



Regular Meeting of the Board of Directors

City of Texarkana, Arkansas

216 Walnut Street

Agenda - Monday, November 07, 2022 - 6:00 PM

Call to Order

Roll Call

Invocation given by Assistant Mayor Hollibush

Pledge of Allegiance led by Bi-State Justice Building Maintenance Manager Kristine Barron

CITIZEN COMMUNICATION

Please fill out a Citizen Communication Card with your name and contact information for the City Clerk's records.

A limit of five (5) minutes per person is allotted for citizens to express their concerns to the Board of Directors, with a maximum of fifty (50) minutes reserved for Citizens Communication. The Board of Directors cannot respond to citizens' concerns during this time.

Be respectful of the Board of Directors, city staff, and the public by refraining from abusive conduct, personal charges, or verbal attacks.

PROCLAMATION(S)

1. Proclamation declaring November 26, 2022, as Small Business Saturday. (ADMIN)

PRESENTATION(S)

2. Presentation of the City of Texarkana, Arkansas Employee Service Awards. (ADMIN)
3. Presentation by the Texarkana Regional Airport. (AIRPORT) Airport Director Paul Mehrlich

CONSENT

4. Approval of the minutes of the regular meeting October 17, 2022. (CCD) City Clerk Heather Soyars
5. Adopt a Resolution approving the reimbursement of \$38,100.00 to the Texarkana Regional Airport from American Rescue Act Funds. (FIN) Finance Director TyRhonda Henderson

REGULAR

6. *THIS ITEM WAS TABLED ON THE PREVIOUS MEETING, OCTOBER 17, 2022*

Adopt a Resolution requesting the Miller County Quorum Court to increase the County Road levy to the maximum 3.0 mills. (ADMIN) City Manager E. Jay Ellington

7. Adopt a Resolution authorizing the City Manager to seek proposals for Amendment 78 financing for capital improvements for the Front Street Plaza project and to amend the FY2022 General Fund Budget to increase funding amount and associated allocation. (FIN) Finance Director TyRhonda Henderson
8. Adopt a Resolution to renew agreement with Gabriel, Roeder, Smith & Company for actuarial services for the Texarkana Arkansas Public Employee Retirement System (TAPERS). (FIN) Finance Director TyRhonda Henderson
9. Adopt a Resolution authorizing the City Manager to enter into an Industry Track Agreement with Union Pacific Railroad and an Agreement and Consent to Joint Use of Track with Cooper Tire. (ADMIN) City Manager Jay Ellington
10. Adopt an Ordinance to rezone two tracts of land located in Ward 3 in the 5800 block of East 9th Street from R-1 Rural residential to A-1 Mixed use rural zoning in order to build garage/shop (Smith). (PWD-Planning) City Planner Mary Beck
11. Adopt an Ordinance to rezone a quarter section of land located in Ward 3 in the 5100 block of Old Post Road from R-1 Rural residential to M-2 General manufacturing that would allow a one-year conditional use permit for batch concrete/asphalt mixing to occur up to 180 days of the permitted time in order to provide materials for renovations at the Texarkana Airport. (PWD-Planning) City Planner Mary Beck

BOARD OF DIRECTORS' COMMENTARY

CITY MANAGER REPORT

NEXT MEETING DATE: Monday, November 21, 2022

ADJOURN

City Calendar

Veterans Day Parade - Saturday, November 12th - 11AM - 1:30PM

Main Street Christmas Parade - Monday, December 5th - 7PM - 9PM

Celebration of the Feast of Our Lady of Guadalupe - Sunday, December 11th - 12PM - 1PM

Run the Line - Sunday, February 19th - 7AM - 12:30PM

Texarkana Rec Center Calendar

Ageless Grace - Mondays – 2PM – 3PM

Gym Open - Mondays, Wednesdays & Fridays – 8AM - 7PM & Saturdays - 8AM – Noon

Dance Fitness - Tuesdays - 6PM & Saturdays - 11AM



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE: Proclamation declaring November 26, 2022, as Small Business Saturday. (ADMIN)

AGENDA DATE: November 7, 2022

ITEM TYPE: Ordinance Resolution Other : Proclamation

DEPARTMENT: Administration

PREPARED BY: Heather Soyars, City Clerk

REQUEST: Proclamation for Small Business Saturday

EMERGENCY CLAUSE: N/A

SUMMARY:

EXPENSE REQUIRED: N/A

AMOUNT BUDGETED: N/A

APPROPRIATION REQUIRED: N/A

RECOMMENDED ACTION: N/A

EXHIBITS: Proclamation



CITY OF TEXARKANA, AR

BOARD OF DIRECTORS

AGENDA TITLE: Presentation of the City of Texarkana, Arkansas Employee Service Awards. (ADMIN)

AGENDA DATE: November 7, 2022

ITEM TYPE: Ordinance Resolution Other : Presentation

DEPARTMENT: City Clerk Department

PREPARED BY: Heather Soyars, City Clerk

REQUEST: Presentation of employee service awards.

EMERGENCY CLAUSE: N/A

SUMMARY: Employee Service Awards:

Thomas Durham	TWU	5 years
James Whisenhunt, III	TWU	10 years
Justicia Magsalay	TAPD	5 years
Landon Loe	TAPD	5 years
Thomas West	TAPD	15 years
Larry Cook	TAFD	15 years
Jason Carroll	TAFD	20 years
Michael McKee	TAFD	20 years
Brian Irvin	TAFD	20 years
Jim Wall	TAFD	20 years
Vincent Johnson	TAFD	30 years

EXPENSE REQUIRED: N/A

AMOUNT BUDGETED: N/A

**APPROPRIATION
REQUIRED:** N/A

**RECOMMENDED
ACTION:** N/A

EXHIBITS: None



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE: Presentation by the Texarkana Regional Airport. (AIRPORT) Airport Director Paul Mehrlich

AGENDA DATE: November 7, 2022

ITEM TYPE: Ordinance Resolution Other : Presentation

DEPARTMENT: Airport

PREPARED BY: Paul Mehrlich, Airport Director

REQUEST: Presentation

EMERGENCY CLAUSE: N/A

SUMMARY:

EXPENSE REQUIRED: N/A

AMOUNT BUDGETED: N/A

**APPROPRIATION
REQUIRED:** N/A

**RECOMMENDED
ACTION:** N/A

EXHIBITS:



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE:	Approval of the minutes of the regular meeting October 17, 2022. (CCD) City Clerk Heather Soyars
AGENDA DATE:	November 7, 2022
ITEM TYPE:	Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Other <input checked="" type="checkbox"/> : Minutes
DEPARTMENT:	City Clerk Department
PREPARED BY:	Heather Soyars, City Clerk
REQUEST:	Approval of meeting minutes.
EMERGENCY CLAUSE:	N/A
SUMMARY:	Approval of meeting minutes
EXPENSE REQUIRED:	N/A
AMOUNT BUDGETED:	N/A
APPROPRIATION REQUIRED:	N/A
RECOMMENDED ACTION:	The City Clerk recommends Board approval.
EXHIBITS:	Meeting minutes.



Regular Meeting of the Board of Directors

City of Texarkana, Arkansas

216 Walnut Street

Minutes - Monday, October 17, 2022 - 6:00 PM

Mayor Brown called the meeting to order at 6:00 PM.

PRESENT: Mayor Allen Brown, Ward 1 Director Terry Roberts, Ward 2 Director Laney Harris, Assistant Mayor Ward 3 Steven Hollibush, Ward 5 Director Barbara Miner, and Ward 6 Director Jeff Hart.

ALSO, PRESENT: City Manager E. Jay Ellington, City Attorney George Matteson, and Deputy City Clerk Jenny Narens.

ABSENT: Ward 4 Director Ulysses Brewer and City Clerk Heather Soyars.

Invocation given by Evangelist Donna Quarles, guest of Director Laney Harris.

Pledge of Allegiance led by Animal Care and Adoption Center Director Lenor Teague.

CITIZEN COMMUNICATION

- Chris Owens, spoke about the Ingraham Pool being unsafe for the community.
- Cody Barling, 2407 Laurel Street, is the new owner of the Wild Hare, formally the Railyard Saloon. He wanted to know what the City's plan was in reference to the barricades in front of his bar.
- Dearica Gates gave a freedom of speech rap performance.

PROCLAMATION(S)

1. Proclamation declaring October 23-29, 2022, as Pro Bono Week. (ADMIN)
2. Proclamation declaring October 28, 2022, as First Responder Appreciation Day. (ADMIN)
3. Proclamation declaring November 2022, as Business Appreciation Month. (BOD) (This proclamation added at the request of Director Harris)

PRESENTATION(S)

4. Presentation of upcoming street projects. (TWU) Public Works Director Tyler Richards
5. Presentation of the 2022 General Fund Variance Report. (FIN) Finance Director TyRhonda Henderson

CONSENT

Director Hart made the motion to adopt the Consent agenda, Seconded by Director Roberts. The motion carried and the following item was approved:

6. Approval of the minutes of the regular meeting October 3, 2022. (CCD) City Clerk Heather Soyars

REGULAR

7. Consider the following action concerning the maintenance of overgrown lots:
Conduct a Public Hearing regarding the placing of liens on (37) thirty-seven overgrown lots.
Adopt a Resolution placing liens on (37) thirty-seven overgrown lots. (PWD) Shawn Maxey Building Official

After a brief discussion motion to table the resolution was made by Director Harris, Seconded by Assistant Mayor Hollibush.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Assistant Mayor Hollibush, and Director Hart.

Voting Nay: Director Miner

The motion carried 5-1 and the resolution was tabled.

8. Resolution No. 2022-63 recommended the Texarkana Metropolitan Planning Organization (MPO) request design plans from the Arkansas Department of Transportation (ARDOT) for the Stateline Avenue Corridor Plan Alternative Two. (ADMIN) City Manager E. Jay Ellington

After a brief discussion motion to adopt the resolution made by Director Hart, Seconded by Director Miner.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Assistant Mayor Hollibush, Director Miner, and Director Hart.

The motion carried 6-0 and the Mayor declared the resolution adopted.

9. Resolution No. 2022-64 to accept employee health benefits rate increase to the Municipal Health Benefit Fund Premium. (FIN) Finance Director TyRhonda Henderson

After a brief discussion motion to adopt the resolution made by Director Roberts, Seconded by Director Harris.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, and Director Miner.

Voting Nay: Assistant Mayor Hollibush and Director Hart.

The motion carried 4-2 and the Mayor declared the resolution adopted.

10. Adopt a Resolution requesting the Miller County Quorum Court to increase the County Road levy to the maximum 3.0 mills. (ADMIN) City Manager E. Jay Ellington

After a brief discussion motion to table the resolution was made by Director Roberts, Seconded by Assistant Mayor Hollibush.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Assistant Mayor Hollibush, Director Miner, and Director Hart.

The motion carried 6-0 and the resolution was tabled.

BOARD OF DIRECTORS' COMMENTARY

Director Harris said National League of City's (NLC) Federal Advocacy Committees were open for any Board of Director to join until November 30, 2022. He said last Saturday there was a food truck festival at Bobby Ferguson Park. Director Harris said the City was to receive funds from the Community Development Block Grant (CDBG) and wanted to know if some of the funds could be used at Bramble Park. He also said the Ingraham Pool needed to be fixed up again.

Assistant Mayor Hollibush said due to the upcoming election, there would be an open forum at the Church of the Living God and Christ on Thursday, located on Laurel Street, beginning at 6:00PM.

CITY MANAGER REPORT

City Manager E. Jay Ellington gave the following report:

- The new Police Chief would start on October 24, 2022.
- Miller County Judge gave him a verbal notice that the Juvenile Detention Center would close November 1, 2022.
- He said inside the entertainment district there would be a reduced speed for the scooters, and they were trying to figure out where to put the bollards if needed.
- He said work on the stage cover for the Front Street Plaza would begin in the next few weeks.
- He said discussions about the budget had been going on for several weeks and he would bring recommendations to the Board at the end of November or first of December.
- He said there were several events happening in Texarkana and he mentioned the Gotxk website to view them all.

NEXT MEETING DATE: Monday, November 7, 2022

ADJOURN

Motion to adjourn made by Director Miner, Seconded by Director Hart.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Assistant Mayor Hollibush, Director Miner, and Director Hart.

The motion carried 6-0 and the meeting adjourned at 7:41 PM.

APPROVED this the 7th day of November 2022.

Allen L. Brown, Mayor

Heather Soyars, City Clerk



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE:	Adopt a Resolution approving the reimbursement of \$38,100.00 to the Texarkana Regional Airport from American Rescue Act Funds. (FIN) Finance Director TyRhonda Henderson
AGENDA DATE:	11/7/2022
ITEM TYPE:	Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Other <input type="checkbox"/> : _____
DEPARTMENT:	Finance Department
PREPARED BY:	TyRhonda Henderson, Finance Director

REQUEST:	N/A
EMERGENCY CLAUSE:	N/A

SUMMARY:	The American Rescue Act Fund was approved by the City of Texarkana, Arkansas Board of Directors on December 20, 2021, with resolution 2021-65. This budget allocated \$972,090 in 2021 and the remaining \$656,637 in 2022. Of the total \$1,628,727, \$182,286.30 has been spent. The purpose of this agenda item is to approve the reimbursement of \$38,100.00 to the Texarkana Regional Airport for engineering services in connection with the Landside Development. As this would be considered a general governmental service, it is eligible for reimbursement due to the City receiving less than \$10 million from the American Rescue Plan Act.
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EXPENSE REQUIRED:	\$38,100.00
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AMOUNT BUDGETED:	\$38,100.00
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APPROPRIATION REQUIRED:	\$0
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RECOMMENDED ACTION:	City Manager and staff recommend approval
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EXHIBITS:	Resolution and invoice
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RESOLUTION NO. _____

WHEREAS, allocated American Rescue Plan Act (ARPA) Funds remain available for use in accordance with applicable law and restriction; and

WHEREAS, of the total ARPA funds allocated, \$1,628,727.00, the total spent to date is \$182,286.30 and;

WHEREAS, an eligible use of a portion of such funds is to reimburse the Airport Authority for \$38,100.00 incurred in connection with Landslide Development; and

WHEREAS, City Manager and staff recommend approval;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Texarkana, Arkansas, that the reimbursement described herein is approved and, further, all applicable City budgets are appropriately amended.

PASSED AND APPROVED this 7th day of November, 2022.

Allen Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George Matteson, City Attorney

Texarkana Regional Airport Authority
 Paul Mehrlich, Executive Director of Aviation
 201 Airport Drive
 Texarkana, AR 71854

Invoice number 225712-006
 Date 09/08/2022

Project **225712 Texarkana Regional Airport
 Landside Development - Design Only**

Billing Period: August 1, 2022 through August 31, 2022

Engineering services in connection with the above referenced project in accordance with our agreement and Work order #3.

PRELIMINARY DESIGN & REPORTS

Contract Amount	28,750.00		
Percent Complete	90.43		
Prior Billed	26,000.00		
Total Billed	26,000.00		
		Current Billed	0.00

GRANT ADMINISTRATION

Contract Amount	7,500.00		
Percent Complete	29.33		
Prior Billed	2,200.00		
Total Billed	2,200.00		
		Current Billed	0.00

TOPOGRAPHIC SURVEY

Contract Amount	24,500.00		
Percent Complete	100.00		
Prior Billed	24,500.00		
Total Billed	24,500.00		
		Current Billed	0.00

ENVIRONMENTAL COORDINATION

Contract Amount	12,500.00		
Percent Complete	20.80		
Prior Billed	0.00		
Total Billed	2,600.00		
		Current Billed	2,600.00

GEOTECHNICAL INVESTIGATION

Contract Amount	20,275.00		
Percent Complete	100.00		
Prior Billed	20,275.00		
Total Billed	20,275.00		
		Current Billed	0.00

ENGINEERING DESIGN DOCUMENTS

Contract Amount	263,975.00
Percent Complete	44.78
Prior Billed	107,711.30
Total Billed	118,211.30

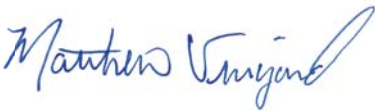
Current Billed	10,500.00
Total	13,100.00

Invoice total **13,100.00**

Invoice Summary

Description	Contract Amount	Prior Billed	Total Billed	Current Billed
PRELIMINARY DESIGN & REPORTS	28,750.00	26,000.00	26,000.00	0.00
GRANT ADMINISTRATION	7,500.00	2,200.00	2,200.00	0.00
TOPOGRAPHIC SURVEY	24,500.00	24,500.00	24,500.00	0.00
ENVIRONMENTAL COORDINATION	12,500.00	0.00	2,600.00	2,600.00
GEOTECHNICAL INVESTIGATION	20,275.00	20,275.00	20,275.00	0.00
ENGINEERING DESIGN DOCUMENTS	263,975.00	107,711.30	118,211.30	10,500.00
ADDITIONAL SERVICES	0.00	0.00	0.00	0.00
Total	357,500.00	180,686.30	193,786.30	13,100.00

Approved by:



Matthew R. Vinyard
 Project Manager, P.E.

Texarkana Regional Airport Authority
 Paul Mehrlich, Executive Director of Aviation
 201 Airport Drive
 Texarkana, AR 71854

Invoice number 225712-007
 Date 10/05/2022

Project **225712 Texarkana Regional Airport
 Landside Development - Design Only**

Billing Period: September 1, 2022 through September 30, 2022

Engineering services in connection with the above referenced project in accordance with our agreement and Work order #3.

PRELIMINARY DESIGN & REPORTS

Contract Amount	28,750.00		
Percent Complete	90.43		
Prior Billed	26,000.00		
Total Billed	26,000.00		
		Current Billed	0.00

GRANT ADMINISTRATION

Contract Amount	7,500.00		
Percent Complete	29.33		
Prior Billed	2,200.00		
Total Billed	2,200.00		
		Current Billed	0.00

TOPOGRAPHIC SURVEY

Contract Amount	24,500.00		
Percent Complete	100.00		
Prior Billed	24,500.00		
Total Billed	24,500.00		
		Current Billed	0.00

ENVIRONMENTAL COORDINATION

Contract Amount	12,500.00		
Percent Complete	84.80		
Prior Billed	2,600.00		
Total Billed	10,600.00		
		Current Billed	8,000.00

GEOTECHNICAL INVESTIGATION

Contract Amount	20,275.00		
Percent Complete	100.00		
Prior Billed	20,275.00		
Total Billed	20,275.00		
		Current Billed	0.00

ENGINEERING DESIGN DOCUMENTS

Contract Amount	263,975.00
Percent Complete	51.22
Prior Billed	118,211.30
Total Billed	135,211.30

Current Billed	17,000.00
Total	25,000.00

Invoice total **25,000.00**

Invoice Summary

Description	Contract Amount	Prior Billed	Total Billed	Current Billed
PRELIMINARY DESIGN & REPORTS	28,750.00	26,000.00	26,000.00	0.00
GRANT ADMINISTRATION	7,500.00	2,200.00	2,200.00	0.00
TOPOGRAPHIC SURVEY	24,500.00	24,500.00	24,500.00	0.00
ENVIRONMENTAL COORDINATION	12,500.00	2,600.00	10,600.00	8,000.00
GEOTECHNICAL INVESTIGATION	20,275.00	20,275.00	20,275.00	0.00
ENGINEERING DESIGN DOCUMENTS	263,975.00	118,211.30	135,211.30	17,000.00
ADDITIONAL SERVICES	0.00	0.00	0.00	0.00
Total	357,500.00	193,786.30	218,786.30	25,000.00

Approved by:

Matthew R. Vinyard
 Project Manager, P.E.



