



City Council Meeting Agenda

5:30 p.m.

January 26, 2017

300 West Cotton Street

Jo Ann Metcalf Municipal Building

City Hall Council Chamber

I. Call to Order

II. Invocation

III. Pledge of Allegiance

IV. Employee Recognition

V. Citizen Comment

VI. Presentation Item

Amphitheater update – Peggy Vaughn, LEDCO Chairman.

VII. Public Safety Update

A. Police

B. Fire

VIII. Consent Agenda

A. Consider a Resolution authorizing and directing the City Manager or the City Manager's designee to execute any necessary documents for the purchase of a sanitation truck via the city's purchasing agreement with Region VII Education Service Center cooperative purchasing program known as The Interlocal Purchasing System (TIPS) for an amount not to exceed \$289,554.91 – Dwayne Archer, Assistant Public Works Director.
[Pages 3 - 6](#)

B. Consider a Resolution accepting the Longview Animal Shelter project and authorizing final payment to RPR Construction Co., Inc. of Tyler, Texas, in

the amount of \$316,445.82 – Rolin McPhee, Director of Public Works.
[Pages 7 - 10](#)

- C. Consider approval of the following minutes: December 8, 2016, and January 12, 2017 – Shelly Ballenger, City Secretary. [Page 11](#)

IX. Action Items

- A. Consider a Resolution authorizing and directing the City Manager to execute an agreement between the City of Longview and the Longview Arboretum and Nature Center relating to the design, construction, and development of an arboretum and nature center – Scott Caron, Director of Parks and Recreation. [Pages 12 - 23](#)
- B. Consider an Ordinance renewing the designation of "Longview Economic Development Corporation (LEDCO) Industrial District No. 2" – Keith Bonds, Assistant City Manager. [Pages 24 - 29](#)
- C. Consider a Resolution authorizing the execution of an industrial district agreement between the City of Longview and Sysco Food Services of East Texas, L.L.C. – Keith Bonds, Assistant City Manager. [Pages 30 - 42](#)
- D. Consider a Resolution authorizing the execution of an economic development agreement between the City of Longview and Everest Rehabilitation Hospitals, LLC, to encourage the construction of a new physical rehabilitation hospital in the City of Longview – Keith Bonds, Assistant City Manager. [Pages 43 - 56](#)

X. Items of Community Interest

XI. Executive Session Item

Consultation with the City's Attorney(s) --- Under TEXAS GOVERNMENT CODE Section 551.071.

"Receive legal advice from the City's attorney(s) concerning legal issues regarding the registration and regulation of multi-person dwellings."

XII. Adjourn

Any final action, decision, or vote on a matter deliberated in a closed meeting will only be taken in an open meeting that is held in compliance with Texas Government Code, Chapter 551. The City Council reserves the right to adjourn into a closed meeting or executive session as authorized by Texas Government Code, Sections 551.001, et seq. (the Texas Open Meetings Act) on any item on its open meeting agenda in accordance with the Texas Open Meetings Act, including, without limitation Sections 551.071-551.088 of the Texas Open Meetings Act. In addition, the City Council may consider a vote to excuse the absence of any City Council Member for absence from this meeting or for absence from any previous City Council meeting.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aid or services are requested to contact the City Secretary's Office at 903.237.1080 at least two days before this meeting so that appropriate arrangements can be made. Para ayuda en español, por favor llame al 903.237.1000.

PURCHASE OF A SANITATION TRUCK

DESCRIPTION: This item would allow for the purchase of a 2018 Mack side loading sanitation truck. This new unit will replace sanitation truck, unit # 3284.

We recommend that the City purchase this equipment from East Texas Mack, by using the Region VII Local Government Purchasing Cooperative known as TIPS. The equipment listed has been properly bid and by purchasing from this purchasing cooperative agreement we fulfill bidding requirements under Chapter 252 of the Local Government Code.

The total of this transaction for the sanitation truck will not exceed \$289,554.91.

RECOMMENDED ACTION: Approval of the transaction using the TIPS cooperative purchasing program .

SOURCE OF FUNDS: Sanitation Captial Account; 023-032-000-7170

STAFF CONTACTS: Jaye Latch, Purchasing Manager
903-237-1324
jlatch@longviewtexas.gov

Dwayne Archer, Assistant Public Works Director
903-237-1267
darcher@longviewtexas.gov

COUNCIL DATE: January 26, 2017

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS, AUTHORIZING THE PURCHASE OF A SANITATION TRUCK VIA THE CITY'S PURCHASING AGREEMENT WITH THE REGION VIII EDUCATION SERVICE CENTER COOPERATIVE KNOWN AS THE INTERLOCAL PURCHASING SYSTEM (TIPS); AUTHORIZING AND DIRECTING THE CITY MANAGER, OR THE CITY MANAGER'S DESIGNEE AND/OR OTHER OFFICIAL(S) OF THE CITY AS SHALL BE REQUIRED TO EXECUTE ANY DOCUMENTS NECESSARY FOR SAID PURCHASE; SETTING FORTH THE CONDITIONS OF SUCH AUTHORIZATION; DETERMINING THAT SAID PURCHASE IS EXEMPT FROM STATE BIDDING REQUIREMENTS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS PASSED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of Longview (the "City") desires to purchase a sanitation truck; and,

WHEREAS, the City is able to purchase such sanitation truck through the Region VIII Education Service Center Cooperative known as the Interlocal Purchasing System (TIPS); and,

WHEREAS, Section 271.102 of Texas Local Government Code authorizes the purchase of said sanitation truck without the need for the City to engage in a competitive bidding process where the purchase is made through the City's participation in a cooperative purchasing program with another local government or a local cooperative organization; and

WHEREAS, Region VII Education Service Center is such a local cooperative organization and TIPS is such a cooperative purchasing program; and,

WHEREAS, the City has such a contract with said local cooperative organization; and,

WHEREAS, funding for this purchase is provided from the Sanitation Capital Account, 023-032-000-7170; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS;

Section 1. That the findings set out in the preamble to this resolution are hereby in all things approved and adopted.

Section 2. That the City Manager, the City Manager's designee and/or other official(s) of the City as shall be required, are hereby authorized and directed to execute any and all contracts and other documents on behalf of the City of Longview, as approved by the City Attorney's Office, incident to the purchase of a sanitation truck for an amount not to exceed \$289,554.91

Section 3. That the authorization provided herein is contingent upon all of the following:

a) The purchase authorized herein shall not require an amendment of the City's budget; and,

b) The purchase authorized herein shall be made through the Region VII Service Center cooperative purchasing program known as TIPS.

Section 4. That the purchase described in this resolution is exempt from state bidding requirements pursuant to section 271.102 of the Texas Local Government Code.