CITY OF TEXARKANA, AR

BOARD OF DIRECTORS

AGENDA TITLE:	*THIS ITEM WAS TABLED ON THE PREVIOUS MEETING, OCTOBER 17, 2022* Adopt a Resolution requesting the Miller County Quorum Court to increase the County Road levy to the maximum 3.0 mills. (ADMIN) City Manager E. Jay Ellington
AGENDA DATE:	November 07, 2022
ITEM TYPE:	Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Other <input type="checkbox"/> : _____
DEPARTMENT:	Administration
PREPARED BY:	E. Jay Ellington, City Manager
REQUEST:	Request Miller County Quorum Court to increase the road levy to the maximum 3.0 mills.
EMERGENCY CLAUSE:	N/A
SUMMARY:	Request Miller County Quorum Court to increase the road levy to the maximum 3.0 mills.
EXPENSE REQUIRED:	N/A
AMOUNT BUDGETED:	N/A
APPROPRIATION REQUIRED:	N/A
RECOMMENDED ACTION:	The City Manager recommends Board approval.
EXHIBITS:	Resolution

RESOLUTION NO. _____

WHEREAS, Miller County currently levies 0.5 mills of a maximum 3.0 mills allowable as the “County Road” portion of the County’s total real and personal property ad valorem tax levy; and

WHEREAS, the County Road portion of the County’s ad valorem tax levy is for use in connection with roads located in the County – including roads and streets in the City; and

WHEREAS, as such, under applicable law, the County Road portion of the County’s tax levy is divided between the County and City; and

WHEREAS, of the current County Road levy of 0.5 mills, 0.3 mills (being approximately \$127,000.00) is directed to the City and 0.2 mills (being approximately \$85,000.00) is directed to the County; and

WHEREAS, an increase in the County’s County Road levy to the maximum 3.0 mills, to be divided 1.8 mills to the City and 1.2 mills to the County would result in an estimated \$630,000.00 in favor of the City and \$420,000.00 in favor of the County; and

WHEREAS, the increased revenue could be used to benefit street and road repair in the City and the County; and

WHEREAS, the City Manager and staff recommend that the Board of Directors request that the Miller County Quorum Court increase the County Road portion thereof to a total of 3.0 mills (1.8 mills to the City and 1.2 mills to the County);

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the City of Texarkana, Arkansas, that request is made upon the Quorum Court of Miller County to increase the “County Road” portion of its next ad valorem tax levy to the maximum amount of 3.0 mills, to be divided as set forth above, and provide additional resources for the

betterment and necessary improvement of streets and roads for citizens of the City and County alike.

PASSED AND APPROVED this 7th day of November, 2022.

Allen L. Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George Matteson, City Attorney



CITY OF TEXARKANA, AR

BOARD OF DIRECTORS

AGENDA TITLE: Adopt a Resolution authorizing the City Manager to seek proposals for Amendment 78 financing for capital improvements for the Front Street Plaza project and to amend the FY2022 General Fund Budget to increase funding amount and associated allocation. (FIN) Finance Director TyRhonda Henderson

AGENDA DATE: 11/7/2022

ITEM TYPE: Ordinance Resolution Other : _____

DEPARTMENT: Finance Department

PREPARED BY: TyRhonda Henderson, Finance Director

REQUEST: N/A

EMERGENCY CLAUSE: N/A

SUMMARY: During the FY2022 Budget process, the Texarkana, Arkansas Board of Directors allocated \$400,000 to the Front Street Plaza project with the intent of borrowing those funds to pay for this project. Due to rising costs, we are requesting that the allocation be increased to \$650,000 and permission to seek proposals for Amendment 78 financing for capital improvements in said amount.

EXPENSE REQUIRED: \$650,000

AMOUNT BUDGETED: \$400,000

**APPROPRIATION
REQUIRED:** \$250,000

**RECOMMENDED
ACTION:** City Manager and staff recommend approval

EXHIBITS: Resolution and budget

RESOLUTION NO. _____

WHEREAS, the FY2022 Budget contemplates incurrence of indebtedness in the amount of \$400,000.00, for Front Street Plaza improvements; and

WHEREAS, request is now made to amend the FY2022 Budget to increase the anticipated indebtedness to \$650,000.00, and further for authority to proceed pursuant to applicable law with a request for proposals for such purpose; and

WHEREAS, the City Manager and staff recommend approval.

NOW, THEREFORE, BE IT RESOLVED, by Board of Directors for the City of Texarkana that the FY2022 Budget is hereby amended to increase the anticipated indebtedness described above from \$400,000.00 to \$650,000.00, and further staff is authorized to seek and evaluate proposals for Amendment 78 financing for such purpose and future presentation to the Board for consideration.

PASSED AND APPROVED this 7th day of November, 2022.

Allen L. Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George M. Matteson, City Attorney



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE:	Adopt a Resolution to renew agreement with Gabriel, Roeder, Smith & Company for actuarial services for the Texarkana Arkansas Public Employee Retirement System (TAPERS). (FIN) Finance Director TyRhonda Henderson
AGENDA DATE:	November 7, 2022
ITEM TYPE:	Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Other <input type="checkbox"/> : _____
DEPARTMENT:	Finance Department
PREPARED BY:	TyRhonda Henderson, Finance Director

REQUEST:	Renew agreement with Gabriel, Roeder, Smith & Company for actuarial services for the (TAPERS).
EMERGENCY CLAUSE:	N/A

SUMMARY:	Adopt a resolution to renew agreement with Gabriel, Roeder, Smith & Company for actuarial services for the Texarkana Arkansas Public Employee Retirement System (TAPERS). The renewal includes the option to renew at the current retainer fee of \$22,500.00 annually through June 30, 2027. The TAPERS committee voted to accept this contract on October 25, 2022.
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EXPENSE REQUIRED:	N/A
AMOUNT BUDGETED:	N/A
APPROPRIATION REQUIRED:	N/A

RECOMMENDED ACTION:	The City Manager and staff recommend approval.
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EXHIBITS:	Resolution and Gabriel, Roeder, Smith & Company Contract
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CITY OF TEXARKANA ARKANSAS

FINANCE DEPARTMENT-Personnel Division
216 WALNUT ST 71854-6024
P O BOX 2711 TEXARKANA ARKANSAS 75504-2711
PHONE (870) 779-4954 FAX (870) 772-8182

TAPERS Meeting Minutes **10/25/2022 10:00 a.m.**

Present:

Director Laney Harris, Committee Member
City Manager E. Jay Ellington, Committee Member
Dara Cornett, Committee Member
Pe'Tree Banks, Committee Member

TyRhonda Henderson, Finance Director
Rachel Hopkins, Personnel Administrator

- The meeting of the TAPERS Retirement Committee was called to order at 10:00 a.m. with a quorum present.
- Approval of 05/18/2022 minutes. Motion: Dara Cornett
Second: Laney Harris
Approved 4-0
- Renewal of GRS (Gabriel, Roeder, Smith, and Company) Actuarial Contract
Motion: Dara Cornett
Second: E. Jay Ellington
Approved 4-0
- Discussion of Retirement Eligibility Requirements
Committee discussed eligibility rules defined in the TAPERS plan for clarification. Committee requested GRS (Gabriel, Roeder, Smith, and Company) actuarial company come and hold an employee education meeting. This meeting will address any questions about the TAPERS plan and the eligibility to retire without a reduced benefit.
- Meeting Adjourned at 10:38 a.m. Motion: E. Jay Ellington
Second: Pe'Tree Banks
Approved 4-0

**CONSULTING SERVICES AGREEMENT
BETWEEN THE
CITY OF TEXARKANA, ARKANSAS EMPLOYEE RETIREMENT PLAN
AND
GABRIEL, ROEDER, SMITH AND COMPANY**

**Section I
General Information**

A. Purpose

The City of Texarkana, Arkansas Employee Retirement Plan (TAPERS) (Client) hereby enters into a contractual agreement with Gabriel, Roeder, Smith and Company (GRS) for actuarial and consulting services. The client in this matter shall be TAPERS as represented by the Retirement Committee. This Contract does not create any relationship between GRS and any other related private or not for profit entity, or participants in TAPERS. Such entities may rely upon GRS work products only with the permission of both GRS and the Retirement Committee.

B. Entire Agreement and Order of Precedence

This Agreement forms the complete and exclusive contract between the parties as it relates to this transaction. The failure of a party to insist upon strict adherence to any term of the contract shall not be considered a waiver, or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the contract. The contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

Each provision of the contract shall be deemed to be severable from all other provisions of the contract and, if one or more of the provisions of the contract shall be declared invalid, the remaining provisions of the contract shall remain in full force and effect. The contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Arkansas.

C. Term of Contract

The contract is for the 12-month period extending from July 1, 2022, through June 30, 2023. By mutual agreement of the parties, the contract may be renewed on a year-to-year basis for up to an additional four years (through June 30, 2027).

D. Contractor Responsibilities

GRS assumes responsibility for all contractual activities whether or not it performs them directly. GRS shall be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract. Client reserves the right to interview the key personnel assigned by GRS to this project and to request reassignment of personnel deemed unsatisfactory by Client in its reasonable discretion.

If any part of the work is to be subcontracted, Client reserves the right to approve the subcontractors in advance, and to require that GRS replace any subcontractors found by Client to be unacceptable in its reasonable discretion. GRS shall be responsible for adherence by the subcontractor to all provisions of the contract.

E. Client Responsibilities

Client agrees to review information supplied by GRS for general reasonableness, and to ensure that GRS has properly understood the assignment. In the event that Client finds a GRS work product to be unreasonable or otherwise unsatisfactory, Client shall not distribute such work product or otherwise make use of it, or rely upon it, until a correction has been made, or GRS has explained matters to the satisfaction of Client. Client agrees that GRS is not responsible for the accuracy or completeness of any data provided to GRS by Client, and Client, to the extent permitted by state and federal law, will indemnify, defend and hold harmless GRS, its employees and agents from and against all losses, liabilities, penalties, fines, damages and claims, and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred by GRS in connection with any inaccuracy or incompleteness in such data. In the event of discovery of an error made by GRS in a calculation, Client agrees to take immediate and substantial steps to mitigate the effects of such error.

F. Accounting Records

GRS shall maintain all pertinent financial and accounting records and evidence pertaining to this contract in accordance with generally accepted accounting principles (GAAP).

G. Patent/Copyright Infringement and Employee Indemnification

GRS shall indemnify, defend and hold harmless Client and its employees and agents from and against all losses, liabilities, penalties, fines, damages and claims, and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against Client to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity, or service supplied by GRS or its subcontractors, or the operation of such equipment, software, commodity, or service, or the use or reproduction of any documentation provided with such equipment, software, commodity, or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become, or in GRS' opinion be likely to become, the subject of a claim of infringement, GRS shall at its sole expense, (i) procure for Client the right to continue using the equipment, software, commodity, or service, or (ii) if such option is not reasonably available to GRS, replace or modify the same with equipment, software, commodity, or service of equivalent function and performance so that it becomes non-infringing, or (iii) if such options are not reasonably available to GRS, accept its return by Client with appropriate credits to Client against GRS' charges and reimburse Client for any losses or costs incurred as a consequence of Client ceasing to use and returning the equipment, software, commodity, or service. The foregoing indemnification is void to the extent that Client, its employees or agents modifies or misuses such equipment, software, commodity, or service.

GRS agrees to indemnify Client from claims made by GRS employees while working on Client premises on Client projects, provided that Client has complied with all relevant Federal and State Laws related to workplace safety, and human rights, including, but not limited to anti-discrimination and anti-harassment laws; however, GRS shall not be required to indemnify Client with respect to any claim that is based on Client's negligence or misconduct. In any and all claims against Client, or any of its agents or employees, by any employee of GRS or any of its subcontractors, the foregoing indemnification obligation shall not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for GRS or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in subclauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clauses.

The duty to indemnify will survive the expiration or early termination of the contract for a period of one year with respect to any claims based on facts or conditions which occurred prior to termination or expiration.

H. Liability Insurance and General Indemnity

GRS shall purchase and maintain such insurance as will protect it from claims which may arise out of or result from its performance under the contract, whether such performance be by GRS or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The insurance shall be written for not less than the greater of \$1,000,000 and any limits required by law, and shall include contractual liability insurance as applicable to GRS' obligations under the indemnification clause of this contract.

GRS agrees to indemnify Client for the actual amount of all direct losses the client suffers due to gross negligence, error, or willful misconduct on the part of GRS in performing the services hereunder in an amount not to exceed five (5) times the fees paid under this contract during the year in which said gross negligence, error, or willful misconduct is alleged to have occurred, but in any event not to exceed (a) \$250,000 in any consecutive 12-month period in which this Agreement is in effect, commencing as of the first day of the provision of services hereunder, or (b) \$500,000 in the aggregate for all such damages. The indemnification provided by GRS for any single act of gross negligence, error, or willful misconduct shall not exceed \$250,000. In the event of disputes, both parties to this contract agree to waive their right to a jury trial and that any claims or dispute arising out of this agreement, will be submitted to mandatory binding arbitration before an arbitrator in good standing with the American Arbitration Association. Client must notify GRS of any lawsuit, complaint, or other situation for which indemnification may be sought within six (6) months of the date Client is notified of the matter. Client agrees to indemnify, defend and hold harmless GRS for third party claims to the extent that such third party claims would cause the aggregate damages to exceed \$500,000. Furthermore, Client shall indemnify GRS against third party derivative lawsuits, to the extent that such lawsuits result in a judgment payable to Client. In no event will GRS be liable to Client for any indirect, incidental, special, consequential, exemplary or reliance damages (including, without limitation, lost business opportunities or lost sales or profits) arising out of GRS' services to Client, regardless of whether GRS is advised of the likelihood of such damages.

I. Retirement Committee Minutes

The Client shall routinely provide GRS with copies of Retirement Committee Minutes for GRS' reference in connection with work to be performed pursuant to this contract. GRS is not obligated to provide corrections to the minutes. Silence on the part of GRS does not constitute agreement with the minutes, even with respect to meetings that a GRS employee attended or at which GRS was directly or indirectly quoted.

J. Cancellation

Client, with 30 days written notice to GRS, may cancel the contract. GRS may also cancel the contract with 30 days written notice to Client for any of the following reasons: 1) Client, the City of Texarkana, Arkansas, or one or more plan participants or beneficiaries, or the State has filed a lawsuit against GRS in a matter related to Client, its participants, or its beneficiaries, 2) a member of the Retirement Committee or city employee has been found guilty of criminal or civil breach of fiduciary responsibility or other severe wrongdoing with respect to Client or GRS, or 3) a member of the Retirement Committee or a city employee demands that GRS take actions deemed by GRS Management to be unethical or illegal. GRS may otherwise cancel the contract upon giving 90 days written notice to Client. If Client cancels the contract for any reason other than the failure of GRS to fulfill the obligations of the quotation or contract, Client shall pay GRS' reasonable final invoice for work performed under the contract, such final invoice, at the option of GRS, to include a penalty of not more than the greater of \$15,000 or 50% of the amount paid under the contract for the most recently completed fiscal year. If Client cancels the contract for failure of GRS to fulfill all obligations under the contract, Client shall pay GRS' reasonable final invoice for work performed under the contract. In the event of the failure of GRS to fill its obligations under the contract, or in the event that GRS cancels this contract without sufficient notice as described above, Client may procure the services of other sources, and hold GRS liable for any excess costs occasioned thereby, up to the greater of \$15,000 or 50% of the amount paid under the contract for the most recently completed fiscal year.

K. Delegation/Assignment

GRS shall not delegate any duties under this contract to a subcontractor unless Client has given prior written consent to the delegation. GRS may not assign the right to receive money due under the contract without the prior written consent of Client. In addition, Client reserves the right to approve subcontractors for this project and to require GRS to replace subcontractors who in Client's judgment are unacceptable. Notwithstanding the foregoing, however, GRS shall have the right to assign its rights and duties under this contract in connection with a sale of its business, whether by merger, consolidation, sale of stock, sale of assets or otherwise.

L. Non-Discrimination Clause

In performing the contract, GRS agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, marital status, sexual orientation, physical or mental handicap or disability. GRS further agrees that every subcontract entered into for the performance of services hereunder will contain

a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor.

M. Fees

The fees set forth in this contract shall be firm for the duration of the contract. Other than possible fee updates for inflation, no fee changes will be permitted without prior written consent of Client. See Section III of this contract.

If GRS is required by governmental regulation, subpoena, or other legal process to produce records or any personnel as a witness with respect to the services provided to Client, Client will reimburse GRS for the costs of professional time and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred in responding to such requests, so long as GRS is not a party to the proceeding in which the information is sought.

N. Modification of Services

Client reserves the right to modify the service requirements during the course of the contract subject to GRS acceptance and potential changes in pricing. Modifications may include adding, deleting, or altering the work to be performed under the contract. Any changes in pricing (increases or decreases) proposed by GRS as a result of service modifications are subject to written acceptance by Client. In the event that price changes are not acceptable to Client, the contract may be canceled and subject to competitive bidding based upon the new specifications, in which case Client shall pay GRS' reasonable final invoice for work performed under the contract.

O. Confidentiality

GRS shall instruct its employees and the employees of any subcontractor to keep as confidential information concerning the business of Client, its financial affairs, its relations with its participating municipalities and courts, members, retirees and beneficiaries, and its employees, as well as any other information which may be specifically classified as confidential by Client. At Client' request, GRS or any subcontractor(s) and each of their employees may be required to sign confidentiality statements prior to beginning or continuing to work on the contract.

GRS reserves the right to destroy Client confidential information one year following receipt, unless it receives instructions to the contrary from Client, in which case GRS will deliver such confidential information to Client at Client's sole cost and expense, including, without limitation, GRS' internal costs to retrieve and collect such information. GRS will not reveal or disclose either information or findings concerning this contract with anyone who does not have a substantial need-to-know and who has not been expressly authorized in writing by Client to receive the information/findings. GRS shall ensure that commercially reasonable safeguards and procedures are implemented to protect confidential information.

P. Record Retention

GRS shall retain records of Client work appropriate to its business needs in accordance with its standard retention policy.

Q. Tax Advice, Legal Advice, and Investment Advice

Based upon its general background and research on Federal Income Tax, Legal Issues, and Investment Matters, GRS employees may from time to time provide general comments and information on same. However, no GRS work product shall be deemed to provide income tax advice, legal advice, or investment advice unless such work product contains one of the following phrases or substantially equivalent language.

- “This work product is intended to provide income tax advice.”
- “This work product is intended to provide legal advice.”
- “This work product is intended to provide investment advice.”

No oral communication of any GRS employee shall be interpreted to provide income tax advice, legal advice, or investment advice. Further, no GRS work product shall be used for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) marketing or recommending to another party any tax-related matter addressed within the work product.

R. Third Party Dealings

Except as may be required by law or legal process, GRS will not provide information related to Client to third parties except with the permission of, and under the specific direction of, Client. By giving such direction and permission, Client agrees to indemnify, defend, and hold harmless GRS, or to require such third party to indemnify GRS, with respect to any such third party’s use of GRS work products. GRS shall not review any third party work product except under the specific written direction of Client to do so, and only for reasonable compensation. Such review if undertaken shall be limited to those areas in which GRS has expertise, and shall specifically exclude conclusions related to income tax, investment matters, and legal matters.

S. Communications

Client shall appoint an individual to serve as GRS' main contact throughout the term of this agreement. GRS shall presume, with no duty of inquiry that all assignments given by such main contact are given with the permission of Client's Retirement Committee. GRS shall presume, with no duty of inquiry, that all communications and materials provided to such main contact will be transmitted to the Retirement Committee. GRS shall not take direction from any other individual without explicit consent of such main contact.

T. Limitations

GRS shall act with due diligence in all matters in which it provides services under this contract. GRS acts only as the independent actuary for the Client and makes recommendations based upon Client funding policies. GRS does not provide legal or investment advice to the Client. GRS is not a fiduciary, within the meaning of any applicable state or federal law, or member of the Retirement Committee for the Client, and therefore, GRS does not vote on matters of governance and does not make decisions of any kind on behalf of the Client. GRS relies, as it must, on audited financial statements, demographic data, and member benefit information provided by the Client and/or the employer, and is not engaged to audit this data. GRS shall not be responsible under any circumstance for making employee or employer contributions to Client.

No provision of this contract shall be interpreted to require GRS to provide income tax advice, investment advice, or legal advice to Client. GRS has no responsibility for the performance or non-performance of Client's assets, the structure of Client's portfolio, or the selection or termination of investment managers and consultants. GRS is not a registered municipal advisor with the SEC.

U. Warranty

GRS warrants that all work performed under the contract will be performed by individuals who are qualified under the requirements as are from time-to-time issued by various actuarial and other professional bodies. GRS warrants that the work product will be subject to an internal peer review procedure. Finally, GRS warrants that GRS has no direct or indirect financial relationship to Client, other than the relationship described in this contract. Other than as expressly set forth herein, GRS makes no other express or implied warranties of any kind, including without limitation, any implied warranty of merchantability or fitness for a particular use.

V. Ownership

GRS has created, acquired or otherwise has rights in, and may, in connection with the performance of services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, templates, software systems, user interfaces and screen designs, general purpose consulting and software tools, benefit administration systems, data, documentation, and other proprietary information and processes ("GRS Technology").

All GRS Technology is and will remain the sole property of GRS, and Client shall acquire no right or interest in such property. Client will honor GRS' copyrights, patents, trademarks and other intellectual property rights relating to the services provided hereunder and the GRS Technology and will not use

GRS' name, copyrights, patents, trademarks or other intellectual property without GRS' prior written consent.

Nothing contained in this contract will prohibit GRS from using any of the GRS Technology, its general knowledge or knowledge acquired under this Agreement (excluding confidential information of Client to the extent protected by Section I, Item O) to perform services for others.

W. Force Majeure

GRS shall not be liable for any delays or non-performance hereunder resulting from circumstances or causes beyond its reasonable control, including, without limitation, acts or omissions of or the failure to cooperate by the Client (including, without limitation, entities or individuals under Client's control, or any of their respective officers, directors, employees, or other personnel or agents), acts or omissions of or the failure to cooperate by any third party, fire or other casualty, act of God, strike or labor dispute, war, terrorism or other violence, or any law, order or other requirement of any governmental agency or authority.

X. Independent Contractor

Client and GRS are independent entities, and neither Client nor GRS is, nor shall be considered to be, an agent, distributor, joint venturer, partner, fiduciary or representative of the other. Neither Client nor GRS shall act or represent itself, directly or by implication, in any such capacity in respect of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

Section II

Work Statement

A. Duties

The regular and special services duties to be performed by GRS are set forth in Appendix 1, Scope of Services and Fees. GRS is not constrained from supplementing this list with additional items or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques, within the price schedule set forth in the proposal, unless agreed otherwise by the parties in writing.

B. Other Services

From time-to-time, Client may require services other than those described. GRS may be asked to provide communication services, applied technology services, defined contribution plan services, or other supplemental consulting services not described above. Fees for such services shall be based on the hourly rates as described in a separate Letter of Engagement.

If GRS is required by government regulation, subpoena, or other legal process to produce documents or any personnel as a witness with respect to the Services provided to Client, Client will reimburse GRS for the costs of professional time and expenses, including without limitation reasonable attorney's fees, incurred in responding to such requests, so long as GRS is not a party to the proceeding in which the information is sought.

C. Transition

If another vendor succeeds GRS as Client's actuary; GRS shall cooperate in the transition of responsibilities by providing the successor firm the most recent year's actuarial valuation data in the format provided by the Client, and without improvement, and a full set of actuarial assumptions. GRS is not required to provide anything else to such successor actuary. Items that GRS will not provide include, without limitation:

- Internal work papers, including financing spreadsheets.
- Historical reports, correspondence, prior benefit calculations, or any other items that have already been delivered to Client or that came from Client.
- Valuation program output of any type. In particular, we will not supply test life information from our valuation system.
- Source code for or changes to any software, including spreadsheets.
- Any type of certification that the replacement actuary's work is correct.
- Access to GRS offices or computers.

Such transition cooperation is contingent upon Client's agreement to pay GRS' reasonable final invoice for work performed under this contract. GRS may, at its option and with agreement of Client, provide additional transition assistance to such other vendor. GRS shall charge fees for the first ten (10) hours of such additional transition assistance in accordance with the standard rates described herein. For hours

in excess of ten (10), the fees shall be based upon 150% of the otherwise applicable rates. GRS' obligation to assist the replacement vendor in the transition shall cease upon the 6-month anniversary of the contract termination.

D. Audit

In the event that an Audit of GRS' work for Client is performed during the term of this contract, GRS shall cooperate with the audit to the extent required by actuarial standards and within the limits of GRS corporate policies provided that Client agrees to pay GRS' reasonable fees associated with such cooperation. GRS internal work papers, proprietary information, source code and software are property of GRS and considered confidential and will not be made available to the auditing firm. In the event of an audit subsequent to the termination of this contract, client agrees that GRS shall have no specific duty of cooperation.

Section III
Price and Payment Schedule

A. Price for Actuarial Consulting Services

GRS' fees for Actuarial Consulting Services are set forth in Appendix 1 – Scope of Services and Fees. Prices for future contract years may be updated for inflation, and changes, if any, in the scope of services requested.

B. Fees for Additional Meetings and Other Services

Hourly rates applicable to these items are set forth in Appendix 1 – Scope of Services and Fees. These fees are adjusted annually, and do not include direct expenses, such as travel and lodging.

C. Fees and Payment of Invoices

Properly submitted invoices upon which payment is not received within thirty (30) days of the invoice date shall accrue a late charge of 1.5%. Without limiting its right to remedies, GRS shall have the right to halt or terminate the Actuarial Consulting Services entirely if payment is not received within thirty (30) days of the invoice date. Client shall indemnify GRS for the costs of collection of overdue payments.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective the 1st day of July, 2022.

For GRS:

For TAPERS:

Daniel J. White, Senior Consultant
Gabriel, Roeder, Smith & Company

E. Jay Ellington, City Manager
City of Texarkana, Arkansas Employee
Retirement Plan

_____, 2022

_____, 2022

APPENDIX 1 – SCOPE OF SERVICES AND FEES

A. Scope of Service and Fees for Regular Services:

The following services are included as part of the \$22,500 Annual Retainer Fee:

- Actuarial valuation performed as of each July 1st
- Cost projections
- Individual benefit statements
- One meeting with the Retirement Committee each year
- Continual maintenance of member contribution balances in TAPERS

This annual retainer fee will be maintained for up four (4) years, through the fiscal year ending June 30, 2027.

B. Fees for ad hoc services that are not described above:

Fees to perform any services that are outside the service of regular services described above will be discussed in advance with the Retirement Committee to determine an agreed-upon cost. Generally, our hourly rates will apply to all out-of-scope services. However, an alternative, fixed fee arrangement for those particular projects could be discussed.

<u>Associate Level</u>	<u>Hourly Rates</u>
Actuaries & Consultants	\$385 - \$430
Actuarial Analysts	\$275 - \$330
Administrative Assistants	\$140 - \$220



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE: Adopt a Resolution authorizing the City Manager to enter into an Industry Track Agreement with Union Pacific Railroad and an Agreement and Consent to Joint Use of Track with Cooper Tire. (ADMIN) City Manager Jay Ellington

AGENDA DATE: November 7, 2022

ITEM TYPE: Ordinance Resolution Other : _____

DEPARTMENT: Administration

PREPARED BY: Jay Ellington, City Manager

REQUEST: Adopt a Resolution authorizing the City Manager to enter into an Industry Track Agreement with Union Pacific Railroad and an Agreement and Consent to Joint Use of Track with Cooper Tire.

EMERGENCY CLAUSE: N/A

SUMMARY: A resolution authorizing the City Manager to enter into an Industry Track Agreement with Union Pacific Railroad and an Agreement and Consent to Joint Use of Track with Cooper Tire.

EXPENSE REQUIRED: N/A

AMOUNT BUDGETED: N/A

**APPROPRIATION
REQUIRED:** N/A

**RECOMMENDED
ACTION:** The City Manager recommends Board approval.

EXHIBITS: Resolution, Agreement with Cooper Tire and Union Pacific

RESOLUTION NO. _____

WHEREAS, Union Pacific Railroad Company requests that the City enter into an Industry Track Agreement and an Agreement and Consent to Joint Use of Track in connection with expansion by Cooper Tire in Texarkana; and

WHEREAS, the City Manager and staff recommend approval;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the City of Texarkana, Arkansas, that the City Manager is authorized to enter into the above-referenced agreements.

PASSED AND APPROVED this 7th day of November, 2022.

Allen L. Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George Matteson, City Attorney

**AGREEMENT AND
CONSENT TO JOINT USE OF TRACK**

THIS AGREEMENT is made and entered into as of the ____ day of _____, 20___, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter "Railroad") **CITY OF TEXARKANA, ARKANSAS**, a municipality to be addressed at PO Box 2711, Texarkana, Arkansas 75504 (hereinafter "Industry"), and **COOPER TIRE & RUBBER COMPANY**, a Delaware corporation c/o The Goodyear Tire & Rubber Company, to be addressed at 200 Innovation Way, Akron, Ohio 44316 (hereinafter "User").

RECITALS:

By agreement dated _____ identified in the records of Railroad as Agreement Audit No. _____ in RE Project No. 0784430 (hereinafter the "Basic Agreement"), Railroad has agreed to operate certain track (herein and therein "Track") for the benefit of Industry at or near Texarkana, Miller County, Arkansas (Circ7: X 491, Yard 01, Mile Post 415.9, Pine Bluff Subdivision), as described in the Basic Agreement, for the purpose of receiving rail service as contemplated by the Basic Agreement.

User desires rail service from Railroad on or over all or a portion of the Track, represents that it has made arrangements with Industry to use all or a portion of the Track jointly for rail service, and that Industry and User desire Railroad's consent to be jointly served.

Railroad is willing to give such consent on the terms and conditions described in this Consent to Joint Use of Track (this "Agreement").

AGREEMENT:

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

Article 1. INDUSTRY'S CONSENT.

In consideration of the covenants and agreements of User herein contained, Industry hereby consents to the joint use by User of the Track for the purpose of being served thereon by Railroad.

Article 2. RAILROAD'S CONSENT, TERM.

In consideration of the covenants and agreements herein contained, and subject to the terms and conditions hereof, Railroad hereby consents to serve jointly Industry and User over all or a portion of the Track for the period commencing as of the date first herein written, and extending for a term concurrent with the term of the Basic Agreement, conditioned upon and subject to the terms and conditions of this Agreement; provided, however, that upon termination howsoever of the Basic Agreement, this Agreement shall terminate forthwith.

Article 3. OBLIGATIONS OF INDUSTRY AND USER.

All of the covenants, terms and conditions of the Basic Agreement shall remain in full force and effect. User agrees to be bound by the terms and conditions of the Basic Agreement which are binding upon Industry, to the same extent and in the same manner as such terms and conditions pertain to the Track and are binding upon Industry; provided, however, nothing herein contained shall be deemed to release Industry from keeping and performing all the terms, covenants, and conditions by Industry to be kept and performed under the Basic Agreement or to release Industry from any of Industry's liabilities or obligations thereunder; further provided, however, that User shall not acquire by virtue of this Agreement any ownership or salvage interest in the Track. Nothing in this Agreement shall be construed as amending or modifying the Basic Agreement except as specifically provided herein.

Article 4. TERMINATION.

This Agreement may be terminated by any party upon at least 30 days written notice to the other parties. Such notice shall be in writing and (a) personally delivered; (b) delivered by a reputable overnight courier; or (c) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices are valid only if actually received by the individual to whom addressed, and followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices will be deemed received at the earlier of actual receipt, or one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit, or three (3) business days after deposit in the U.S. Mail as evidenced by a return receipt. Notice must be directed to the parties at their respective addresses shown below, or such other address as any party may, from time to time, specify in writing to the others in the manner described above:

If to Railroad: UNION PACIFIC RAILROAD COMPANY
 ATTN: Real Estate Project 0784431
 1400 Douglas Street, Mail Stop 1690
 Omaha, Nebraska 68179
 Facsimile: (402) 501-0340

With a copy to: UNION PACIFIC RAILROAD COMPANY
 ATTN: Law Department – Industrial Track
 1400 Douglas Street, Mail Stop 1580
 Omaha, Nebraska 68179
 Facsimile: (402) 501-0132

If to Industry: CITY OF TEXARKANA, ARKANSAS
 PO Box 2711
 Texarkana, Arkansas

If to User: COOPER TIRE & RUBBER COMPANY
 c/o The Goodyear Tire & Rubber Company
 ATTN: Corporate Secretary
 200 Innovation Way
 Akron, Ohio 44316

Article 5. INSURANCE.

A. Before commencement of the term of this Agreement and subsequently upon request, User shall provide to Railroad a certificate issued by its insurance carrier evidencing the insurance coverage

required under **Exhibit A** to this Agreement.

B. Not more recently than once every two years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

Article 6. NO FURTHER SUBLETTING OR ASSIGNMENT.

Neither Industry nor User may transfer or assign any interest in this Agreement. This Agreement shall not be construed to authorize Industry or User further to transfer or assign any interest in the Basic Agreement.

Article 7. NON-DISCLOSURE.

For the term of this Agreement and for thirty six (36) months thereafter, no party may disclose any of the terms of this Agreement to any non-party without the prior written consent of the other party except (1) as required by law, (2) to a corporate parent, subsidiary, or affiliate or (3) to legal counsel. Each party to this Agreement agrees to indemnify the other from and against any damage(s) suffered by a party as a result of disclosure by a party hereto, or by an auditor or counsel of any of the terms or conditions in violation of this provision. In the event a party determines that the terms of the Agreement have been disclosed to a non-party without the prior written consent of the non-disclosing party, then the non-disclosing party shall have the right to terminate this Agreement immediately upon notice to the other party, and to seek whatever remedies it may have at law or in equity.

Article 8. SIGNATURE IN COUNTERPARTS.

This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile shall be effective as the delivery of a manually executed counterpart of this Agreement.

Intentionally left blank, signature on following page

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By _____

Printed Name _____

Title _____

CITY OF TEXARKANA, ARKANSAS

By _____

Printed Name _____

Title _____

("Industry")

COOPER TIRE & RUBBER COMPANY

By _____

Printed Name _____

Title _____

("User")

EXHIBIT A
Union Pacific Railroad
Contract Insurance Requirements

User shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability Insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Railroad Company Property” covered under this Agreement as the Designated Job Site.

B. Business Automobile Coverage Insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos.)

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Railroad Company Property” covered under this Agreement as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability Insurance. Coverage must include but not be limited to:

- User’s statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If User is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Environmental Liability Insurance. Environmental Legal Liability Insurance (ELL) applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or compliance with statute; all in connection with any loss arising from the insured’s performance under this Agreement. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance must apply as if each named insured were the only named insured; and separately to the additional insured against whom claim is made or suit is brought. Coverage shall be maintained in an amount of at least \$5,000,000 per loss, with an annual aggregate of at least \$10,000,000. The ELL insurance policy must contain no exclusion for bodily injury, property damage, or environmental damage arising out of ownership, maintenance, use or entrustment to others of any rolling stock owned or operated or rented or loaned to User.

User warrants that any retroactive date applicable to ELL insurance coverage under the policy is the same as or precedes the effective date of this Agreement; and that continuous coverage will be maintained for a period of 5 years

beginning from the time the work under this Agreement is completed or if coverage is cancelled for any reason the policies extended discovery period, if any, will be exercised for the maximum time allowed.

E. Umbrella or Excess Insurance. If User utilizes umbrella or excess policies, these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except business automobile, worker’s compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsement CG 20 26 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as Additional Insured shall not be limited by User's liability under the indemnity provisions of this Agreement. **BOTH USER AND COMPANY EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.**

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (b) all punitive damages are prohibited by all states in which this Agreement will be performed.

H. User waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Industry required in this Agreement, where permitted by law. This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by User will not be deemed to release or diminish the liability of User, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from User or any third party will not be limited by the amount of the required insurance coverage.

K. User shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements in this Agreement.

L. All insurance correspondence, certificates of insurance and endorsements shall be addressed as follows:

Union Pacific Railroad Company
Real Estate Department – Project # 0784431
1400 Douglas Street, Stop 1690
Omaha, NE 68179

Basic points to remember:

- The certificate must indicate that Union Pacific Railroad Company is included as an additional insured. (Listing Union Pacific Railroad Company only as a certificate holder is not sufficient.)
- Binders are only accepted for sixty (60) days.
- Failure to comply with insurance requirements may result in a delay of your activity with UPRR.
- The certificate must indicate your RE project number.