Section 5. That the meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

Section 6. That this resolution shall become effective immediately from and after its passage.

PASSED AND APPROVED this 26th day of January, 2017.

Dr. Andy Mack
Mayor

ATTEST:

Shelly Ballenger
City Secretary

APPROVED AS TO FORM:

Jim Finley
City Attorney

R SANITATIION TRUCK VIA TIPS 1-26-17

LONGVIEW ANIMAL SHELTER

DESCRIPTION: Consider a resolution accepting the "Longview Animal Shelter" project and authorizing final payment in the amount of \$316,445.82 to RPR Construction Co., Inc.. Approval of final payment will begin the contractor's one-year warranty period.

The City Council awarded a contract to RPR Construction Co., Inc. of Tyler, TX on January 27, 2015, in the amount of \$5,750,000.00. Change Order #1 decreased the contract in the amount of \$295,738.53. The final construction cost is \$5,454,261.47.

This project provided for construction of a new 20,885 square feet animal shelter and adoption building.

The project has been completed in accordance with the contract. Staff recommends acceptance of the project and approval of final payment.

\$2,500,000.00 of these funds have been reimbursed by Gregg County.

RECOMMENDED ACTION: Passage of resolution

SOURCE OF FUNDS: 200-290-929-9030

STAFF CONTACT: McPhee, Director
903-237-1336
rmcphee@longviewtexas.gov

COUNCIL DATE: January 26, 2017

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS, ACCEPTING THE PROJECT ENTITLED “LONGVIEW ANIMAL SHELTER”; AUTHORIZING AND APPROVING FINAL PAYMENT TO RPR CONSTRUCTION, INC. OF TYLER, TEXAS, FOR THE CONSTRUCTION OF SAID PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS PASSED WAS IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, on January 27, 2015, the City Council awarded a contract to RPR Construction, Inc. of Tyler, Texas, in the amount of \$5,750,000 for the project known as “Longview Animal Shelter”; and,

WHEREAS, this project is for the construction of a new 20,885 square foot animal shelter and adoption building, and;

WHEREAS, one change order was executed that decreased the contract in the amount of \$295,738.53; and,

WHEREAS, the final construction cost for said project was \$5,454,261.47; and,

WHEREAS, the project has been completed in accordance with the plans and specifications and the contractor, RPR Construction, Inc., has requested final payment in the amount of \$316,445.82; and,

WHEREAS, the final amount of \$316,445.82 is due to the contractor as final payment; and,

WHEREAS, the acceptance of the work by RPR Construction, Inc. of

Tyler, Texas, on the aforementioned contract and the approval of final payment therefore will begin the one-year warranty period for said work; NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS:

Section 1. That the findings set out in the preamble to this resolution are hereby in all things approved.

Section 2. That the construction work performed by RPR Construction, Inc. of Tyler, Texas, on the project known as " Longview Animal Shelter" is hereby accepted as complete and that final payment in the amount of \$316,445.82 for the construction of said project is hereby approved.

Section 3. That the meeting at which this resolution was passed was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

Section 4. That this resolution shall become effective from and after its passage.

PASSED AND APPROVED this 26th day of January, 2017.

Dr. Andy Mack
Mayor

ATTEST:

Shelly Ballenger
City Secretary

APPROVED AS TO FORM:

Jim Finley
City Attorney

R PW FINAL PAY ANIMAL SHELTER 1-26-17

CONSIDER APPROVAL OF THE FOLLOWING MINUTES

December 8, 2016 and January 12, 2017

**CONSIDER A RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF LONGVIEW AND THE LONGVIEW ARBORETUM AND NATURE
CENTER FOR THE DEVELOPMENT AND CONSTRUCTION OF THE LONGVIEW
ARBORETUM**

DESCRIPTION: Development of an Arboretum was identified in the 2015 Comprehensive Plan. The City of Longview has been awarded a grant from Texas Parks and Wildlife for construction of a trail on the 29 acre site. The Longview Arboretum and Nature Center Board has been raising funds to further develop the area with a pond, landscaping, water features, restrooms and more. This agreement will allow for the coordination of the improvements.

RECOMMENDED ACTION: Approve Resolution

SOURCE OF FUNDS: Not Applicable

STAFF CONTACT: Scott Caron, Director of Parks and Recreation
903-237-1231
scaron@longviewtexas.gov

COUNCIL DATE: January 23, 2017

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS, AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AN AGREEMENT BY AND BETWEEN THE CITY OF LONGVIEW AND THE LONGVIEW ARBORETUM AND NATURE CENTER RELATING TO THE DESIGN, CONSTRUCTION, AND DEVELOPMENT OF AN ARBORETUM AND NATURE CENTER; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION WAS APPROVED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, City of Longview ("City") Ordinance No. 3808 designates the general area bounded on the west by the Maude Cobb Convention and Activity Complex parking lot then east along Cotton Street to Grace Creek for development as an arboretum and park; and,

WHEREAS, the Longview Arboretum and Nature Center (the "Board") is a Texas non-profit corporation formed on July 30, 2010, to, among other things, (i) facilitate and aid the City with respect to the enhancement and development of the aforesaid arboretum and park, (ii) raise the necessary funds to develop a comprehensive design of said arboretum and park, (iii) defray costs of the landscaping and other amenities, and (iv) ensure the quality and consistency of the design and development of said arboretum and park; and,

WHEREAS, the City and the Board each have certain funds available to them for the design and construction of the aforesaid arboretum and park; and,

WHEREAS, as a result of the foregoing, the City and Board desire to cooperate in the design, construction, and development of the aforesaid arboretum and

park; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS:

Section 1. That the findings set out in the preamble to this resolution are hereby in all things approved and adopted.

Section 2. That the City Manager is hereby authorized and directed to execute an agreement by and between the City and the Board substantially in the form of Exhibit A attached hereto, which exhibit is made a part of this resolution for all purposes.

Section 3. That the meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

Section 4. That this resolution shall be effective immediately from and after its date of passage.

PASSED and APPROVED this 26th day of January, 2017.

Dr. Andy Mack
Mayor

ATTEST:

Shelly Ballenger
City Secretary

APPROVED AS TO FORM:

Jim Finley
City Attorney

R PARKS ARBORETUM CONTRACT 1-26-17

EXHIBIT A

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LONGVIEW AND THE LONGVIEW ARBORETUM BOARD RELATING TO THE CONSTRUCTION OF THE LONGVIEW ARBORETUM AND NATURE CENTER

This Memorandum of Understanding (this "MOU" or this "Agreement") is entered into this ___th day of _____, 2017, by and between the City of Longview, Texas ("City") and the Longview Arboretum and Nature Center, a Texas non-profit corporation ("Board") (collectively "Parties" and individually a "Party").