INDUSTRY TRACK AGREEMENT

THIS AGREEMENT ("Agreement") is made _____, 20____ ("Effective Date"), between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"), and City of Texarkana, Arkansas, a municipality to be addressed at PO Box 2711, Texarkana, Arkansas 75504 ("Industry").

RECITALS:

1. Under prior agreement(s), Railroad and Industry, or their predecessors, agreed to the construction of Industry Track No. 783, 784, 785, and 788 from the Clearance Point to the end of the track, at or near Texarkana, Miller County, Arkansas (Circ 7: X 491, Yard 01, Mile Post: 415.9, Pine Bluff Subdivision), generally shown on the drawing dated March 22, 2022, attached hereto as **Exhibit A** (the "Track").

2. Industry professes that it is the lawful owner of the industry owned portion of the Track and desires rail service from Railroad over the Track.

3. Railroad is willing to provide such rail service, on the terms and conditions of this Agreement.

AGREEMENT:

Article 1. TRACK IDENTIFICATION

A. As used in this Agreement with respect to any particular track comprising all or part of the Track:

“**Point of Switch**”: the beginning of the track.

“**Clearance Point**”: the initial 13-foot clearance point on the track, which is the point on the centerline of the track that is thirteen (13) feet distant, measured at right angles, from the centerline of the adjacent track.

“**Railroad Property Line**”: the point on the track that intersects the property line or right-of-way boundary line of Railroad.

“**Derail Device**”: a track safety device in the rail designed to guide a railcar off the track at a selected spot as a means of protection against collisions or accidents.

B. For the purpose of this Agreement, the following segments of the Track shall be identified as follows:

Track 783

Engineering Station 0+00
Engineering Station 2+15

the Point of Switch
the end of track

Track 784

Engineering Station 0+00	the Point of Switch
Engineering Station 2+27	the end of track

Track 785

Engineering Station 0+00	the Point of Switch
Engineering Station 0+99	the Clearance Point
Engineering Station 1+25	the Beginning Private Road Crossing
Engineering Station 3+13	the End Private Road Crossing
Engineering Station 3+87	the 24' Private Road Crossing
Engineering Station 5+65	the 24' Private Road Crossing
Engineering Station 6+62	the end of track

Track 788

Engineering Station 1+00	the Clearance Point
Engineering Station 5+12.5	the end of track

C. The parties acknowledge that the Track from time to time may be assigned different identifying descriptions, including without limitation the Railroad station name, subdivision, yard and track numbers (if applicable), and Milepost numbers, which shall not affect the applicability of this Agreement. All references in this Agreement to the Track apply to the Track as constructed, even if it differs from its depiction on **Exhibit A**. References in this Agreement to the Track also apply to rearrangements, reconstructions, extensions, or additions to the Track. However, Industry must in all events obtain Railroad's prior written approval of the plans for any proposed Track changes.

D. Railroad has the right at any time, but not the obligation, to rearrange or reconstruct the Track or modify its elevation in order to develop or modify Railroad property or tracks. If Railroad chooses to exercise this option, Railroad shall bear all costs of any such change in the Track by Railroad, except that Industry shall bear the cost if the change is due to governmental requirements, safety needs, or any other cause beyond Railroad's reasonable control.

Article 2. OWNERSHIP OF THE TRACK

- A. None of the Track
- B. Industry shall own all of the Track (“Industry Track Portion”).

Article 3. USE AND OPERATION OF THE TRACK

A. Railroad agrees to operate the Track, and to provide rail service to Industry over the Track under applicable tariffs or rail transportation contracts. Railroad is not obligated to operate the Track or provide rail service to Industry when, as determined by Railroad in its sole and absolute discretion, the safe and/or efficient operation of the Track is or may be hindered by Industry's breach of this Agreement or by any cause beyond Railroad's reasonable control, including, without limitation, inclement weather, natural disaster, governmental action, terrorist attack, or labor dispute.

B. Railroad hereby grants to Industry the non-exclusive right to use Railroad's property underlying that portion of the Track owned by Industry, if any, as described in Article – "OWNERSHIP OF THE TRACK," being nine (9) feet on each side of such Track, for the purpose of constructing, maintaining, repairing, and reconstructing the Industry Track Portion and for storing and loading/unloading of railcars.

C. Railroad grants Industry the right of ingress and egress to the Track over Railroad's property in the most practical means for the sole, specific purpose of Industry's fulfilling its obligations under this Agreement. Industry shall not have any right to enter Railroad's property for the purpose of loading, unloading, or moving railcars unless that right is specified elsewhere in this Agreement.

D. Railroad has the right to use the Track for Railroad's own purposes, including normal switching operations, setting out of bad order cars, and the temporary placement of vehicles and maintenance of way equipment, except to the extent Railroad's use would substantially interfere with rail service to Industry.

E. Industry shall manage the inventory of inbound and outbound railcars on the Track so as not to adversely impact Railroad operations, and shall cooperate with Railroad operational requirements. If Industry's failure to manage its inventory of railcars on the Track adversely impacts Railroad's operations, in addition to any other rights and remedies it may have, Railroad shall have the right to terminate this Agreement immediately upon notice to Industry.

F. This Agreement sets forth the terms and conditions pertinent to the Track in connection with service provided by Railroad at this location. It does not obligate Railroad to provide such service. Railroad's service to, from, and at this location is governed by the terms of the applicable rail transportation agreement, circular, tariff, or other authority.

G. If at any time in the course of providing service to Industry, Railroad operates on track at this location other than Track as defined in this Agreement, all terms and conditions of this Agreement shall be deemed to apply to such operation and any track so utilized. Notwithstanding the foregoing, such operation shall be solely at Railroad's discretion and nothing in this Agreement shall be deemed to require Railroad to provide any service outside of the Track.

H. Railroad agrees that Industry may use the Track for the shipping, receiving, handling, and storage of railcars containing hazardous commodities. If Industry uses the Track for the purpose of shipping, receiving, or storing railcars containing hazardous materials, as defined by the Department of Transportation (the "DOT"), Industry shall comply with and abide by all DOT regulations as set forth in 49 Code of Federal Regulations, Parts 100-199, inclusive, as amended from time to time, and provisions contained in applicable Circulars of the Bureau of Explosives, Association of American Railroads, including any and all amendments and supplements thereto. The term "Laws" as defined in this Agreement shall include, but not be limited to, regulations referenced in this article.

1. Any commodities identified as "poison-by-inhalation" or "toxic-by-inhalation" ("TIH") by DOT must be received and unloaded by Industry upon arrival (i.e., spot on arrival), and may not in any event be stored or held on any part of the Railroad Track Portion or other Railroad-owned property except property Industry leases in part for purposes of storing such commodities or holding them for re-sale to Industry customers. Railcars containing TIH will be placed on the track in order of arrival and empties will be pulled in order of placement on the track.

2. TIH railcars that cannot be delivered will be assessed a daily charge as outlined in UP-6004 series tariff publications or any successor publications.

3. Outbound railcars containing TIH commodities will not be held in rail yards or other rail facilities awaiting billing. Billing must be provided before TIH cars will be pulled from the Track. A representative must be physically present any time a railcar containing TIH is being delivered to (spotted) or pulled from the Track.

4. Any Track leased to Industry under this Agreement shall not be considered "railroad premises" for hazardous storage tariff purposes under Tariff UP 6004 or any replacement or successor provision in effect from time to time. As to any such leased Track, Industry shall abide by the terms of this Agreement, including without limitation the provisions set forth under Article - "COMPLIANCE WITH LAWS" and any and all applicable tariffs, provisions of rail transportation contracts, or other rules or regulations pertaining to demurrage or car storage.

Article 4. NON-USE ACCESS FEE

A. If Industry fails to do business in a Substantial Manner (as defined in this Sub-Article C), Industry shall pay Railroad an annual non-use access fee of Five Thousand and no/100ths Dollars (\$5,000.00) (the "Non-Use Access Fee"). Railroad has the right to adjust the Non-Use Access Fee in advance.

B. Industry shall pay the Non-Use Access Fee in arrears when it is first determined that Industry failed to do business in a Substantial Manner and then shall pay the Non-Use Access Fee annually in advance until Industry does business in a Substantial Manner. Railroad shall refund any Non-Use Access Fee paid in advance for an annual period in which Industry does business in a Substantial Manner; provided, however, that within sixty (60) days after the end of such annual period Industry shall provide Railroad a list of cars operated over the Track as described in this Sub-Article C to evidence its doing business in a Substantial Manner.

C. "Substantial Manner" means that in each annual period beginning with the Effective Date, Industry ships or receives at least twenty five (25) cars over the Track that yield road haul revenue to Railroad. Railroad has the right to adjust the required minimum number of cars in advance, upon notice to Industry.

Article 5. TERM; TERMINATION

A. The term of this Agreement begins on the Effective Date and, until terminated as provided below in this Article, extends for one (1) year with automatic month-to-month extensions.

B. Each party has the right to terminate this Agreement without cause by giving the other party not less than thirty (30) days notice of termination. In addition, notwithstanding any provision hereof to the contrary, Railroad shall have the right to deem this Agreement terminated, without notice to Industry, if at any time Industry ceases its possession of and sells or leases the Industry Track Portion or Industry's facility that is served by the Track.

C. Termination of this Agreement will not affect any of the rights, obligations, or liabilities of the parties that have accrued before termination.

D. Upon termination of this Agreement for any reason, Industry shall vacate and surrender the quiet and peaceable possession of the right-of-way or other property owned by Railroad upon which the Track is located, if any. Railroad shall have the right to remove the portion of the Track it owns. Not later than the last day of the term of this Agreement, Industry, at its sole cost and expense, shall (a) remove from

Railroad's right-of-way or other property all portions of the Track owned by Industry, obstructions, contamination caused by or arising from the use of the Track for Industry's purposes, and other property not belonging to Railroad or authorized by Railroad located thereon and (b) restore Railroad's right-of-way or other property to as good a condition as it was in before the Effective Date. If Industry fails to perform such removal and restoration to the satisfaction of Railroad, Railroad may perform the work at Industry's expense but in any event and subject to the terms of this Agreement, Railroad shall not be responsible for any liability, claims, loss, expenses, or damages incurred as a result of any act of Industry, including without limitation Industry's contamination and/or failure to vacate, surrender, remove, or restore the Track or any real or personal property adjacent to, underneath, or next to the Track. Any portion(s) of the Track owned by Industry and not removed as provided herein may, at Railroad's election, be deemed abandoned and become the property of Railroad or Railroad, at Industry's sole cost and expense, may remove such portion(s) of the Track from Railroad's property and dispose of same and restore Railroad's property. If Railroad performs such track removal, disposal, and/or restoration, Industry shall reimburse Railroad within thirty (30) days of its receipt of billing from Railroad, for all costs and expenses incurred by Railroad (less any resulting salvage value) in connection therewith.

E. Notwithstanding the immediately preceding paragraph, upon notice to Industry, Railroad shall have the option to purchase at salvage value, prior to their removal, any or all portions of the Track and structures owned by Industry located on Railroad's right-of-way or other property. For purposes of this Agreement, "salvage value" shall mean the then fair market value of the components of the Track and structures if they were removed and sold, net of costs of removal and sale.

Article 6. PERMITS AND PROPERTY

Industry warrants that it and/or its predecessor(s), at no expense to Railroad, have obtained and shall maintain in force, all governmental permits and approvals and all property rights now or in the future necessary for the construction, maintenance, and operation of all portions of the Track located off Railroad's property, if any.

Article 7. MAINTENANCE BY RAILROAD (Intentionally Omitted)

Article 8. MAINTENANCE BY INDUSTRY

A. Industry, at Industry's expense, shall inspect and maintain the Industry Track Portion (including, without limitation, rail, ties, ballast and other track material, crossing surface and signals at any intersection of the track with a public road, and all track appurtenances). This obligation shall include, without limitation, maintenance required as a result of normal wear and tear, repairs, and track reconstruction as necessary. All track maintained by Industry hereunder shall be maintained to at least Federal Railroad Administration Class 1 track standards pursuant to 49 C.F.R. Part 213 or such replacement standards as in effect from time to time.

B. Industry shall maintain in a safe condition the property under and adjacent to the Industry Track and Industry property upon which Railroad's employees or contractors may enter pursuant to this Agreement, including, without limitation, removal of snow, ice, vegetation, and other substances and/or materials that might create a hazardous or unsafe condition, elimination of any tripping or slipping hazards, and maintenance of proper drainage and grading to permit safe operation over the Track.

C. Maintenance, repairs, and any track reconstruction performed by Industry must conform to Railroad's standards.

Article 9. SAFETY; COMPLIANCE WITH LAWS

A. Clearances/Impairments. Except as otherwise provided elsewhere in this Agreement, Industry must not construct, maintain, place, or allow the construction or placement of, any structure or object (including, without limitation, platforms, fences, vehicles, equipment, and when open or closed, gates, doors, and windows) closer to the Track than the standard clearance requirements of Railroad without Railroad's prior written consent as evidenced by an amendment or supplement to this Agreement. The standard clearances of Railroad ("Standard Clearances") are (a) horizontally, nine (9) feet from the centerline of the Track, and increased one and one-half inches (1-1/2") for each degree of curvature of the Track, and (b) vertically, twenty-three feet four inches (23'4") above the top of the rail of the Track. Railroad hereby consents to Industry's impairment of the Standard Clearances by use of a portable loading/unloading device, provided that (a) the device when not in use is moved to a safe distance beyond the Standard Clearances, (b) all fallen debris from the operation of the device within the Standard Clearances shall be immediately cleaned up and properly disposed of, (c) the device is maintained in a safe operable condition, and (d) Industry shall be solely responsible for all damages or injuries arising from the use of any such device, including without limitation from fallen debris, in accordance with Article – "LIABILITY" of this Agreement. Any moveable equipment, including, but not limited to, dock plates and loading or unloading spouts or equipment, that impairs the Standard Clearances requirements may be used only when the rail car is stationary, and when not in use must be securely stored or fastened so as not to violate Standard Clearances requirements.

B. Facilities. Except as otherwise provided elsewhere in this Agreement, Industry must not construct, maintain, or place or allow the construction, maintenance, or placement of, any installations (including, without limitation, pits, load out facilities, buildings, road crossings, beams, pipes, or wires) over or under the Track without Railroad's prior written consent as evidenced by an amendment or supplement to this Agreement.

C. Protection of Railroad Employees/Contractors.

1. Industry shall ensure that Railroad employees and contractors on or near Industry's property pursuant to this Agreement are not exposed to any unsafe, hazardous, or harmful conditions on or emanating from Industry's property, including, without limitation, exposure, release, or emission of dust or chemicals. If Industry becomes aware of the presence of any such condition and is unable to immediately eliminate the condition, then Industry shall immediately notify Railroad's Response Management Communication Center ("RMCC") of the condition by telephone to **1-888-877-7267**. Providing the notification will not relieve Industry of its obligations and liabilities for the condition.

2. Industry shall provide and maintain a clear and safe walkway for Railroad employees and contractors along both sides of the Industry Track Portion.

D. Industry to Train and Oversee Employees/Contractors. Industry shall train and oversee its employees, contractors, and agents as to proper and safe working practices to follow when performing any work in connection with this Agreement, including, without limitation, any work associated with Railroad serving Industry over the Track.

E. Intraplant Switching. Industry must not perform any intraplant switching, unless elsewhere specifically authorized in this Agreement. Intraplant switching means any movement of rail cars on the Track by Industry.

F. Fire Precautions and Vegetation Control. Industry must not allow any fire hazards to exist on Industry's property that might endanger the Track or operations on the Track. Without limitation of the preceding sentence, Industry must not place, or allow to be placed, any flammable material within ten (10) feet of centerline of the Track. Industry shall remove or otherwise control vegetation adjacent to the Track in accordance with applicable local, state, and federal standards and so that it does not constitute a fire hazard or impair sight lines from the train.

G. Telecommunications and Fiber Optic Cable Systems. Telecommunications and fiber optic cable systems may be buried on Railroad's property. Prior to undertaking work on Railroad's property, Industry shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except holidays) at **1-800-336-9193** (also a 24-hour, 7-day number for emergency calls) to determine if telecommunications or fiber optic cable are buried anywhere on Railroad's property to be used by Industry. If it is, Industry will telephone the telecommunication company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the cable and will commence no work on Railroad's property until all such protection or relocation has been accomplished.

H. Notice and Flagging.

1. Prior to entering Railroad's right-of-way or other property for the purpose of performing any construction, reconstruction, maintenance, or repair of the Track as set forth in this Agreement, and/or constructing additional track segments connecting to the Track, Industry and/or its contractors shall first advise Railroad's local engineering field manager at least ten (10) working days in advance of such work so that Railroad can determine if flagging and/or other protection is needed. If Railroad deems that flagging and/or other protection is needed, no work of any kind shall be performed, and no person, equipment, machinery, tool, material, vehicle, or thing shall be located, operated, placed, or stored within 25 feet of the Track or any other track of Railroad at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. In case of a need to perform emergency repair of the Track, Industry shall telephone Railroad's RMCC at **1-888-877-7267**, and the parties shall cooperate reasonably to address the emergency appropriately.

2. If flagging or other special protective or safety measures are performed by Railroad, such services will be provided at Industry's expense with the understanding that if Railroad provides any flagging or other services, Industry shall not be relieved of any of its responsibilities or liabilities under this Agreement, including without limitation liabilities arising out of or connected to Industry notifications under this Agreement.

3. Industry shall promptly pay to Railroad all charges connected with such services within thirty (30) days after presentation of a bill. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagman used during regularly assigned hours and overtime in accordance with union collective bargaining agreements and schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and Unemployment Compensation, supplemental pension, Employer's Liability and Property Damage, and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect on the day that the flagging is provided. One and one-half times the current hourly rate is paid for overtime, Saturdays, and Sundays; two and one-half times current hourly rate is paid for holidays. Wage rates are subject to change at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Industry shall pay on the basis of the new rates and charges. Reimbursement to Railroad will be required covering

the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by said flagman following the flagman assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Industry and/or Industry's contractors may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Industry or Industry's contractors must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Industry will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five (5) day cessation notice has been given to Railroad.

4. Industry shall be permitted to hire a private contractor to perform flagging or other special protective or safety measures (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Industry to utilize a CIC pursuant to the preceding sentence, Industry shall obtain Railroad's prior approval in writing for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the services to be performed for the project by the approved CIC; and (iii) any other terms and conditions governing such services to be provided by the CIC. If flagging or other special protective or safety measures are performed by an approved CIC, Industry shall be solely responsible for (and shall timely pay such CIC for) its services. Railroad reserves the right to rescind any approval pursuant to this paragraph, in whole or in part, at any time, as determined in Railroad's sole and absolute discretion.