RECITALS

WHEREAS, the area referred to as the Longview Arboretum and Nature Center (the "LANC") is a prominent geographic feature of the City; and,

WHEREAS, the LANC is generally described as the area bounded on the west by the Maude Cobb Convention and Activity Complex parking lot, then east along Cotton Street to Grace Creek, and is designated for development of an arboretum and as a park (City Ordinance No. 3808); and,

WHEREAS, there is limited funding currently identified by and available to the City to perform the necessary design work to develop, operate and/or maintain the LANC and to create a premier amenity with a high level of design excellence, and as a result the City is interested in seeking support from a private entity to financially assist the City with these functions; and,

WHEREAS, cities throughout the country have entered into public-private partnerships with nonprofit organizations to create and revitalize urban parks and maximize the development, operation, and maintenance of such parks, including partnerships for Atlanta's Piedmont Park, Brooklyn's Prospect Park, Chicago's Millennium Park, Detroit's Campus Martius Park, Houston's Discovery Green Park, New York's Central Park, Pittsburgh's Forest Park, Portland's Courthouse Square, and St. Louis's Forest Park; and,

WHEREAS, the Board was formed on July 30, 2010, to, among other things, (i) facilitate and aid the City with respect to the enhancement and development of the LANC, (ii) raise the necessary funds to develop a comprehensive design of the LANC, (iii) defray costs of the landscaping and other amenities, and (iv) to ensure the quality and consistency of the design and development of the LANC; and,

WHEREAS, the City Council of the City approved and adopted a resolution directing the City Manager to explore a public-private partnership with the Board for the development, management, and operation of the LANC;

NOW, THEREFORE, in order to advance their mutual objectives with respect to the LANC and to commence a collaborative process with each other, the Parties agree as follows:

SECTION 1.
PURPOSE OF AGREEMENT.

The purpose of this Agreement is to lay the foundation for a cooperative working relationship between the Parties, and to establish the role of each Party in that relationship as the Parties continue to work together to further their common goal of preserving, restoring, developing, enhancing, rehabilitating and maintaining the LANC and to lay the foundation for an operation agreement that will ultimately be entered into by and between the City and the Board.

SECTION 2.
THE BOARD

1. Purposes of the Board. The purposes of the Board shall include, without limitation, the following:
 - (a) The Board will raise funds initially and on an ongoing basis to pay for the costs of design and construction, as well as a portion of the costs for maintenance and operation of the LANC.
 - (b) The Board will review, approve, and fund the Design Process for the LANC in accordance with the City's typical standards, working in cooperation with the City in accordance with this MOU.
 - (c) The Board understands that all improvements to the LANC must be designed and constructed according to City standards so that future operations and maintenance are kept at a minimum.
 - (d) The Board will assume responsibility for the development, redevelopment, and ongoing maintenance of the Formal Garden Areas of the LANC.
 - (e) The Board will supplement the City's efforts for public outreach with respect to the LANC.
 - (f) The Board will promote, preserve, and encourage the operation and usage of the LANC.
2. Directors and Officers.
 - (a) The Board will initially include nine (9) members.
 - (b) A representative from the City Manager's office will be a non-voting ex-officio

member of the Board.

(c) The Board officers are Robert Metzler (Chairman), Rachel Snell (Secretary), and Myra Smith (Treasurer).

3. Transparency of Operations.

(a) The Board shall from time to time hold board meetings which shall be open to the public. However, the parties acknowledge that the Board is not a political subdivision of the State of Texas, and nothing in this Agreement is intended to subject the Board to the Texas Open Meetings Act. Accordingly, nothing in this Agreement requires the Board to publish notice of the Board's meetings, post agendas for the Board's meetings, or otherwise notify the public of the Board's meetings.

(b) An annual audit or review of the Board will be conducted on the Board's fiscal year basis by a qualified CPA firm chosen by the Board with costs incurred by the Board.

(c) The Board will comply with applicable state and federal law in providing books, records, and financial information to the public upon request.

(d) The Board will establish a public website with information about the Board, its operations, and the LANC and will maintain the website as long as reasonably manageable.

SECTION 3.
THE CITY

1. It is the City's intent to create a public-private partnership that will result in the City and the Board designing, developing, operating, maintaining and managing the LANC.
2. The City shall maintain ownership of all public property currently owned by the City in the LANC.
3. The City shall have authority to approve the Arboretum Design in accordance with Section 4 below, such authority to be exercised in good faith and in cooperation with the Board.
4. The City will maintain the responsibility of operations and maintenance for the Open Meadows and Trails constructed in accordance with typical City standards.

SECTION 4.
DESIGN

1. Design Process. The Board will review, approve, and fund a design process (the "Design Process") to produce a comprehensive design (the "Arboretum Design") for

the development, renovation and improvement of the LANC. The purpose of the Design Process is to develop a world-class design of the highest standards and aesthetics for the LANC. The Design Process for the LANC shall take into consideration, but shall not be bound by and could materially deviate from, the recommendations articulated in the Lady Bird Johnson Master Plan. The final Arboretum Design is subject to approval by both the City and the Board.

2. The Board will incur all costs of the Design Process.
3. The Parties acknowledge that the Board has entered into a contract (the "Design Contract") with a firm to develop the Arboretum Design. At any time during the period in which this MOU is in effect, the Board shall, upon written request from the City Manager of the City, assign the Design Contract to the City. Unless the Parties agree otherwise in any such assignment, the Board shall continue to be responsible for the costs of design and shall reimburse the City for any such costs incurred by the City subsequent to the assignment of the Design Contract to the City.
4. The City will provide design standards for various site amenities and components such as trails, bridges, construction materials standards, utility design standards, and other applicable standards.

SECTION
5.
IMPLEMENTATION OF PLAN

1. Upon conclusion of the Design Process and approval of the Arboretum Design by the City Manager and the Board, the Parties shall begin implementation of the Arboretum Design.
2. The estimated cost of each improvement set forth in the Arboretum Design and the probable schedule for construction of each improvement will be set forth in writing and attached to this MOU as Attachment A. Said Attachment A will become a part of this MOU. Actual costs may be more or less than estimated and any decision to alter the Arboretum Design must be approved by both the Board and the City.
3. The Board shall comply with the City's review and approval process for park projects, improvements, and initiatives. Further, any work performed in the LANC shall comply with all applicable laws and ordinances.
4. Once the Board has presented evidence sufficient to the City that the Board has \$1,100,000 ready to fund improvements for the LANC, the City will proceed with advertising and bidding the project.
5. The City agrees not to initiate any substantial changes, additions, and alterations to the approved Arboretum Design, unless the Board has granted approval in writing.
6. The City will