I. Compliance with Laws.

1. Industry shall comply with all applicable ordinances, regulations, statutes, rules, decisions, and orders (including, but not limited to, those relating to safety, zoning, rail operations, air and water quality, noise, hazardous substances, hazardous materials, and hazardous wastes) issued by any court or federal, state, or local governmental entity, including, without limitation, the federal Department of Transportation, the Federal Railroad Administration, and the federal Environmental Protection Agency ("Laws"). Industry shall be solely responsible for securing and maintaining, at its expense, any necessary permits, licenses, and approvals required by any Laws for Industry's operations.

2. If at any time Industry is not in full compliance with any Laws, Railroad, after notifying Industry of its noncompliance and Industry's failure to correct such noncompliance within a timeframe that is satisfactory to regulatory and/or other legal authorities, may choose at its sole discretion and without assuming any legal, common law, or statutory obligation, to take whatever action is necessary to bring the Track and any Railroad property affected by such noncompliance into compliance with such Laws; provided, however, that if Industry's failure to comply with the Laws interferes with, obstructs, or endangers Railroad mainline or yard operations in any way, Railroad may initiate compliance action immediately. Industry shall reimburse Railroad for all costs (including without limitation consulting, engineering, clean-up, disposal,

legal costs and attorneys' fees, fines, and penalties) incurred by Railroad in complying with, abating a violation of, or defending any claim of violation of such Laws.

J. Minimum Standards; Industry Responsibility. The provisions in this Agreement relating to safety are minimum standards only, and do not relieve Industry of the obligation to comply with Laws or to conduct its operations and maintain its property in a safe manner and free from hazards to human beings and the environment. Industry in all events is solely responsible for the safety of its operations, its employees, and its property, and no consent, approval, review, waiver, investigation, observation, knowledge, or advice of or by Railroad, including any action undertaken with the authority set forth in this Agreement, will relieve Industry of such responsibility.

Article 10. LIABILITY

A. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING DEFINITIONS SHALL APPLY:

"RAILROAD": RAILROAD AND ITS OFFICERS, AGENTS, AND EMPLOYEES.

"INDUSTRY": INDUSTRY AND ITS OFFICERS, AGENTS, AND EMPLOYEES.

"PARTY": RAILROAD OR INDUSTRY.

"LOSS": LOSS OF OR DAMAGE TO THE PROPERTY OF ANY THIRD PERSON OR PARTY (INCLUDING ENVIRONMENTAL CLAIMS), INJURY OR DEATH OF ANY THIRD PERSON OR PARTY, AND/OR ANY REGULATORY CHARGE, FINE OR PENALTY. "LOSS" SHALL ALSO INCLUDE, WITHOUT LIMITATION, THE FOLLOWING EXPENSES INCURRED BY A PARTY: COSTS, EXPENSES, THE COST OF DEFENDING LITIGATION OR A REGULATORY PROCEEDING, ATTORNEYS' FEES, EXPERT WITNESS FEES, COURT COSTS, ARBITRATION OR MEDIATION COSTS, MEDIATOR AND/OR ARBITRATOR FEES, AMOUNTS PAID IN SETTLEMENT, THE AMOUNT OF A JUDGMENT, PRE-JUDGMENT AND POST-JUDGMENT INTEREST, AND COSTS OF RESPONSE (INCLUDING ANALYTICAL, REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS) ARISING OUT OF ANY INCIDENT INVOLVING THE RELEASE OF HAZARDOUS SUBSTANCES, HAZARDOUS MATERIALS, OR HAZARDOUS WASTES.

B. EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT, ALL LOSS RELATED TO THE CONSTRUCTION, OPERATION, MAINTENANCE, USE, PRESENCE, OR REMOVAL OF THE TRACK SHALL BE ALLOCATED AS FOLLOWS:

1. EXCEPT AS PROVIDED IN SUB-ARTICLE B.4 OF THIS ARTICLE – "LIABILITY" BELOW, – RAILROAD SHALL DEFEND AND INDEMNIFY INDUSTRY AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS FOR LOSS ARISING OUT OF OR CONNECTED TO THE NEGLIGENT ACTS OR OMISSIONS OF RAILROAD.

2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, INDUSTRY SHALL DEFEND AND INDEMNIFY RAILROAD AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS FOR LOSS ARISING OUT OF OR CONNECTED TO THE NEGLIGENT ACTS OR OMISSIONS OF INDUSTRY.

3. EXCEPT AS PROVIDED IN SUB-ARTICLE B.4 OF THIS ARTICLE – “LIABILITY” BELOW, RAILROAD AND INDUSTRY SHALL EACH PAY THEIR PROPORTIONATE SHARE OF ANY AND ALL CLAIMS FOR LOSS ARISING OUT OF OR CONNECTED TO THE JOINT OR CONCURRING NEGLIGENCE OF RAILROAD AND INDUSTRY, SUCH PROPORTIONATE SHARE TO BE DETERMINED BY THE COMPARATIVE FAULT OF EACH PARTY; PROVIDED, HOWEVER, THAT NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS IMPAIRING THE RIGHT OF EITHER PARTY TO SEEK CONTRIBUTION OR INDEMNIFICATION FROM A THIRD PERSON.

4. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, INDUSTRY SHALL DEFEND AND INDEMNIFY RAILROAD AND HOLD IT HARMLESS FROM AND AGAINST ANY LOSS ARISING OUT OF OR CONNECTED TO THE FOLLOWING (REGARDLESS OF THE EXTENT OF RAILROAD’S OR A THIRD PARTY’S FAULT OR LIABILITY):

a. ANY IMPAIRMENT OF CLEARANCES OR INTRAPLANT SWITCHING BY INDUSTRY, REGARDLESS OF WHETHER IT IS A BREACH OF THIS AGREEMENT OR HAS BEEN CONSENTED TO OR WAIVED BY RAILROAD;

b. ANY PRIVATE OR PUBLIC ROAD CROSSING OVER ANY INDUSTRY TRACK PORTION OR ANY LEASED TRACK REGARDLESS OF WHETHER IT IS A BREACH OF THIS AGREEMENT OR HAS BEEN CONSENTED TO OR WAIVED BY RAILROAD;

c. ANY EXPOSURE OF ANY RAILROAD EMPLOYEE OR CONTRACTOR TO ANY UNSAFE, HAZARDOUS, OR HARMFUL CONDITION ON OR EMANATING FROM INDUSTRY’S PROPERTY;

d. ANY EMISSION, DISCHARGE, LEAK, SPILL, OR OTHER FORM OF RELEASE, AS THAT TERM IS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, OF HAZARDOUS SUBSTANCES, HAZARDOUS MATERIALS, OR HAZARDOUS WASTES SHIPPED, RECEIVED, OR STORED BY INDUSTRY, REGARDLESS OF WHETHER SUCH SHIPMENT, RECEIPT, OR STORAGE IS A BREACH OF THIS AGREEMENT OR HAS BEEN CONSENTED TO OR WAIVED BY RAILROAD;

e. ANY DAMAGE TO RAIL EQUIPMENT ON THE TRACK, OR CARGO OR COMMODITY STORED IN RAILCARS ON THE TRACK (EXCLUDING THOSE RAILCARS PLACED BY RAILROAD PURSUANT TO ARTICLE – “USE AND OPERATION OF THE TRACK”) RESULTING FROM ANY ACT OR EVENT BEYOND THE CONTROL OF RAILROAD, INCLUDING WITHOUT LIMITATION ANY ACT OF GOD AND SPECIFICALLY INCLUDING WATER DAMAGE FROM WHATEVER SOURCE; OR

f. THIRD PARTY USE OF ALL OR A PORTION OF THE TRACK WITHOUT COMPLIANCE WITH ARTICLE – “ASSIGNMENT; USE BY THIRD PARTIES.”

C. THE RIGHT TO INDEMNIFICATION UNDER THIS ARTICLE – “LIABILITY” WILL ACCRUE UPON THE LATER OF THE OCCURRENCE OF THE EVENT GIVING RISE TO THE LOSS OR THE ASSERTION BY A THIRD PARTY OF A CLAIM FOR A LOSS.

D. INDUSTRY EXPRESSLY ASSUMES POTENTIAL LIABILITY UNDER THIS ARTICLE – “LIABILITY” FOR ACTIONS BROUGHT BY INDUSTRY’S OWN EMPLOYEES, AND HEREBY AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS RAILROAD FOR ANY LOSS TO INDUSTRY’S EMPLOYEES REGARDLESS OF FAULT. INDUSTRY HEREBY WAIVES ANY IMMUNITY IT MAY HAVE UNDER WORKERS’ COMPENSATION OR INDUSTRIAL INSURANCE ACTS TO INDEMNIFY RAILROAD UNDER THIS –ARTICLE – “LIABILITY.” INDUSTRY ACKNOWLEDGES THAT THIS WAIVER WAS MUTUALLY NEGOTIATED BY THE PARTIES.

E. NO COURT OR JURY FINDINGS IN ANY EMPLOYEE’S SUIT UNDER THE FEDERAL EMPLOYER’S LIABILITY ACT AGAINST RAILROAD MAY BE USED BY INDUSTRY IN ANY ATTEMPT TO ASSERT LIABILITY AGAINST RAILROAD.

F. NO PROVISION OF THIS AGREEMENT WITH RESPECT TO INSURANCE WILL LIMIT THE SCOPE OR EXTENT OF THE INDEMNITY UNDER THIS ARTICLE – “LIABILITY” AND INDUSTRY UNDERSTANDS AND ACCEPTS THAT THE TERMS OF THIS ARTICLE ARE WHOLLY SEPARATE FROM AND INDEPENDENT OF THE TERMS OF ARTICLE – “INSURANCE.”

Article 11. INSURANCE

A. Irrespective of and in addition to any indemnity provisions hereof, before the term of this Agreement begins, Industry, at its sole expense, shall provide to Railroad prior to execution, and subsequently upon request, a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit B** attached and by reference made a part of this Agreement.

B. Not more frequently than once every two (2) years, Railroad has the right to modify reasonably the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Industry understands and accepts that the terms of this Article are wholly separate from and independent of the terms of Article -- “LIABILITY.”

Article 12. PAYMENT OF INVOICES; COSTS AND EXPENSES

A. Cost(s) and expense(s) payable by Industry hereunder include without limitation direct and indirect labor and material costs including all then-current assignable Railroad cost additives, and material at then-current values when and where used. Invoices shall be due thirty (30) days after invoice date. Invoices not paid within thirty (30) days are subject to interest at the then-current delinquency rate charged by Railroad.

B. Industry shall pay Railroad all accessorial charges that, pursuant to UP-6004 series tariff publications or any successor publications, are assessed on railcars destined to or originating from the Track, including, but not limited to, demurrage, switching, reconsignments, and weighing charges.

Article 13. NOTICES

Any notice or other communication required or permitted to be given under this Agreement must be in writing and (a) personally delivered; (b) delivered by a reputable overnight courier; or (c) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Facsimile notices are valid only if actually received by the individual to whom addressed, and followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices will be deemed received at the earlier of actual receipt, or one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit, or three (3) business days after deposit in the U.S. Mail as evidenced by a return receipt. Notices must be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

If to Railroad: UNION PACIFIC RAILROAD COMPANY
 ATTN: Real Estate Project 0784430
 1400 Douglas Street, STOP 1690
 Omaha, Nebraska 68179-1690
 Facsimile: (402) 501-0340

With copy to: UNION PACIFIC RAILROAD COMPANY
 ATTN: Law Department - Industrial Track
 1400 Douglas Street, STOP 1580
 Omaha, Nebraska 68179-1580
 Facsimile: (402) 501-0132

If to Industry: CITY OF TEXARKANA, ARKANSAS
 PO Box 2711
 Texarkana, Arkansas 75504

Article 14. ASSIGNMENT; USE BY THIRD PARTIES

A. Industry must not assign this Agreement or permit use of the Track by any person or entity other than Industry and Railroad without the prior written consent of Railroad. Railroad has the right to withhold its consent in its sole and absolute discretion. Railroad may terminate this Agreement immediately upon notice to Industry for any departure from the terms of this Sub-Article.

B. Without limitation of the immediately preceding Sub-Article, Industry shall immediately notify Railroad of any sale or lease of all or any portion of the Industry Track Portion or of Industry's facility that is served by the Track. If Railroad consents to the joint use of the Track by Industry's lessee or other user, then Industry and Industry's lessee or other user will be required to enter into Railroad's then-current form of Joint Use Agreement.

C. Subject to the two immediately preceding Sub-Articles, this Agreement binds and benefits the heirs, executors, administrators, successors, and assigns of Railroad and Industry.

Article 15. ATTORNEYS' FEES

If either party retains an attorney to enforce this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees to the extent allowed by applicable law.

Article 16. WAIVER OF BREACH; SAVINGS

Any waiver by either party of any breach by the other of this Agreement will not affect or impair rights arising from any other or subsequent breach. If any one or more of the provisions in this Agreement shall be invalid, illegal, or unenforceable in any respect under any applicable law: (a) the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired, and (b) to the fullest extent possible and permitted by law, the provisions of this Agreement shall be construed so as to give a maximum effect to the intent manifested by the provision held to be invalid, illegal, or unenforceable.

Article 17. RIGHTS AND OBLIGATIONS OF RAILROAD

If any of the rights and obligations of Railroad under this Agreement are substantially and negatively affected by any changes in the Laws applicable to this Agreement, whether statutory, regulatory, or under federal or state judicial precedent, then Railroad may require Industry to enter into an amendment to this Agreement to eliminate the negative effect on Railroad's rights and obligations to the extent reasonably possible.

Article 18. ENTIRE AGREEMENT

This Agreement, including its Exhibits, along with any license agreements or leases applicable to any installation over, under, or near the Track, is the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes all oral agreements and prior written agreements between the parties pertaining to this transaction. The Recitals are hereby incorporated into this Agreement and shall be deemed a part hereof. This Agreement may be amended only by a written instrument signed by Industry and Railroad.

Article 19. GOVERNING LAW

This Agreement and any dispute arising from this Agreement will be governed by the laws of the state in which the Track is located without regard to principles of conflicts of laws. Notwithstanding anything to the contrary set forth in the foregoing sentence or elsewhere in this Agreement, federal law shall control on all subjects preempted by federal law. For purposes of clarity, Railroad and Industry each agree that nothing in this Agreement is meant to be, nor shall be interpreted to be, a waiver of principles of legal preemption or preclusion that may apply to Railroad because of its status as a common carrier regulated by the federal government, including without limitation the Surface Transportation Board and the FRA.

Article 20. DISPUTE RESOLUTION

A. Disputes. Any dispute arising under or related to this Agreement shall be resolved as set out below.

B. Informal Resolution. If either party believes a dispute exists, that party may notify the other party, pursuant to the Article – “NOTICE,” that a dispute exists and of the nature of the dispute. The other party shall respond within ten (10) business days after notice, and notify the complaining party of its position in response and of its agreement to meet and attempt in good faith to resolve the dispute. If the other party responds timely and agrees to meet, the parties’ authorized representatives and counsel shall meet within ten (10) business days after the response date and confer in good faith and exercise reasonable efforts to resolve the dispute. If the parties cannot informally resolve the dispute, then they are free to exercise their rights as they deem appropriate, including without limitation to initiate litigation.

Article 21. USE BY OTHER RAILROADS

This Agreement is made for the benefit of such other railroads, if any, that either by agreement with Railroad or order of competent public authority have the right to use the Track to provide service to Industry at Industry's request, all of which railroads shall be deemed "Railroad" under this Agreement with all rights as a party hereto, including rights of enforcement.

Article 22. ADJACENT TRACK RIGHTS

As a condition to Railroad serving Industry over the Track, if any of the Industry Track Portion does not connect directly to Railroad-owned track, Industry shall obtain and keep in effect during the term of this Agreement, at no charge to Railroad, any permission required for Railroad to use the third party track and underlying property adjacent to the Railroad Track Portion and the Industry Track Portion to allow Railroad to serve Industry over the Track. If the aforesaid third party track and property are not adequately maintained, or if the required permission for any reason is not in effect, Railroad shall have no liability for any resulting adverse impact on its service to Industry. Industry shall defend and indemnify Railroad and hold Railroad harmless from and against any and all claims, damages, expenses, lawsuits, and proceedings arising out of or connected to Railroad's use of third party track to serve Industry over the Track, including without limitation any alleged trespass or other violation of a property right, and/or any derailment.

Article 23. TRACK SAFETY DEVICE – DERAILS

A. Unless otherwise notified by Railroad, Industry at its sole cost shall maintain all Derail Devices on the Industry Track Portion or Leased Track, if any, including without limitation those required pursuant to the Sub-Article immediately below, in accordance with Article – "MAINTENANCE BY INDUSTRY."

B. Whether or not Derail Device(s) are on the Track, Railroad in the sole discretion of its Operating personnel at any time may require Industry to install new or replace existing Derail Device(s) on the Track. In such event, upon thirty (30) days notice from Railroad, Industry at its sole cost shall install or cause to be installed the required replacement or additional Derail Device(s) of a type and size, and in location(s) on the Industry Track Portion or Leased Track specified by Railroad. Installation or replacement of Derail Device(s) on the Railroad Track Portion shall be accomplished by Railroad at Industry expense. Industry shall cooperate at all times with Railroad personnel regarding inspecting, repairing, replacing and installing Derail Device(s) on the Track.

Article 24. USE OF DIGITAL IMAGERY

Industry acknowledges that if it or its consultant provided to Railroad digital imagery depicting the Track (the "Digital Imagery"), Industry authorized Railroad to use the Digital Imagery in the **Exhibit A**. Industry represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

Article 25. CONFIDENTIALITY

For the term of this Agreement and for thirty six (36) months thereafter, no party may disclose any of the terms of this Agreement to any non-party without the prior written consent of the other party except (1) as required by law, (2) to a corporate parent, subsidiary, or affiliate or (3) to its auditor or legal counsel. Each party to this Agreement agrees to indemnify the other from and against any damage(s) suffered by a party as a result of disclosure by a party hereto, or by its auditor or counsel of any of the terms or conditions

in violation of this provision. In the event a party determines that the terms of the Agreement have been disclosed to a non-party without the prior written consent of the non-disclosing party, then the non-disclosing party shall have the right to terminate this Agreement immediately upon notice to the other party, and to seek whatever remedies it may have at law or in equity.

Article 26. SIGNATURE IN COUNTERPARTS

This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic means shall be effective as the delivery of a manually executed counterpart of this Agreement. The parties agree that such electronically exchanged or stored copies will be enforceable as original documents.