- (a) manage, own, and hold title to public land and improvements;
 - (b) execute contracts among the City and the Board and with various third-party entities for the development, redevelopment, construction, maintenance, and operation of the improvements contemplated in this MOU;
 - (c) administer funds contributed by the Parties with respect to LANC activities; and
 - (d) handle other matters as may be agreed to by the City and the Board.
7. The City shall have the right to select contractors for and oversee all work performed in the LANC, including, but not limited to, projects, construction of capital improvements, landscaping, and other initiatives for the purpose of ensuring that such work is performed in accordance with the Arboretum Design.
8. Except as expressly provided otherwise in this MOU, the Board shall reimburse the City for all costs associated with constructing each improvement set forth in the Arboretum Design. The Board shall pay each such cost within 30 days after the City presents to the Board evidence that the cost has been incurred. For purposes of this MOU, the costs of constructing each improvement set forth in the Arboretum Design include the costs of engineering design, construction, mobilization, and contingency and the costs of mitigation and remediation of any environmental problems necessitated by or necessary for the construction of said improvements. The costs of said improvements also include the costs associated with the relocation, encasement, lowering, or other modification of existing third-party pipelines when such relocation, encasement, lowering, or other modification is associated with the construction of said improvements. Nothing in this MOU obligates the Board to pay any cost for which the City has received a grant from the State of Texas or from any political subdivision of the State of Texas.
9. Upon conclusion of the construction, the Parties shall negotiate in good faith in order to agree upon and enter into an agreement (“Operating Agreement”) governing the respective rights and responsibilities with respect to the LANC. Upon execution of the Operating Agreement by the City and the Board, this MOU shall terminate. If the Parties are unable to agree upon and enter into an Operating Agreement by October 1, 2017, this MOU shall terminate and operation of the LANC shall be the responsibility of the City.
10. The Operating Agreement will address the following (which list shall not be deemed to be an exhaustive list):
- (a) The precise scope of land, facilities, and improvements to be included in the LANC, for which the Board will assume obligations.
 - (b) The development of policies and procedures for use of LANC.

- (c) Integration and coordination of consultants and contractors to both the City and the Board.
- (d) Short- and long-term funding obligations of the Parties with respect to LANC assets.
- (e) The allocation of responsibilities between the City and the Board with respect to design, construction, operation, and maintenance of LANC assets. Maintenance shall be the responsibility of all Parties. Routine and minor maintenance and inspections shall be the responsibility of the City.
- (f) City shall be responsible for maintenance and in accordance with its standard for maintenance of similar improvements within the park system as funds are available. Should the improvements become damaged beyond repair due to vandalism or demolished due to a natural event such as lightning, hail, tornado, or any other act of nature, the City reserves the right to remove such improvements.
- (g) Distribution of revenues accruing to the Board and the City from events in the LANC, including concessions, user fees, events fees, and other revenue sources.
- (h) The provision and coordination of public services by the City, including heat, air conditioning, electricity, water, sewer, waste removal, and other services.
- (i) Indemnification obligations of the City and the Board.
- (j) Insurance and bonding requirements for work to be performed by the Parties and their third-party consultants, contractors, and agents.

SECTION 6.
GENERAL PROVISIONS

1. The Parties agree to work together at all times in good faith, meet regularly, and keep each other informed as to activities of the other, and maintain at all times a formal representative who shall serve as a point of contact for communications.
2. Each Party shall be responsible for all costs and expenses incurred by that Party in the preparation and adoption of this MOU, the preparation and adoption of an Operating Agreement, and future actions related to such preparation and adoption.
3. This MOU may be executed in multiple counterparts which, taken together, shall collectively constitute a single agreement, but in making proof of such agreement, it shall not be necessary to account for more than one such counterpart.

4. Changes in the terms and conditions of this MOU can be made only by written amendment executed by the Parties hereto prior to the changes being made.
5. Without regard to any rules on conflicts of law, this MOU shall be subject to and interpreted in conformance with the laws of the State of Texas and the ordinances of the City of Longview, Texas, unless expressly provided otherwise by federal law or regulations. Venue for any action arising hereunder shall lie exclusively in Gregg County, Texas, for actions in state court and in the Eastern District of Texas, Tyler Division, for actions in federal court.
6. Neither Party may assign this MOU without the written consent of the other Party.
7. Nothing in this MOU shall be construed to give any rights or benefits in this MOU to anyone other than the City and the Board and all duties and responsibilities undertaken pursuant to this MOU will be for the sole and exclusive benefit of the City and the Board and not for the benefit of any other entity.
8. The Parties agree that this MOU shall not be construed in favor of or against either Party on the basis that the Party did or did not author this MOU. Either Party may terminate this MOU at any time, with or without cause, by giving written notice to the other Party at least thirty (30) days in advance of the effective date of termination.
9. The Board shall procure and maintain, at no expense to the City, general liability insurance coverage with liability limits not less than Two Hundred Fifty Thousand Dollars (\$250,000) for injury or death of one person and in an amount not less than Five Hundred Thousand Dollars (\$500,000) in any one occurrence; and property damage limits of not less than One Hundred Thousand Dollars (\$100,000) in any one occurrence. All general liability insurance shall include the City, the City's agents and employees as additional named insured and be with a company or companies satisfactory to the City. The Board shall submit written evidence to the City that the Board has obtained the minimum insurance required by this MOU.
10. The City shall not be in default by reason of any failure in performance of this MOU in accordance with its terms (including, without limitation, any failure by the City to progress in the construction of the improvements contemplated in this MOU) if such failure arises out of causes beyond the control and without default or negligence of the City. Such causes may include but are not limited to acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.
11. This MOU and Attachment A referenced herein constitute the entire agreement between the City and the Board regarding the subject matter hereof and supersede all prior or oral understandings.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

City:
City of Longview, Texas

Board:
Longview Arboretum and Nature Center

By: _____

By: _____

David Willard
City Manager

Printed
Name: _____
Title: _____

ATTEST:

Shelly Ballenger
City Secretary

ATTEST:

Printed
Name: _____
Title: _____

SYSKO INDUSTRIAL DISTRICT AGREEMENT

DESCRIPTION: The proposed ordinance would renew the existence of the industrial district in which Sysco Food Services of East Texas, LLC, ("Sysco") is located. The proposed resolution immediately following that ordinance would allow the City Manager to enter into an industrial district agreement with Sysco.

The City originally entered into an industrial district agreement with Sysco in August 2006. This agreement expired on December 31, 2016. The original agreement required Sysco to construct a 300,000 square foot distribution center resulting in a capital investment of not less than \$25,000,000. The original agreement also required Sysco to employ at least 300 full-time employees. In the original agreement the City agreed not to annex the industrial district occupied by Sysco.

In the proposed agreement, the City would again agree not to annex Sysco. In return, Sysco would agree to make annual payments beginning October 15, 2017, to the City in the following amounts:

October 2017 - \$200,000
October 2018 - \$200,000
October 2019 - \$206,000
October 2020 - \$206,000
October 2021 - \$206,000
October 2022 - \$212,180
October 2023 - \$212,180
October 2024 - \$212,180
October 2025 - \$218,545.40
October 2026 - \$218,545.40

RECOMMENDED ACTION: Passage of the ordinance and the resolution

SOURCE OF FUNDS: N/A

STAFF CONTACT: Keith Bonds, P.E., Assistant City Manager
903-237-1051
kbonds@LongviewTexas.gov

COUNCIL DATE: January 26, 2017

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS, DESIGNATING AND ESTABLISHING A PORTION OF THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF LONGVIEW, TEXAS, AS AN INDUSTRIAL DISTRICT UNDER SECTION 42.044 OF THE TEXAS LOCAL GOVERNMENT CODE, TO BE KNOWN AS “LONGVIEW ECONOMIC DEVELOPMENT CORPORATION (LEDKO) INDUSTRIAL DISTRICT NO. 2”; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE WAS APPROVED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, it is the established policy of the City Council of the City of Longview, Texas, (the “City Council”) to adopt such reasonable measures, from time to time, as are permitted by law and which will tend to enhance the economic stability and growth of the City of Longview (the “City”) and the City’s environs by attracting the location of new industries and the retention or expansion of the existing industries therein; and,

WHEREAS, Chapter 42, Section 42.044 of the Texas Local Government Code authorizes the City Council to designate any part of the area located within the City’s extraterritorial jurisdiction as an industrial district, and to treat such area in such a manner as may be deemed to be in the best interest of the City; and,

WHEREAS, in Ordinance No. 3468 the City Council designated a portion of the City’s extraterritorial jurisdiction as an industrial district at the request of the Longview Economic Development Corporation (“LEDKO”); and,

WHEREAS, the purpose of the aforesaid designation was to support the

efforts of LEDCO to attract a new regional distribution operation and facility to locate in the area designated as an industrial district; and,

WHEREAS, said industrial district was formally designated as the "Longview Economic Development Corporation (LEDCO) Industrial District No. 2"; and,

WHEREAS, as a result of the foregoing, LEDCO entered into an industrial district agreement (the "Original Agreement") with the City for the location of a regional distribution operation and the construction of the necessary facilities for same in the aforesaid Longview Economic Development Corporation (LEDCO) Industrial District No. 2; and,

WHEREAS, LEDCO assigned the Original Agreement to Sysco Food Services of East Texas, L.L.C., a Delaware limited liability company, ("Sysco"); and,

WHEREAS, Sysco subsequently fulfilled the requirements of the Original Agreement, as amended, by locating Sysco's regional distribution operation within the aforesaid Longview Economic Development Corporation (LEDCO) Industrial District No. 2 and constructing the necessary facilities for same within said industrial district; and,

WHEREAS, the Original Agreement has expired pursuant to its own terms; and,

WHEREAS, the City and Sysco desire to enter into another industrial district agreement applicable to Sysco's operations and facilities within the aforesaid Longview Economic Development Corporation (LEDCO) Industrial District No. 2; and,

WHEREAS, as a result of the foregoing, the City and Sysco wish to continue the existence of Longview Economic Development Corporation (LEDCO) Industrial District No. 2; and,

WHEREAS, the City Council, after due and careful consideration, has determined that it is in the public interest to now officially adopt this ordinance pursuant to Section 42.044 of the Texas Local Government Code to designate the area described herein as an industrial district, to be treated from time to time as the City Council may deem in the best interest of said City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS:

Section 1. That the findings set out in the preamble to this ordinance are hereby in all things approved and adopted.

Section 2. That the areas and territories described by metes and bounds as set out in Exhibit "A", Exhibit "B", and Exhibit "C", all of said exhibits being attached hereto and made a part hereof for all purposes, are hereby designated and established as a single industrial district of the City of Longview, Texas, pursuant to Section 42.044 of the Texas Local Government Code.

Section 3. That the industrial district hereby designated and established shall be known as the "Longview Economic Development Corporation (LEDSCO) Industrial District No. 2."

Section 4. That it is hereby declared to be the purpose of the City Council of the City of Longview, Texas, to treat the Longview Economic Development Corporation (LEDSCO) Industrial District No. 2 from time to time as may be in the best interest of the said City, as authorized by Section 42.044 of the Texas Local Government Code, including without limitation by taking such actions as may be desirable to foster the attraction, maintenance, retention, and expansion of industry therein.

Section 5. That all ordinances and parts of ordinances in conflict herewith shall be amended to the extent of such conflict only.

Section 6. That, should any provision of this ordinance be declared invalid by final judgment of a competent court of law, then such invalid provision shall be severed from the remaining provisions of this ordinance and such remaining provisions shall be saved from such invalidity and should this ordinance for any reason be ineffective as to any part of the area hereby designated and established as an industrial district, such ineffectiveness of this ordinance as to any such part or parts of any such area shall not affect the effectiveness of this ordinance as to all of the remainder of such area; and the City Council hereby declares it to be the City Council's purpose to designate and establish every part of the area described in Exhibit "A", Exhibit "B" and Exhibit "C" of this ordinance as an industrial district pursuant to Texas Local Government Code Section 42.044, regardless of whether any other part of such described area is hereby effectively designated and established as such an industrial district.

Section 7. That the meeting at which this ordinance was approved was conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

Section 8. That this ordinance shall be effective immediately from and after its passage.

PASSED AND APPROVED this 26th day of January, 2017.

Dr. Andy Mack
Mayor

ATTEST:

Shelly Ballenger
City Secretary

APPROVED AS TO FORM:

Jim Finley
City Attorney

O CM SYSCO (LEDCO #2) INDUSTRIAL DIST EXTENSION 1-26-17

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS, AUTHORIZING THE EXECUTION OF AN INDUSTRIAL DISTRICT AGREEMENT BETWEEN THE CITY OF LONGVIEW AND SYSCO FOOD SERVICES OF EAST TEXAS, L.L.C.; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION WAS APPROVED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Longview, Texas, recognizes and acknowledges the long-term contribution to the economy and the community by Sysco Food Services of East Texas, L.L.C.; and,

WHEREAS, the City and Sysco Food Services of East Texas, L.L.C., have both prospered because of the synergistic relationship between the two; and,

WHEREAS, by Ordinance No. _____, the City has extended and renewed the creation of Longview Economic Development Corporation (LEDCO) Industrial District No. 2; and,

WHEREAS, the City of Longview and Sysco Food Services of East Texas, L.L.C., desire to enter into an industrial district agreement as authorized by Section 42.044 of the Texas Local Government Code; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS:

Section 1. That the findings set out in the preamble to this resolution are hereby in all things approved and adopted.