Article 27. SPECIAL PROVISIONS

A. INTRAPLANT SWITCHING

Railroad hereby consents to Industry performing intraplant switching over the Track; PROVIDED (i) Derail Device(s) of a type and in location(s) required by Railroad in its sole discretion, are or have been installed and are maintained in good working condition, (ii) Industry shall be solely responsible for all damages to the Track, track material, and underlying property, and injuries caused by Industry's switching operations howsoever in accordance with Article - "LIABILITY," (iii) Industry shall ensure that all employees involved in intraplant switching are properly trained regarding all applicable Laws, and (iv) Industry shall comply with all safety requirements of Railroad in the course of its performance of intraplant switching . In no event shall Industry perform any intraplant switching operations beyond Derail Device(s) on the Track which protect Railroad general operations.

B. TRACK NOT CONFORMING TO RAILROAD STANDARDS

The parties acknowledge that a portion of the track located at Industry's facility at which the Track is located beyond Engineering Station 5+12.5 of Track 788, depicted on **Exhibit A** as UP OPS LMT, does not conform to Railroad standards (the "Non-Standard Track"). Industry at all times shall maintain clearly visible signage, as required by Railroad, prohibiting Railroad operations on the Non-Standard Track. Industry shall defend Railroad, and indemnify and hold Railroad from and against any Loss as defined in Article - "LIABILITY" arising from or growing out of any non-conformity of the Non-Standard Track with Railroad standards, including without limitation damage to locomotives or railcars due to derailment.

C. PRIVATE ROAD CROSSINGS –EXISTING MULTIPLE

Railroad hereby consents to Industry's maintenance and use of those three (3) private road crossings as shown on **Exhibit A**; PROVIDED as to each such crossing (i) Industry shall install, at Industry's expense, any and all crossing protection signs or devices as may be required by any Laws governing same, (ii) the crossing is maintained in a safe operable condition, and (iii) Industry shall be solely responsible for all damages or injuries arising from the use of the crossing howsoever.

The above Special Provisions, if any, are also subject to the terms, provisions, and conditions set forth elsewhere in this Agreement and to any prior regulatory approval that may be needed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

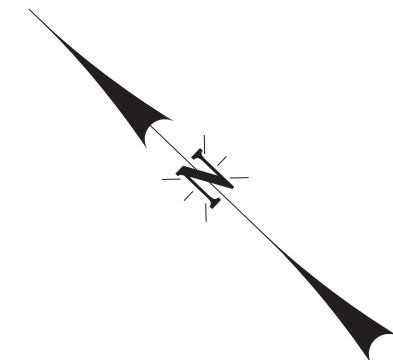
By: _____
Sara Haines
Senior Manager, Real Estate – Track

CITY OF TEXARKANA, ARKANSAS

By _____
Printed Name _____
Title _____

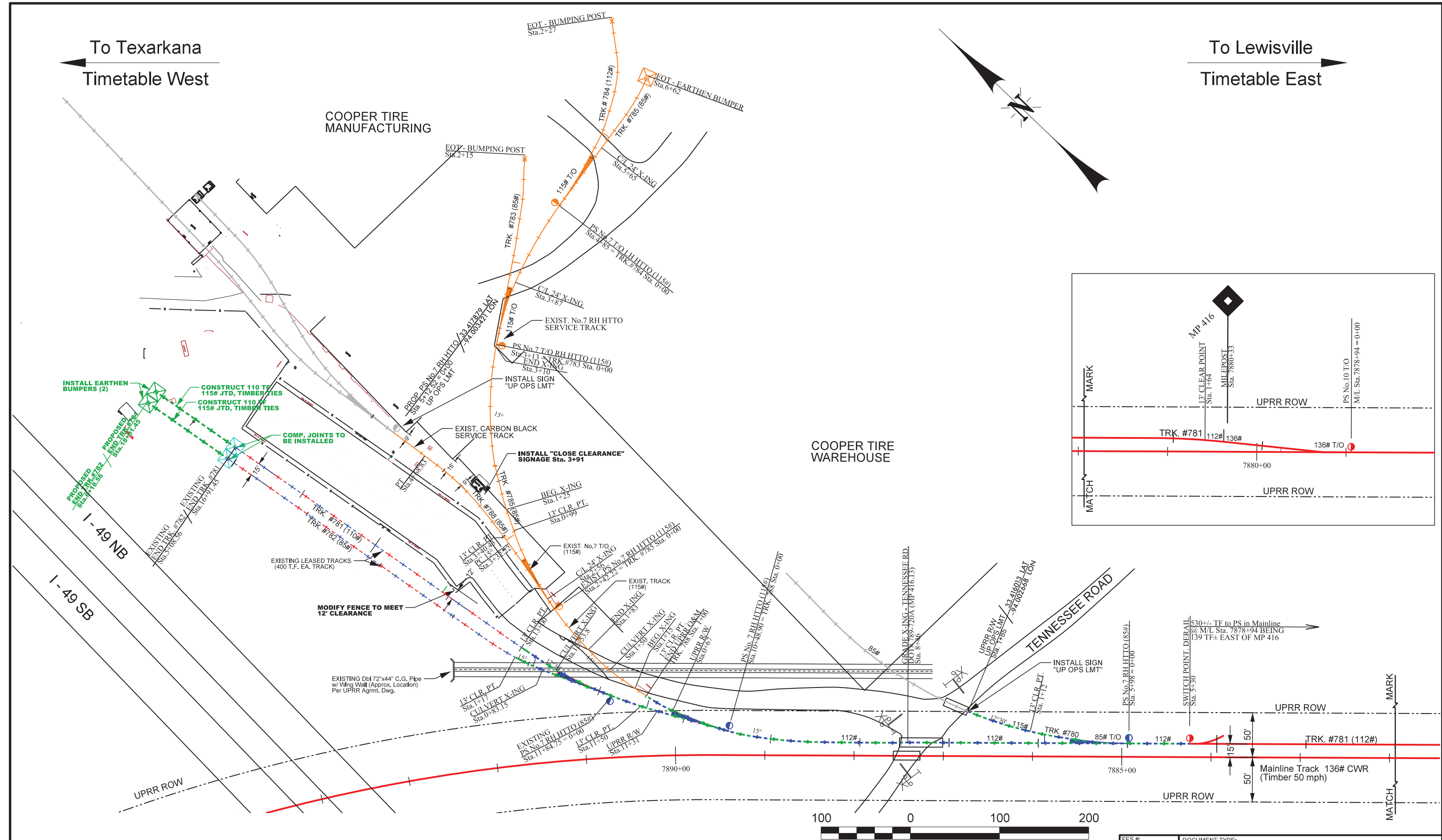
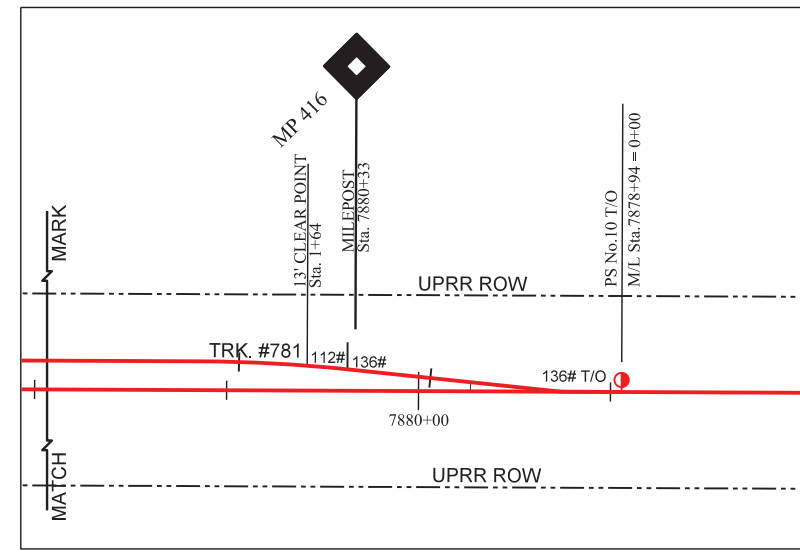
To Texarkana
Timetable West

To Lewisville
Timetable East



COOPER TIRE
MANUFACTURING

COOPER TIRE
WAREHOUSE



REV. #	BY	DATE	DESCRIPTION

- Ex. UPRR Track
- Prop. UPRR Track
- - - Remove UPRR Track
- - - Shift UPRR Track
- Ex. Ind. Track
- Prop. Ind. Track
- - - Remove Ind. Track
- Ex. City Track
- Future Ind. Track
- - - Prop. Leased Ind. Trk
- - - Ex. Leased Ind. Trk
- No RR Operations
- - - Right of Way
- - - Acquire Property
- Hand Throw Turnout
- Power Turnout
- Power Derail
- Hand Throw Derail
- Point of Curve
- Bridge
- Signal



FES #: 47481	DOCUMENT TYPE: Exhibit "A"
DRAWN BY: RJM	For use in Agreement with: Cooper Tire & Rubber Company and City of Texarkana
CHECKED BY: MAC	LOCATION & DESCRIPTION: Texarkana, Arkansas - Pine Bluff Sub MP 415.9 Trackage to Serve: Cooper Tire & Rubber Company
DATE: 03/22/2022	SHEET TITLE: Plan Overview
SHEET NUMBER: 4 of 4	

Approved: Insurance Group
Created: 5/9/06
Last Modified: 10/31/2018
(Ins Profile 5)

RE Project: 0784430

EXHIBIT B
Union Pacific Railroad
Contract Insurance Requirements

Industry shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability Insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" covered under this Agreement as the Designated Job Site.

B. Business Automobile Coverage Insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos.)

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" covered under this Agreement as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability Insurance. Coverage must include but not be limited to:

- Industry's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Industry is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Environmental Liability Insurance. Environmental Legal Liability Insurance (ELL) applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or compliance with statute; all in connection with any loss arising from the insured's performance under this Agreement. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance must apply as if each named insured were the only named insured; and separately to the additional insured against whom claim is made or suit is brought. Coverage shall be maintained in an amount of at least \$5,000,000 per loss, with an annual aggregate of at least \$10,000,000. The ELL insurance policy must contain no exclusion for bodily injury, property damage, or environmental damage arising out of ownership, maintenance, use or entrustment to others of any rolling stock owned or operated or rented or loaned to Industry.

Customer warrants that any retroactive date applicable to ELL insurance coverage under the policy is the same as or precedes the effective date of this Agreement; and that continuous coverage will be maintained for a period of 5 years

beginning from the time the work under this Agreement is completed or if coverage is cancelled for any reason the policies extended discovery period, if any, will be exercised for the maximum time allowed.

E. Umbrella or Excess Insurance. If Industry utilizes umbrella or excess policies, these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except business automobile, worker’s compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsement CG 20 26 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as Additional Insured shall not be limited by Industry's liability under the indemnity provisions of this Agreement. **BOTH INDUSTRY AND COMPANY EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.**

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (b) all punitive damages are prohibited by all states in which this Agreement will be performed.

H. Industry waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Industry required in this Agreement, where permitted by law. This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Industry will not be deemed to release or diminish the liability of Industry, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Industry or any third party will not be limited by the amount of the required insurance coverage.

K. Industry shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements in this Agreement.

L. All insurance correspondence, certificates of insurance and endorsements shall be addressed as follows:

Union Pacific Railroad Company
Real Estate Department – Project # 0784430
1400 Douglas Street, Stop 1690
Omaha, NE 68179

Basic points to remember:

- The certificate must indicate that Union Pacific Railroad Company is included as an additional insured. (Listing Union Pacific Railroad Company only as a certificate holder is not sufficient.)
- Binders are only accepted for sixty (60) days.
- Failure to comply with insurance requirements may result in a delay of your activity with UPRR.
- The certificate must indicate your RE project number.



CITY OF TEXARKANA, AR

BOARD OF DIRECTORS

AGENDA TITLE: Adopt an Ordinance to rezone two tracts of land located in Ward 3 in the 5800 block of East 9th Street from R-1 Rural residential to A-1 Mixed use rural zoning in order to build garage/shop (Smith). (PWD-Planning)
City Planner Mary Beck

AGENDA DATE: 11/07/2022

ITEM TYPE: Ordinance Resolution Other : _____

DEPARTMENT: Public Works/Planning

PREPARED BY: Mary Beck

REQUEST: Adopt an ordinance to rezone two tracts of land located in the 5800 block of East 9th Street from R-1 Rural residential to A-1 Mixed use rural zoning in order to build garage/shop.

EMERGENCY CLAUSE: N/A

SUMMARY: The Planning Commission recommends rezoning the property to A-1.

EXPENSE REQUIRED: N/A

AMOUNT BUDGETED: N/A

**APPROPRIATION
REQUIRED:** N/A

**RECOMMENDED
ACTION:** Adopt an ordinance to rezone property to A-1 Mixed use rural zoning.

EXHIBITS: Ordinance, Memo to City Manager, deed, location map.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. K-286; AND FOR OTHER PURPOSES

WHEREAS, an application to amend the Land Use Plan was filed with the Planning Commission of the City of Texarkana, Arkansas, requesting that the following land located in the 5800 block of East 9th Street, be rezoned from R-1 Rural residential to A-1 Mixed use rural zoning:

The West Half of the East Half of the Southeast Quarter of the Southwest Quarter (W 1/2 E 1/2 SE 1/4 SW 1/4 of Section Twenty-three (23), Township Fifteen (15) South, Range Twenty-eight (28) West, Miller County, Arkansas, containing 10 acres, more or less.

AND ALSO:

All that certain tract or parcel of land being a part of the E 1/2 of the SE 1/4 of Section 23, T. 15 S., R. 28 W., Miller County, Arkansas and being more particularly describe by metes and bounds as follow

BEGINNING at a 1/2 " reinf. steel set at the Northeast corner of the SE 1/4 of the SW 1/4 of Section 23, T. 15 S., R. 28 W., Miller County, Arkansas; an existing fence corner bears S. 77° 39' E., 8.4 ft.;

THENCE - N. 87° 15' 45" W., 330.86 ft. with the North boundary of the above-mentioned SE 1/4 of SW 1/4 to a 1/2" reinf. steel set at the Northwest corner of the E 1/2 of the E 1/2 of said SE 1/4 of SW 1/4;

THENCE - S. 02° 18' 26" W., with the West boundary line of the above-mentioned E 1/2 of E 1/2 of SE 1/4 of SW 1/4 passing at 1275.64 ft. a 1/2" reinf. steel set on the North right-of-way line of U.S. Highway No. 82 and continuing 46.89 ft. for a total of 1324.53 ft. to the Southwest corner of said E 1/2 of E 1/2 of SE 1/4 of SW 1/4;

THENCE - S. 87° 25' 22" E., 330.33 ft. with the South boundary line of the above-mentioned SE 1/4 of SW 1/4 to the Southeast corner of said SE 1/4 of SW 1/4;

THENCE - N. 02° 19' 48" E., with the East boundary line of the above-mentioned SE 1/4 of SW 1/4 passing at 37.70 ft. a drill hole set in concrete

on the above-mentioned North right-of-way line and continuing 70.06 a 1/2" reinf. steel set for reference and continuing 1215.84 ft. for a total distance of 1323.60 ft. to the POINT OF BEGINNING; basis of bearings is grid north from AHTD GPS control monuments. The above-described property being surveyed by Richard Hall, Jr. contains 10.0486 acres of land, more or less (0.3207 acres within highway right-of-way); AND SUBJECT TO such rights as may be vested in the public for U. S. Highway 82 right-of-way; AND ALSO SUBJECT TO such rights as may be vested in others for various utilities including but not limited to those for electric power and telecommunication.

WHEREAS, the Planning Commission, after public hearing, approved said application and recommended that the Board of Directors of the City of Texarkana, Arkansas, adopt the ordinance affecting said rezoning request; and

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Texarkana, Arkansas: Ordinance No. K-286, as amended, is hereby amended to rezone the above-described property in the City of Texarkana, Arkansas, from R-1 Rural residential to A-1 Mixed use rural. This is solely a rezoning and no other action, conveyance, or release of interest.

PASSED AND APPROVED this 7th day of November 2022.

Allen L. Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George Matteson, City Attorney

PREPARED IN THE OFFICE OF:
LANGDON ★ DAVIS
Attorneys at Law
625 Sam Houston
New Boston, TX 75570

AFTER RECORDING, RETURN TO:
MILLER COUNTY ABSTRACT
405 Walnut St.
Texarkana, AR 71854

214705ALoh

WARRANTY DEED

THE STATE OF ARKANSAS }
 }
COUNTY OF MILLER } KNOW ALL MEN BY THESE PRESENTS:

THAT **WILLIAM RICHARD CHANDLER and CYNTHIA I. CHANDLER, husband and wife**, with an address of 7428 Bonita Park Drive, Texarkana, Arkansas 71854, GRANTORS, for and in consideration of the sum of Ten Dollars (\$10.00), cash and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto **ADGER SMITH and DONNA SMITH, husband and wife**, with an address of 308 Meadows Road, Texarkana, Arkansas 71854, GRANTEES, and unto their heirs, successors and assigns forever, the following described lands located in the County of Miller, State of Arkansas:

The West Half of the East Half of the Southeast Quarter of the Southwest Quarter (W 1/2 E 1/2 SE 1/4 SW 1/4) of Section Twenty-three (23), Township Fifteen (15) South, Range Twenty-eight (28) West, Miller County, Arkansas, containing 10 acres, more or less.

Reservations from Conveyance:

None

Exceptions to Conveyance and Warranty:

Liens described as part of the Consideration and any other liens described in this deed as being either assumed or subject to which title is taken; validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantors, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; and Grantees assume real estate taxes for 2021 and subsequent years, subject to proration for the current year of closing, if any, but not for subsequent assessments for a change in land usage or ownership, or both, by Grantors prior to the date

of closing, the payment of which Grantors assume.

To have and to hold unto the Grantees, and unto their heirs, successors and assigns forever, with all tenements, appurtenances and hereditaments thereunto belonging.

And Grantors hereby covenant with the Grantees that they will forever warrant and defend the title to the lands against all lawful claims whatsoever.

And WILLIAM RICHARD CHANDLER and CYNTHIA I. CHANDLER, husband and wife, for and in consideration of the said sum of money, do hereby release and relinquish unto the said Grantee, and unto their heirs, successors and assigns forever, all their right and possibility of curtesy, dower and homestead in and to the above-described real property.

WITNESS our hands this 5th day of August, 2021.

William Richard Chandler

WILLIAM RICHARD CHANDLER

Cynthia I. Chandler

CYNTHIA I. CHANDLER

ACKNOWLEDGMENT

STATE OF ARKANSAS }

COUNTY OF MILLER }

On this 5th day of August, 2021, before me, Arlynda Hill, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named WILLIAM RICHARD CHANDLER and CYNTHIA I. CHANDLER, husband and wife, to me personally well known, or to me proven to be the persons therein stated, who stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 5th day of August, 2021.