Section 2. That the City Manager is hereby authorized to execute on behalf of the City of Longview, Texas, an industrial district agreement with Sysco Food

Services of East Texas, L.L.C., substantially in the form of the attached Exhibit "A," which exhibit is for all purposes made a part of this resolution, and that the City Secretary is hereby authorized to attest to said industrial district agreement and to affix the seal of the City thereto.

Section 3. That the City Manager is further hereby authorized to execute such other instruments and take such other action as shall be necessary to carry out the intention of this resolution.

Section 4. That the meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

Section 5. That this resolution shall become effective immediately from and after its passage.

PASSED AND APPROVED this 26th day of January, 2017.

Dr. Andy Mack
Mayor

ATTEST:

Shelly Ballenger
City Secretary

APPROVED AS TO FORM:

Jim Finley
City Attorney

Exhibit A

STATE OF TEXAS § KNOW ALL MEN BY THESE PRESENTS:
 §
COUNTY OF GREGG §

INDUSTRIAL DISTRICT AGREEMENT

This Agreement, entered into by and between the City of Longview, Texas, a home rule municipal corporation, (hereinafter called "City"), and Sysco Food Services of East Texas, L.L.C., a Delaware limited liability company (hereinafter called "Landowner").

WITNESSETH

WHEREAS, City has a long-established policy of endeavoring to attract and retain industry and encourage its growth, thereby enhancing the economic stability and growth of the City and its environs; and,

WHEREAS, pursuant to said policy, City has enacted Ordinance No. [insert number of ordinance creating industrial district], effective the ____ day of _____, 20____, designating a portion of the City's extraterritorial jurisdiction located in Gregg County, Texas, as an industrial district pursuant to §42.044 of the Texas Local Government Code, with such district being known as the "Longview Economic Development Corporation (LEDCO) Industrial District No. 2" (hereinafter called the "Industrial District"); and,

WHEREAS, the aforesaid Ordinance No. [insert number of ordinance creating industrial district] is attached to and made a part of this Agreement as Exhibit "A" hereto; and,

WHEREAS, the Landowner is the owner of that certain tract or parcel of land described as comprising the Industrial District as set forth in said ordinance, and Landowner has requested that all of said land be included in the Industrial District; and,

WHEREAS, City desires to encourage retention, expansion and growth of business and industry within the Industrial District, and for such purposes desires to enter into this Agreement with Landowner pursuant to an ordinance adopted by the City Council of said City, which is recorded in the official minutes of said City;

NOW, THEREFORE, in consideration of the premises and the mutual agreements of the parties herein contained, and pursuant to the authority granted under the provisions of the Texas Local Government Code referenced above, the parties to this Agreement hereby agree as follows:

Article I. Landowner's Obligations

It is understood and agreed by Landowner and City that Landowner will undertake all of the following:

- A. Landowner shall make annual payments to City as set forth in Exhibit "B," which exhibit is attached to this Agreement and for all purposes made a part hereof. Each such installment shall be due and payable on or before the 15th day of October of each year beginning October 15, 2017, and extending through and including October 15, 2026.
- B. Landowner shall comply with all applicable local, state and federal laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement or Landowner's activities or improvements within the Industrial District, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations, occupational safety regulations, and regulations related to the containment and discharge of waste and/or of any hazardous material and the prevention of environmental contamination. Additionally, by entering this Agreement, Landowner agrees to comply with City's construction codes, including the 2012 International Building Code, the 2012 International Mechanical Code, the 2012 International Fuel Gas Code, the 2012 International Plumbing Code, the 2012 International Residential Code, the 2012 International Energy Conservation Code, the 2012 International Existing Building Code, the 2012 International Property Maintenance Code, and the 2012 International Fire Code, all as amended by the City. Landowner further agrees to comply with any amendments, updates and/or successors to said codes that may be adopted by the City during the term of this Agreement and with any codes or ordinances governing the same subject matter that may be adopted by the City during the term of this Agreement. Landowner shall apply for and obtain any and all permits or other authorizations that are required of Landowner under said codes in accordance with all relevant procedures and provisions of said codes and of City ordinances. Landowner shall submit to all inspections related to or required by said codes, permits and authorizations, and Landowner shall pay all fees associated with said codes, permits, authorizations, and inspections as said fees may from time to time be established by the City.
- C. Landowner shall provide access to and authorize inspection of all property located in the Industrial District by agents or representatives of the City to ensure that any improvements are made according to the terms, conditions, and specifications of this Agreement and/or that the Landowner is otherwise in compliance with this Agreement.

THE PERFORMANCE OF EACH AND EVERY ONE OF THE CONDITIONS AND OBLIGATIONS SET FORTH IN THIS ARTICLE I IS ESSENTIAL TO THE CONTINUATION OF THE EXISTENCE OF THE INDUSTRIAL DISTRICT AND THIS AGREEMENT.

Article II. City's Obligations

The City agrees as follows:

- A. City covenants, agrees and guarantees that the Industrial District shall continue and retain its extraterritorial jurisdiction as an industrial district pursuant to §42.044 of the Texas Local Government Code, and City does further covenant, agree and guarantee that the Industrial District shall not be annexed by the City during the term of this Agreement as said term is set forth in Article III hereof.
- B. When inspecting any portion of the Industrial District in order to determine compliance with this Agreement, City and City's representatives shall comply with and observe all applicable safety procedures that Landowner may reasonably require.
- C. City shall enforce the City's construction codes within the Industrial District, including the 2012 International Building Code, the 2012 International Mechanical Code, the 2012 International Fuel Gas Code, the 2012 International Plumbing Code, the 2012 International Residential Code, the 2012 International Energy Conservation Code, the 2012 International Existing Building Code, the 2012 International Property Maintenance Code, and the 2012 International Fire Code, all as amended by the City. Within the Industrial District, the City shall enforce any amendments, updates and/or successors to said codes that may be adopted by the City during the term of this Agreement and any codes or ordinances governing the same subject matter that may be adopted by the City during the term of this Agreement. The enforcement required of the City under this paragraph shall, at a minimum, include the issuance, denial and/or revocation of permits in accordance with the procedures, provisions and requirements of the aforesaid codes, amendments, updates and/or successors to same; the performance of all inspections that the City is required by same to perform; and the collection from Landowner of all fees associated with the activities described in this paragraph.
- D. City shall provide municipal fire protection services and, to the extent permitted by law, municipal police protection services to the Industrial District during the term of this Agreement.
- E. During the term of this Agreement, City shall provide normal utility services in the form of water and sanitary sewer to the property located

within the Industrial District, charging such applicable rates as are duly established and adopted by the City for customers located inside the corporate limits of the City.

Article III. Term

This Agreement shall be effective beginning on the last date on which this Agreement is executed by one of the parties hereto as said date is written below the signature line provided herein for each party. This Agreement shall terminate at the end of the day on December 31, 2026, unless it is sooner terminated under the other provisions hereof.

Article IV. City's Remedies

In the event of default by Landowner in the performance of any of the terms of this Agreement, the City shall have the option to declare this Agreement terminated if such default is not fully corrected within thirty (30) days from the giving of written notice of such default to Landowner. Upon such termination, the City and Landowner shall be relieved of all further obligations hereunder, but Landowner, or any assignee of Landowner, shall not be relieved of any obligation that accrued hereunder prior to such termination.

In the event of termination of this Agreement for any reason, the City shall be free, in its sole discretion, to repeal the ordinance designating and affecting the area of the Industrial District and to annex all or any portion of said area.

Except as its remedies are expressly limited by this Agreement, the City reserves any and all remedies available at law or in equity for the default of the Landowner hereunder.

In the event the City elects to terminate this Agreement, the City will not pursue any refund of value of benefits received under this Agreement.

Article V. Landowner's Remedies

In the event the City breaches this Agreement by annexing or attempting to pass an ordinance annexing any part of the Industrial District, Landowner shall be entitled to enjoin the City from the date of its breach for the balance of the term of this Agreement, from enforcing any annexation ordinance adopted in violation of this Agreement and from taking any further action in violation of this Agreement. If Landowner elects to take this remedy, then so long as the City specifically performs its contractual obligations hereunder, under injunctive order or otherwise, Landowner shall continue to perform its obligations as required by this Agreement, including without limitation any obligation to make payments to the City.

Except as its remedies are expressly limited by this Agreement, the Landowner reserves any and all remedies available at law or in equity for the default of the City hereunder.

Article VI. Assignment

Landowner may, as Landowner deems necessary, assign this Agreement and transfer title to the land in the Industrial District and/or to improvements located in the Industrial District or any portion of either to a third party as part of a financing transaction only, such as, but not limited to, a mortgage or sale-leaseback arrangement. Landowner may transfer the operation of any improvement or activity located in the Industrial District to a third party who operates it on behalf of the Landowner. Furthermore, this provision shall not prohibit the assignment of this Agreement to a parent, subsidiary, or affiliate of the Landowner. A qualifying parent, subsidiary or affiliate shall be an entity owning fifty percent (50%) or more of the Landowner or an entity that is owned fifty percent (50%) or more by the Landowner. Any financing transaction, use of operators, or corporate assignment as described herein shall be subject to and consistent with the provisions of this Agreement. Any sale of an interest in the land lying within the Industrial District or of an interest in any improvement or activity located in the Industrial District that does not comply with this Article VI shall be considered a default of Landowner under this Agreement unless said sale is approved in writing by the City. Except as provided herein, no assignment of this Agreement or any portion hereof may be made without written approval of the City. Thereafter, this Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns.

Article VII. Agreement Shall Comply with State Law

The Landowner and the City additionally agree that this Agreement shall at all times comply with the requirements of Texas law as set forth in Sections 42.044 and 42.045 of the Texas Local Government Code and in any other applicable law. The parties at all times agree to cooperate with each other assuring compliance with such laws. The City hereby represents to the Landowner that the City has all necessary authority and that the City has complied in all respects with all requirements of Texas law necessary to enter into this Agreement. In the event that for any reason this Agreement, or any part thereof, is determined to be invalid or otherwise ineffective, the parties agree to take such curative action as may be necessary to bring the Agreement into compliance with the applicable provisions of state law to the extent possible, and to achieve the intended purposes and goals of this Agreement.

Article VIII. Status of Parties as Independent Contractors

Nothing herein shall be construed as creating a partnership or joint enterprise between the City and the Landowner. It is expressly agreed that no officer, director, member, agent, employee, contractor, subcontractor, program participant, licensee or invitee of one party to this Agreement is in the paid service of the other party to this

Agreement. Each party to this Agreement shall have exclusive control of, and the exclusive right to control, the details of the tasks performed pursuant to this Agreement by said party, its officers, directors, members, agents, employees, contractors, subcontractors, program participants, licensees or invitees. Accordingly, the parties hereto acknowledge and agree as follows:

- A. **THE CITY SHALL BE NEITHER RESPONSIBLE NOR LIABLE FOR THE ACTS OR OMISSIONS OF THE LANDOWNER, AND THE CITY SHALL BE NEITHER RESPONSIBLE NOR LIABLE FOR THE ACTS OR OMISSIONS OF THE LANDOWNER'S OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES.**
- B. **THE LANDOWNER SHALL BE NEITHER RESPONSIBLE NOR LIABLE FOR THE ACTS OR OMISSIONS OF THE CITY, AND THE LANDOWNER SHALL BE NEITHER RESPONSIBLE NOR LIABLE FOR THE ACTS OR OMISSIONS OF THE CITY'S OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES.**
- C. The doctrine of respondeat superior shall not apply between the City and the Landowner, nor between the City and any officer, director, member, agent, employee, contractor, subcontractor, program participants, licensees or invitees of the Landowner.
- D. The doctrine of respondeat superior shall not apply between the Landowner and the City nor between the Landowner and any officer, director, member, agent, employee, contractor, subcontractor, program participants, licensees or invitees of the City.

Article IX. Force Majeure

Neither party to this Agreement will be liable for delays in the performance of this Agreement arising out of causes that are beyond the control and without the negligence of the delaying party and that directly impact said party's ability to perform hereunder ("force majeure"). Such causes may include, but are not limited to, Acts of God, acts of war, civil unrest, strikes, fires, floods, epidemics, quarantine restrictions, and unusually severe weather. The delaying party shall notify the other party hereto in writing of the beginning of an event of force majeure as soon as reasonably practicable after the delaying party becomes aware of said event. The delaying party shall notify the other party hereto in writing of the end of an event of force majeure as soon as reasonably practicable after the end of such an event. The other party hereto may require the delaying party to provide the other party with any and all documents and other evidence reasonably necessary for the other party to verify the duration of the event of force majeure and determine the extent to which said event warrants any delay or suspension of the provisions of this Agreement. In an event of force majeure, the delaying party shall be granted an extension of time within which to perform its obligations hereunder provided that it seeks to remove that inability to perform with all reasonable diligence.

Any deadlines imposed hereunder will be extended by one day for each day that the delaying party's performance is delayed by an event of force majeure.