Arlynda Hill

Notary Public, State of Arkansas

Printed Name: Arlynda Hill

Commission Expires: 12-4-23

I/WE CERTIFY UNDER PENALTY OF FALSE SWEARING THAT THE CORRECT
AMOUNT OF DOCUMENTARY STAMPS HAVE BEEN PLACED ON THIS INSTRUMENT



GRANTEE OR GRANTEE'S AGENT

PREPARED IN THE OFFICE OF:
LANGDON ★ DAVIS
Attorneys at Law
625 Sam Houston
New Boston, TX 75570

AFTER RECORDING, RETURN TO:
MILLER COUNTY ABSTRACT
405 Walnut St.
Texarkana, AR 71854

214970ARAL

WARRANTY DEED

THE STATE OF ARKANSAS }
 } KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MILLER }

THAT **WILLIAM RICHARD CHANDLER and CYNTHIA I. CHANDLER, husband and wife**, with an address of 7428 Bonita Park Drive, Texarkana, Arkansas 71854, GRANTORS, for and in consideration of the sum of Ten Dollars (\$10.00), cash and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto **ADGER SMITH and DONNA SMITH, husband and wife**, with an address of 308 Meadows Road, Texarkana, Arkansas 71854, GRANTEES, and unto their heirs, successors and assigns forever, the following described lands located in the County of Miller, State of Arkansas:

All that certain tract or parcel of land being a part of the E½ of the E½ of the SE¼ of the SW¼ of Section 23, T. 15 S., R. 28 W., Miller County, Arkansas and being more particularly described by metes and bounds as follows:

BEGINNING at a ½” reinf. steel set at the Northeast corner of the SE¼ of the SW¼ of Section 23, T. 15 S., R. 28 W., Miller County, Arkansas; an existing fence corner bears S. 77° 39’ E., 8.4 ft.;

THENCE - N. 87° 15’ 45” W., 330.86 ft. with the North boundary of the above mentioned SE¼ of SW¼ to a ½” reinf. steel set at the Northwest corner of the E½ of the E½ of said SE¼ of SW¼;

THENCE - S. 02° 18’ 26” W., with the West boundary line of the above mentioned E½ of E½ of SE¼ of SW¼ passing at 1275.64 ft. a ½” reinf. steel set on the North right-of-way line of U.S. Highway No. 82 and continuing 46.89 ft. for a total of 1324.53 ft. to the Southwest corner of said E½ of E½ of SE¼ of SW¼;

THENCE - S. 87° 25’ 22” E., 330.33 ft. with the South boundary line of the above mentioned SE¼ of SW¼ to the Southeast corner of said SE¼ of SW¼;

THENCE - N. 02° 19’ 48” E., with the East boundary line of the above mentioned SE¼ of SW¼ passing at 37.70 ft. a drill hole set in concrete on the above mentioned North right-of-way

line and continuing 70.06 a ½” reinf. steel set for reference and continuing 1215.84 ft. for a total distance of 1323.60 ft. to the POINT OF BEGINNING; basis of bearings is grid north from AHTD GPS control monuments. The above described property being surveyed by Richard V. Hall, Jr. contains 10.0486 acres of land, more or less (0.3207 acres within highway right-of-way); AND SUBJECT TO such rights as may be vested in the public for U.S. Highway No. 82 right-of-way; AND ALSO SUBJECT TO such rights as may be vested in others for various utilities including but not limited to those for electric power and telecommunication.

Reservations from Conveyance:

None

Exceptions to Conveyance and Warranty:

Any and all matters including but not limited to Utility Easements and any part of caption property that lies within the bounds of U.S. Highway No. 82 as shown on Survey by Hall Surveying and Engineering, Inc. dated October 18, 2021, Drawing No. 2012-151-04-01D.

Liens described as part of the Consideration and any other liens described in this deed as being either assumed or subject to which title is taken; validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantors, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; and Grantees assume real estate taxes for 2021 and subsequent years, subject to proration for the current year of closing, if any, but not for subsequent assessments for a change in land usage or ownership, or both, by Grantors prior to the date of closing, the payment of which Grantors assume.

To have and to hold unto the Grantees, and unto their heirs, successors and assigns forever, with all tenements, appurtenances and hereditaments thereunto belonging.

And Grantors hereby covenant with the Grantees that they will forever warrant and defend the title to the lands against all lawful claims whatsoever.

And WILLIAM RICHARD CHANDLER and CYNTHIA I. CHANDLER, husband and wife, for and in consideration of the said sum of money, do hereby release and relinquish unto the said Grantee, and unto their heirs, successors and assigns forever, all their right and possibility of curtesy, dower and homestead in and to the above-described real property.

WITNESS our hands this 3rd day of December, 2021.

William Richard Chandler
WILLIAM RICHARD CHANDLER

Cynthia I. Chandler
CYNTHIA I. CHANDLER

ACKNOWLEDGMENT

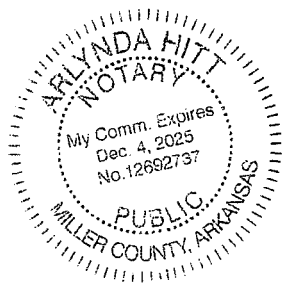
STATE OF Arkansas }

COUNTY OF Miller }

On this 3rd day of December, 2021, before me, Arlinda Hitt, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named WILLIAM RICHARD CHANDLER and CYNTHIA I. CHANDLER, to me personally well known, or to me proven to be the persons therein stated, who stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

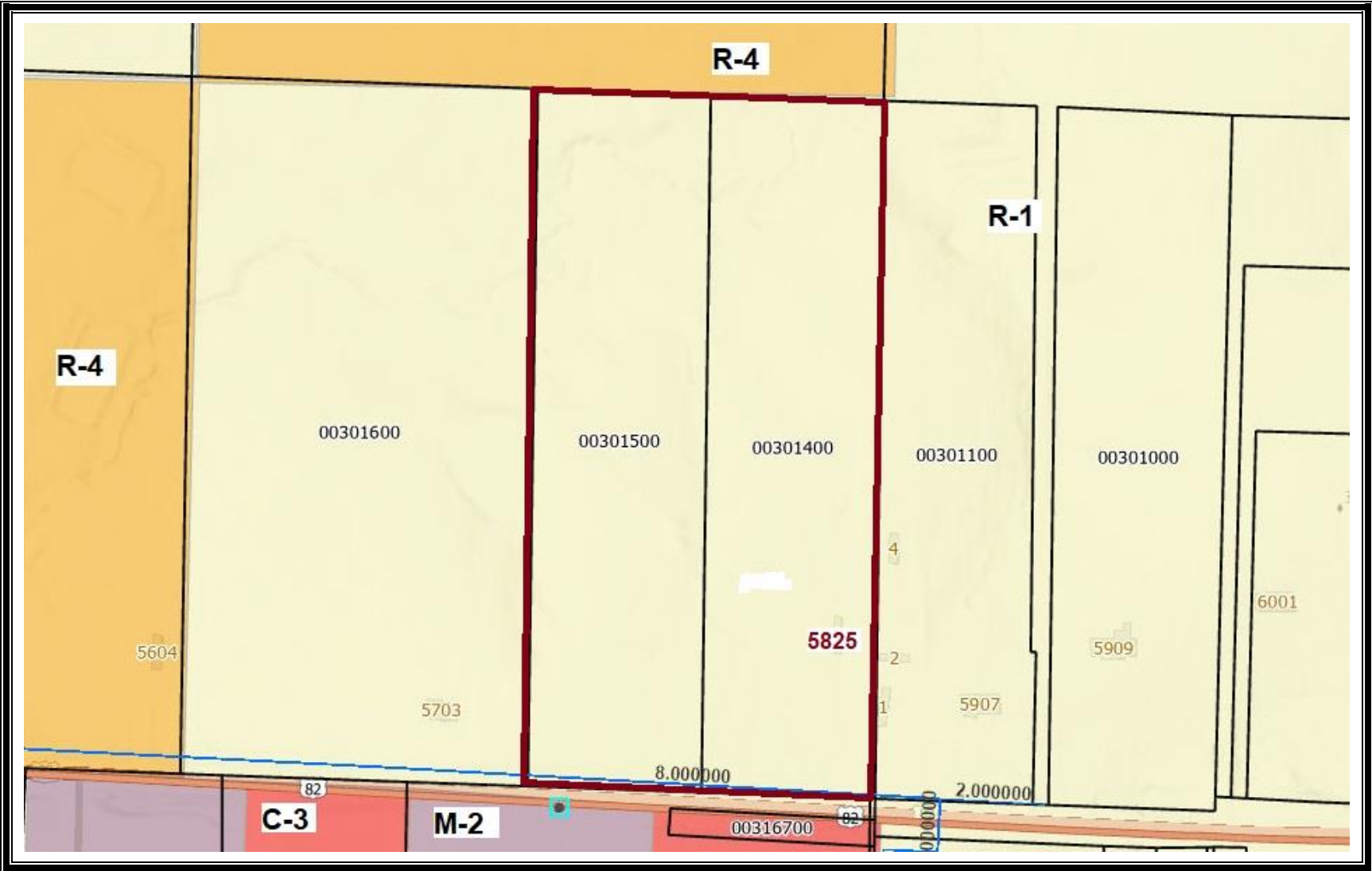
IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 3rd day of December, 2021.

Arlinda Hitt
Notary Public, State of AR
Printed Name: Arlinda Hitt
Commission Expires: 12-4-25



I/WE CERTIFY UNDER PENALTY OF FALSE SWEARING THAT THE CORRECT AMOUNT OF DOCUMENTARY STAMPS HAVE BEEN PLACED ON THIS INSTRUMENT

[Signature]
GRANTEE OR GRANTEE'S AGENT



Planning Commission review

Prepared by:
Planning Division - Public Works Department
City of Texarkana, Arkansas



CITY OF TEXARKANA ARKANSAS

DEPARTMENT OF PUBLIC WORKS

216 WALNUT ST 71854-6024

P O BOX 2711 TEXARKANA ARKANSAS 75504-2711

PHONE (870) 779-4971 – FAX (870) 773-2395

MEMORANDUM

TO: Jay Ellington, City Manager
FROM: Mary L. Beck, City Planner
DATE: October 18, 2022
SUBJECT: Board of Directors Agenda item for November 7, 2022 – Planning Commission rezoning recommendation. **Request by Adger John Smith to rezone property from R-1 Rural residential to A-1 Mixed use rural zoning.**

LEGAL DESCRIPTION:

The property is located at and adjacent to 5819 E. 9th Street two tracts of land legally described as 1) W1/2, E1/2, SE ¼, SW1/4; and, 2) a part of the E1/2, E1/2, SE1/4, SW1/4, both in Section 23, Township 15, Range 28 West, Texarkana, Miller County, Arkansas, containing a total of 20.0486 acres more or less.

REASON FOR REQUEST: Existing dwelling as a rental unit and planned construction for a dwelling and accessory structures would be allowed in the A-1 zone in a manner that is compatible with plans desired of the owners.

EXISTING LAND USES:

Site:	Single-family dwelling – manufactured home
North:	Vacant
East:	Single-family dwelling
South:	Auto parts salvage
West:	Single-family dwelling

EXISTING ZONING:

Site:	R-1 Rural residential
North:	R-4 Medium-density residential
South:	C-3 Open-display commercial and M-2 General manufacturing
East:	R-1 Rural residential
West:	R-1 Rural residential



www.cityoftexarkanaar.com

COMPATIBILITY WITH EXISTING ZONING:

Examining the 1988 comprehensive, plan the property being reviewed was in an area projected to have low-density residential land use. Although other development that has come about since that time to the immediate south includes auto salvage land use, implementation of A-1 mixed use rural zoning would not appreciatively impact that land use nor the adjacent highly compatible R-1 rural residential zoning that it was developed to compliment. Planned accessory buildings mainly to be used for vehicles owned by the property owner and construction of one or two dwellings on each of these separate tracts of property is a suitable use in the A-1 zone and is and expected to be low impact to the adjacent properties.

UTILITIES & TRANSPORTATION NETWORK:

Local :	None
Collector:	None
Arterial:	E. 9 th Street (U.S. Highway 82)
Water:	8" water line along the property in E. 9 th Street
Sewer:	City sewer is not available at this location. Miller County Health Department must approve any additional septic system needs.
Fire hydrant:	On site

CONFORMANCE WITH APPLICABLE ORDINANCES AND/OR STATE STATUTES:

The *Arkansas Code of 1987 Annotated (14-56-422B)* requires the following – “All plans, recommended ordinances, and regulations shall be adopted through the following procedure for adoption of plans and regulations:

(A) The Planning Commission shall hold a public hearing on the plans, ordinances, and regulations proposed under this subchapter.

(B) Notice of public hearing shall be published in a newspaper of general circulation in the city, at least (1) time fifteen days prior to the hearing.

(2) Following the public hearing, proposed plans may be adopted, and proposed ordinance and regulations may be recommended as presented, or in modified form, by a majority vote of the entire commission.

(3) Following it adoption of plans and recommendation of ordinances and regulations, the commission shall certify adopted plans of recommended ordinances of and regulations to the legislative body of the city for its adoption.

(4) The legislative body of the city may return the plans and recommended ordinances and regulations to the commission for further study or rectification, or, by a majority vote of the entire membership, may, by ordinance or resolution, adopt the plans and recommended ordinances or regulations submitted by the commission. However, noting in this subchapter shall be construed to limit the city board's authority to recall the ordinances and resolutions by a vote of a majority of the council.

(5) Following adoption by the legislative body, the adopted plans, ordinances, and regulations shall be filed in the office of the City Clerk. The City Clerk shall file, with the county recorder of the counties in which territorial jurisdiction is being exercised such plans, ordinances, and regulations as pertain to the territory beyond the corporate limits.

The required notice was published in the Sunday, August 28, 2022 edition of the Texarkana Gazette. Letters were mailed to five (5) adjacent property owners within 300' as required by local ordinance.

OPPOSITION:

There was no opposition received or voiced at the meeting.

PLANNING COMMISSION CERTIFICATION:

The Planning Commission met on October 11, 2022 to review this request. Mr. Clyde "Boots" Thomas made a motion to approve, seconded by Ms. Bertha Dunn. The motion passed by a roll call vote of 5-0 with one absent and one recused (the applicant).

Adger Smith	NA
Anderson Neal	Yes
Bertha Dunn	Yes
Jason Dupree	Absent
Randall Hickerson	Yes
Clyde "Boots" Thomas	Yes
Mike Jones	Yes

ACTION REQUESTED BY CITY BOARD OF DIRECTORS:

To adopt an ordinance to change zoning from R-1 Rural residential to A-1 Mixed use rural zoning. The Arkansas Code of 1987 Annotated requires every ordinance to be read three times before adoption. These three readings may all occur at the same meeting or at the second and third subsequent meetings after the first reading of the ordinance.



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE:	Adopt an Ordinance to rezone a quarter section of land located in Ward 3 in the 5100 block of Old Post Road from R-1 Rural residential to M-2 General manufacturing that would allow a one-year conditional use permit for batch concrete/asphalt mixing to occur up to 180 days of the permitted time in order to provide materials for renovations at the Texarkana Airport. (PWD-Planning) City Planner Mary Beck
AGENDA DATE:	09/20/2022
ITEM TYPE:	Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Other <input type="checkbox"/> : _____
DEPARTMENT:	Public Works/Planning
PREPARED BY:	Mary Beck

REQUEST:	Adopt an ordinance to rezone a quarter section of land from R-1 Rural residential to M-2 General manufacturing that would allow a one-year conditional use permit for batch concrete/asphalt mixing to occur up to 180 days of the permitted time in order to provide materials for renovations at the Texarkana Airport.
EMERGENCY CLAUSE:	N/A

SUMMARY:	The Planning Commission recommends rezoning the property to M-2. They have pre-approved a conditional use permit that could go into effect if the zoning is adopted.
-----------------	--

EXPENSE REQUIRED:	N/A
AMOUNT BUDGETED:	N/A
APPROPRIATION REQUIRED:	N/A

RECOMMENDED ACTION:	Adopt an ordinance to rezone property to M-2 General Manufacturing.
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EXHIBITS:	Ordinance, Memo to City Manager, deed, site plan, location map.
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ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE NO.
K-286; AND FOR OTHER PURPOSES**

WHEREAS, an application to amend the Land Use Plan was filed with the Planning Commission of the City of Texarkana, Arkansas, requesting that the following land located in the 5100 block of Old Post Road, be rezoned from R-1 Rural residential to M-2 General manufacturing zoning:

THE NORTHWEST CORNER OF THE NORTHEAST QUARTER (NW 1/4 NE 1/4) OF SECTION 22, TOWNSHIP 15 SOUTH, RANGE 28 WEST, MILLER COUNTY, ARKANSAS, CONTAINING 40 ACRES OF LAND, MORE OR LESS.

WHEREAS, the Planning Commission, after public hearing, approved said application and recommended that the Board of Directors of the City of Texarkana, Arkansas, adopt the ordinance affecting said rezoning request; and

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Texarkana, Arkansas: Ordinance No. K-286, as amended, is hereby amended to rezone the above-described property in the City of Texarkana, Arkansas, from R-1 Rural residential to M-2 General manufacturing. This is solely a rezoning and no other action, conveyance, or release of interest.

PASSED AND APPROVED this 7th day of November, 2022.

Allen L. Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George Matteson, City Attorney



CITY OF TEXARKANA ARKANSAS
DEPARTMENT OF PUBLIC WORKS
216 WALNUT ST 71854-6024
P O BOX 2711 TEXARKANA ARKANSAS 75504-2711
PHONE (870) 779-4971 – FAX (870) 773-2395

MEMORANDUM

TO: Jay Ellington, City Manager
FROM: Mary L. Beck, City Planner
DATE: October 18, 2022
SUBJECT: Board of Directors Agenda item for November 7, 2022 – Planning Commission rezoning recommendation. **Request by NS Land Company, LLC, agent Tatum Excavating Co., to rezone property from R-1 Rural residential to M-2 General manufacturing, with a pre-approved conditional use permit.**

LEGAL DESCRIPTION:

The property is legally described as the NW1/4, NW1/4, Section 22, Township 15 S Range 28 W, and contains 40 acres more or less. The property is in the 5100 block of Post Road.

REASON FOR REQUEST:

To rezone property near the Texarkana Airport to M-2 General manufacturing with a portion of the quarter section to be utilized for one year for operation of a batch plant to produce and provide materials for maintenance and improvements to Texarkana Airport. The Planning Commission pre-approved a conditional use permit effective only if the rezoning is adopted.

EXISTING LAND USES:

Site:	Vacant quarter section of land
North:	Airport property
East:	Single-family dwelling(s)
South:	Vacant quarter section of land
West:	Undeveloped land with trees

EXISTING ZONING:

Site:	R-1 Rural residential
North:	R-1 Rural residential
South:	R-1 Rural residential
East:	R-1 Rural residential
West:	M-2 General Manufacturing



COMPATIBILITY WITH EXISTING ZONING:

Zoning request:

The property in Maxwell's Industrial Park is zoned for light and general manufacturing. The property in question is adjacent to the east to industrial zoning and Texarkana Airport. The property acquired land immediately to the north that is planned for similar land uses as the manufactured zones. The 1988 comprehensive plan stopped on the north side of the applicant's property where the recommendations were industrial types of land uses. The property itself although nearly surrounded by R-1 Rural residential is for the most part undeveloped and the area is more closely related to industrial types of development than residential or commercial development.

Typically having residential zoning adjacent to industrial zoning is not ideal, however, the R-1 Rural residential zone is the default for property annexed into the City where there is no existing development at the time of annexation. The large tracts of property where there is residential land use, in this case there appears to be a pecan orchard and a couple of homes on the east of the property are often buffered by trees and vegetation as is this property.

Conditional Use request:

Undeveloped on three sides and with airport property directly north, industrial land uses that provide supplies to airport improvement operations is very convenient for the supplier. There may be a conflict with the adjacent two existing residences so care should be taken to conform to setbacks and buffers to alleviate any impact to the existing residents from a plant that would operate for 90 days in material preparation and one year total to produce prepared material to the airport.

UTILITIES & TRANSPORTATION NETWORK:

Local :	None
Collector:	Old Post Road
Arterial:	None
Water:	12" water line along the property in Old Post Rd. Sewer:
	The temporary land use will probably utilize "port-a-pots"
Fire hydrant:	At the NE corner of the property on Old Post Rd.

CONFORMANCE WITH APPLICABLE ORDINANCES AND/OR STATE STATUTES:

The *Arkansas Code of 1987 Annotated (14-56-422B)* requires the following – "All plans, recommended ordinances, and regulations shall be adopted through the following procedure for adoption of plans and regulations:

(A) The Planning Commission shall hold a public hearing on the plans, ordinances, and regulations proposed under this subchapter.

(B) Notice of public hearing shall be published in a newspaper of general circulation in the city, at least (1) time fifteen days prior to the hearing.

(2) Following the public hearing, proposed plans may be adopted, and proposed ordinance and regulations may be recommended as presented, or in modified form, by a majority vote of the entire commission.

(3) Following its adoption of plans and recommendation of ordinances and regulations, the commission shall certify adopted plans of recommended ordinances and regulations to the legislative body of the city for its adoption.

(4) The legislative body of the city may return the plans and recommended ordinances and regulations to the commission for further study or rectification, or, by a majority vote of the entire membership, may, by ordinance or resolution, adopt the plans and recommended ordinances or regulations submitted by the commission. However, noting in this subchapter shall be construed to limit the city board's authority to recall the ordinances and resolutions by a vote of a majority of the council.

(5) Following adoption by the legislative body, the adopted plans, ordinances, and regulations shall be filed in the office of the City Clerk. The City Clerk shall file, with the county recorder of the counties in which territorial jurisdiction is being exercised such plans, ordinances, and regulations as pertain to the territory beyond the corporate limits.

The required notice was published in the Sunday, August 28, 2022 edition of the Texarkana Gazette. Letters were mailed to five (5) adjacent property owners within 300' as required by local ordinance.

OPPOSITION:

There was no opposition received or voiced at the meeting.

PLANNING COMMISSION CERTIFICATION:

The Planning Commission voted on the rezoning following a motion by Mr. Adger Smith, seconded by Mr. Clyde "Boots" Thomas. The motion passed 6-0 with one absence.

Adger Smith	Yes
Anderson Neal	Yes
Bertha Dunn	Yes
Jason Dupree	Absent
Randall Hickerson	Yes
Clyde "Boots" Thomas	Yes
Mike Jones	Yes

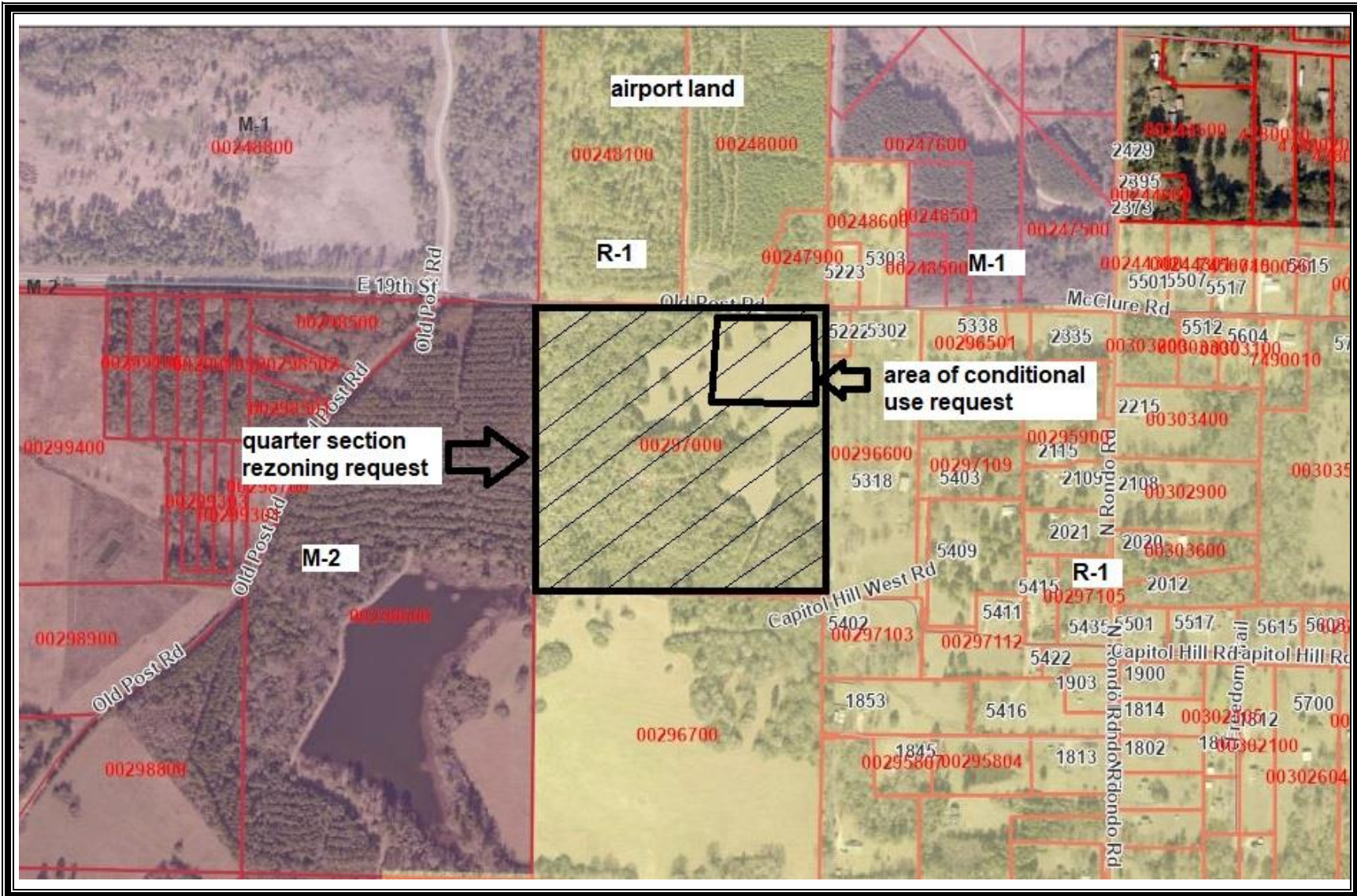
ACTION REQUESTED BY CITY BOARD OF DIRECTORS:

To adopt an ordinance to change zoning from R-1 Rural residential to M-2 General manufacturing zoning. The Arkansas Code of 1987 Annotated requires every ordinance to be read three times before adoption. These three readings may all occur at the same meeting or at the second and third subsequent meetings after the first reading of the ordinance.

Adopting the ordinance would allow the pre-approved conditional use permit to go into effect with the following conditions:

- Construction based on the enclosed site plan;
- Approval for the section designated for batch operations (site plan) would be limited in time from the date of a certificate of occupancy in the temporary office and ending on the same date one year later;
- Batch processing at this site will be allowed 180 days only of the designated year;
- All materials, equipment and structures will be cleared off the property at the end of the one year specified and inspected by the City for violations of zoning code;
- Trees on the east side for a buffer and gated driveway for access will be allowed for one year.

The conditional use passed on an unanimous roll call vote. A motion was made by Mr. Adger Smith, was seconded by Mr. Boots Thomas, with Jason Dupree absent.



Planning Commission review

Prepared by:
 Planning Division - Public Works Department
 City of Texarkana, Arkansas

SOUTHWEST TITLE COMPANY
617 East Sixth Street, Texarkana, Arkansas 71854
(870) 773-5506 * FAX (870) 772-8635

NS Land Company, LLC
2416 S. Lake Dr.
Texarkana, TX 75501

RE: 40 acres Old Post Rd.
Texarkana, AR 71854

Dear Sir/Madam:

In connection with your purchase of the above referenced property, enclosed are the following items:

1. Original recorded Warranty Deed conveying title to the property to you from Danny Bert Roberts.
2. Original Owner's Policy of Title Insurance Number AR1000-9394861 issued by Southwest Title Company, providing \$400,000.00 of owner's coverage.

We appreciate the opportunity to be of service to you and hope that you will not hesitate to contact us should you require our assistance in the future.

Sincerely,

Robin Sewell

Southwest Title Company

12/27/21

Enclosures

Prepared By:
Clayton & Ramirez Law, P.L.L.C.
8920 Business Park Drive, Suite 175
Austin, Texas 78759

After Recording Return To:
Southwest Title Company
617 East 6th Street
Texarkana, AR 71854
File No. 37486

eRecorded
2021R009608
MARY PANKEY
MILLER COUNTY CIRCUIT CLERK
TEXARKANA, AR
RECORDED ON
12/17/2021 11:06:42 AM
RECORDING FEE 25.00
PAGES: 3

Space Above This Line for Recorder's Use

WARRANTY DEED
SINGLE PERSON

KNOW ALL MEN BY THESE PRESENTS:

That **DANNY BERT ROBERTS, A SINGLE PERSON**, hereafter called Grantor(s), for and in consideration of the sum of TEN Dollars (\$10.00) and other good and valuable consideration to us in hand paid by **NS LAND COMPANY, LLC**, hereafter called Grantee(s), receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto Grantee(s), and unto his/her/their/its heirs, successors and/or assigns forever, the following lands lying in the County of Miller and State of Arkansas:

THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER (NW 1/4 NE 1/4) OF SECTION 22, TOWNSHIP 15 SOUTH, RANGE 28 WEST, MILLER COUNTY, ARKANSAS, CONTAINING 40 ACRES OF LAND, MORE OR LESS.

TO HAVE AND TO HOLD the same unto Grantee(s) and unto his/her/their/its heirs, successors and/or assigns forever, with all appurtenances thereunto belonging.

AND GRANTOR(S) hereby covenant with Grantee(s) and unto his/her/their/its heirs, successors and/or assigns forever, that they will forever warrant and defend the title to said lands against all lawful claims whatever, subject to existing easements, building lines, restrictions and assessments of record, if any.

Prepared By:

Clayton & Ramirez Law, P.L.L.C.
8920 Business Park Drive, Suite 175
Austin, Texas 78759

After Recording Return To:

Southwest Title Company
617 East 6th Street
Texarkana, AR 71854
File No. 37486

Space Above This Line for Recorder's Use

WARRANTY DEED
SINGLE PERSON

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AND GRANTOR(S) hereby covenant with Grantee(s) and unto his/her/their/its heirs, successors and/or assigns forever, that they will forever warrant and defend the title to said lands against all lawful claims whatever, subject to existing easements, building lines, restrictions and assessments of record, if any.

WITNESS my hand(s) and seal on this 17th day of Dec, 2021.

Danny Bert Roberts
DANNY BERT ROBERTS

I hereby certify under penalty of false swearing that documentary stamps or a documentary symbol in the legally correct amount has been placed on this instrument. Exempt or no consideration paid if none shown.

GRANTEE(S) OR AGENT: Krupala

GRANTEE'S ADDRESS: 2416 S Lake Dr
Waukanana TX 75001

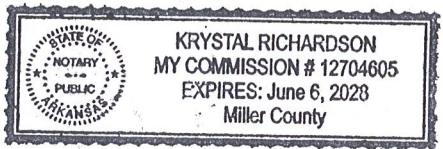
ACKNOWLEDGMENT

STATE OF ARKANSAS
COUNTY OF Miller

BE IT REMEMBERED that on this day came before me, the undersigned, a Notary Public within and for the County and State aforesaid, duly commissioned and acting, DANNY BERT ROBERTS, to me well known as the GRANTOR(S) in the foregoing Deed, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public this 17th day of Dec, 2021.

Krupala
Notary Public





STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
MISCELLANEOUS TAX SECTION
P.O. BOX 896, LITTLE ROCK, AR 72203-0896

Real Estate Transfer Tax Stamp

Proof of Tax Paid



File Number: 37486

Grantee: NS LAND COMPANY LLC
Mailing Address: 2416 S LAKE DR
TEXARKANA TX 755010000

Grantor: DANNY BERT ROBERTS
Mailing Address: 1601 OLD POST ROAD
TEXARKANA AR 718540000

Property Purchase Price: \$400,000.00
Tax Amount: \$1,320.00
County: MILLER
Date Issued: 12/17/2021
Stamp ID: 1725294592

I certify under penalty of false swearing that documentary stamps or a documentary symbol in the legally correct amount has been placed on this instrument

Grantee or Agent Name (printed): Angela Herrington-SWT

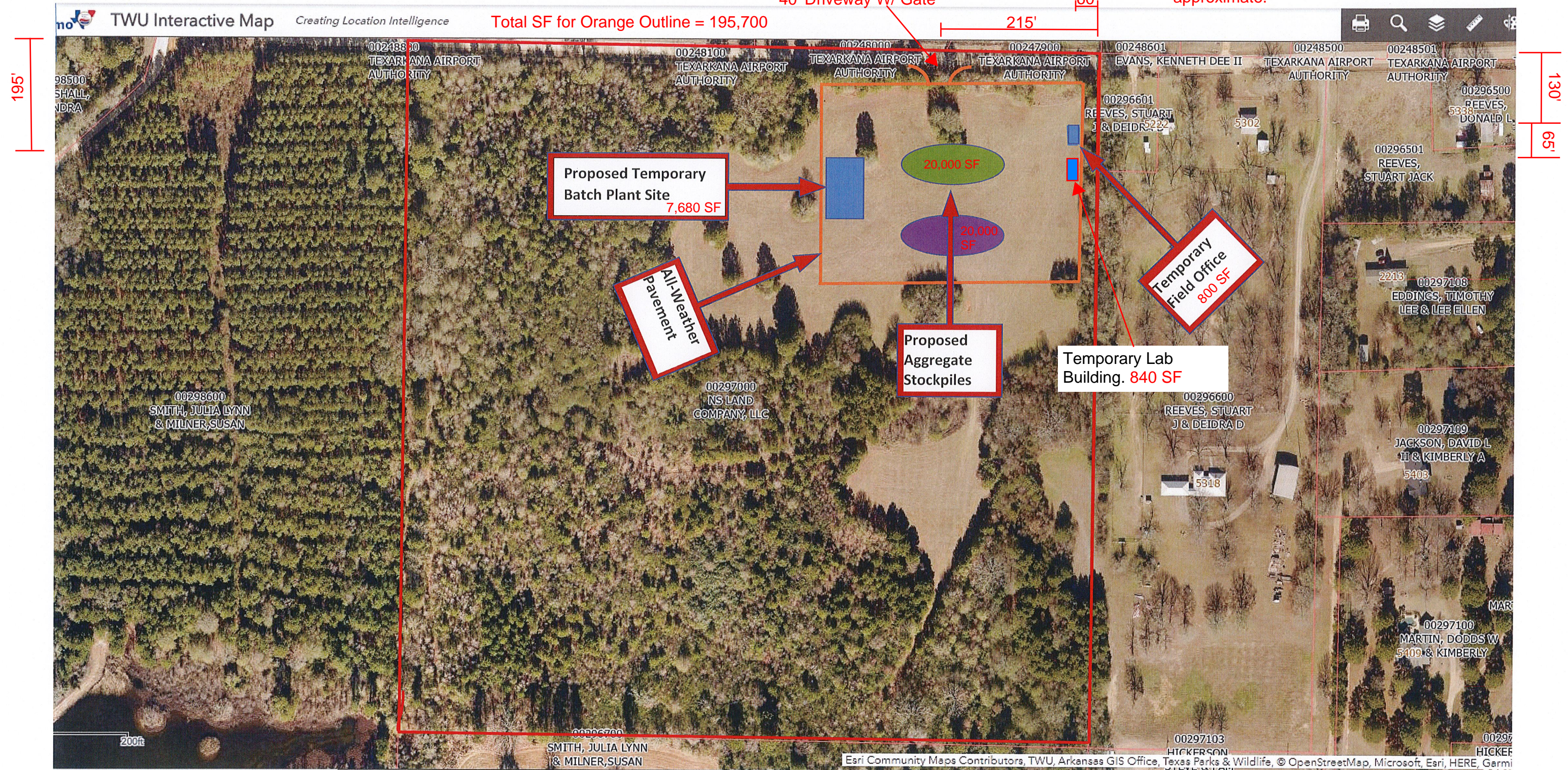
Grantee or Agent Name (signature): Angela Herrington-SWT Date: 12/17/21

Address: 4231 Jefferson Ave.

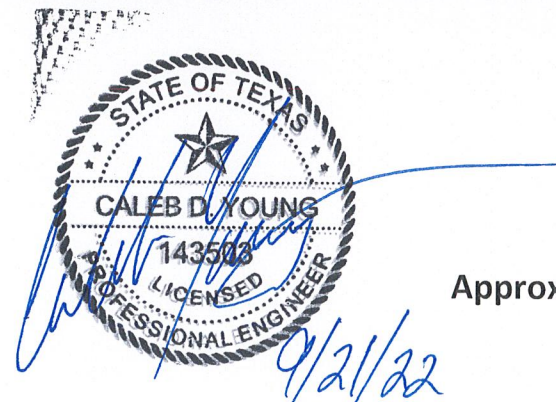
City/State/Zip: Texarkana, AR 71854

Proposed Site Plan for RT 12 Box 320 Texarkana, AR 71854

*Note- All measurements are approximate.



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Approximate Scale: 1" = 186' When Printed on 11" x 17"