Article X. Notices

Unless expressly stated otherwise in this Agreement, all notice required in this Agreement shall be in writing and shall be delivered to the other party hereto at the address specified in this Article X. Either party hereto may specify a different address for receiving notice by providing written notice to the other party at the address specified for said other party in accordance with this Agreement. Unless expressly stated otherwise in this Agreement, all notice shall be deemed received either a) immediately upon personal delivery to the receiving party or b) one day after said notice is placed in the United States Mail with correct postage. All notices required or contemplated by this Agreement shall be addressed as follows:

To City

City of Longview
Attention: City Manager
P.O. Box 1952
Longview, Texas 75606

To Landowner

[Insert contact information for receipt of formal notice under this Agreement]

Article XI. Miscellaneous

The following provisions shall apply to this Agreement:

- A. This Agreement sets forth the entire understanding between the parties with regard to the subject matter hereof, and may not be modified except by a written document that refers to this Agreement and that is signed by all parties hereto.
- B. Without regard to any rules on conflicts of law, the laws of the State of Texas shall govern the interpretation of this Agreement, and Gregg County shall be the venue for the resolution of all matters of fact and law.
- C. This Agreement shall not be subject to binding arbitration.
- D. Any term or condition of this Agreement or the breach of any such term or condition may be waived only by the express, written consent of all parties hereto. Unless specified otherwise in writing, the waiver of any breach of a term or condition of this Agreement does not waive any other breach of that term or condition or any breach of any other term or condition of this Agreement.

- E. The parties agree that this Agreement shall not be construed in favor of or against any party on the basis that the party did or did not author this Agreement.
- F. This Agreement and any related documents and any amendments hereto or thereto may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
- G. Upon the expiration or termination of this Agreement for any reason, the obligations of the parties hereunder shall thereupon cease, but the provisions of this Agreement which confer rights upon any party hereto and which limit or delineate the responsibility of any party hereto shall remain in effect as to the parties' conduct prior to expiration of this Agreement.
- H. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context requires otherwise.
- I. By signing this Agreement, each person executing this Agreement on behalf of a party hereto personally warrants and represents that (i) he or she has full authority to execute this Agreement on behalf of the party that he or she represents and bind said party in accordance with the terms and provisions hereof and (ii) said party has taken all necessary action to enter into and make the agreements set forth herein.
- J. The parties agree that the titles of the articles of this Agreement are for the convenience of the parties only and shall have no effect on the interpretation of this Agreement.
- K. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the parties hereto, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of each of the parties hereto and not for the benefit of any other party.
- L. Misspelling of one or more words in this Agreement shall not void this Agreement. Such misspelled words shall be read so as to have the meaning apparently intended by the parties.
- M. **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT.**

Article XII.

As required by Chapter 2264 of the Texas Government Code, Landowner certifies that Landowner or a branch, division, or department of Landowner, does not and will not knowingly employ an undocumented worker, as the term "undocumented worker" is defined in Chapter 2264 of the Texas Government Code. If Landowner is convicted of a violation under 8 U.S.C. Section 1324a(f), Landowner will be in substantial violation of this Agreement, entitling City to any and all remedies available at law, in equity or under this Agreement. Landowner is not liable for a violation of this Article XII by a subsidiary, affiliate, or franchisee of Landowner, or by a person with whom Landowner contracts. If, after receiving a public subsidy, Landowner, or a branch, division, or department of Landowner, is convicted of a violation under 8 U.S.C. Section 1324a(f), Landowner shall repay to City an amount equal to the total amount of property tax that Landowner would have paid to City from the effective date hereof to the date of such conviction had Landowner been annexed on the effective date of this Agreement minus any amounts already paid by Landowner to City under this Agreement, plus interest at the rate provided for delinquent taxes in accordance with Section 33.01 of the Texas Tax Code. Landowner shall pay such amounts to City not later than the 120th day after the date the City notifies Landowner of a violation under this paragraph.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year last below written.

City:
City of Longview, Texas

Landowner:
Sysco Food Services of East Texas, L.L.C.

By: _____
David Willard
City Manager
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

ATTEST:

ATTEST:

Shelly Ballenger
City Secretary

Printed Name: _____
Title: _____

APPROVED AS TO FORM:

Jim Finley
City Attorney

Exhibit "A"

[Insert copy of ordinance declaring industrial district. Be sure ordinance includes an attachment/exhibit that provides a legal description of land in the district.]

Exhibit "B"
Annual Payments

Payment Amount	Due Date
\$200,000	October 15, 2017
\$200,000	October 15, 2018
\$206,000	October 15, 2019
\$206,000	October 15, 2020
\$206,000	October 15, 2021
\$212,180	October 15, 2022
\$212,180	October 15, 2023
\$212,180	October 15, 2024
\$218,545.40	October 15, 2025
\$218,545.40	October 15, 2026

EVEREST REHABILITATION HOSPITAL ECONOMIC DEVELOPMENT AGREEMENT

DESCRIPTION:	This resolution would allow the City Manager to enter into an economic development agreement with Everest Rehabilitation Hospitals, LLC to encourage the construction of a new physical rehabilitation hospital. The agreement requires the hospital to be constructed on the north side of Loop 281 and east of Tryon Road. The tract of land where the hospital will be constructed is currently not entirely in the city limits. Everest Rehabilitation Hospital and the surrounding 40+ acres of land will be annexed. The hospital will be at least 30,000 square feet and will have at least 30 patient beds. The City will extend sanitary sewer to the hospital and surrounding properties. The cost estimate to extend sanitary sewer to the hospital and surrounding properties is between \$325,000 and \$380,000.
RECOMMENDED ACTION:	Passage of the resolution
SOURCE OF FUNDS:	Utility Fund
STAFF CONTACT:	Keith Bonds, P.E., Assistant City Manager 903-237-1051 kbonds@longviewtexas.gov
COUNCIL DATE:	January 26, 2017

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS, AUTHORIZING THE EXECUTION OF AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LONGVIEW AND EVEREST REHABILITATION HOSPITALS, LLC, TO ENCOURAGE THE CONSTRUCTION OF A NEW PHYSICAL REHABILITATION HOSPITAL IN THE CITY OF LONGVIEW; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION WAS APPROVED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council has previously enacted Article I to Chapter 33 of the Longview City Code establishing a program pursuant to Chapter 380 of the Texas Local Government Code to promote local economic development and to stimulate business and commercial activity in the City of Longview, Texas, (hereinafter called the "City") by making loans and grants of public money and providing personnel and services of the City; and,

WHEREAS, Everest Rehabilitation Hospitals, LLC, a Texas corporation (hereinafter called the "Company") intends to construct a new physical rehabilitation hospital (hereinafter called the "Project") on property lying within or immediately adjacent to the corporate limits of the City; and,

WHEREAS, the Company has requested that the City construct the publicly owned infrastructure required to provide municipal water and sewer utility service to the property on which the Project will be located and that the City annex any portion of said property lying outside the corporate limits of the City; and,

WHEREAS, the City Council specifically determines that the Project will

bring benefit to the City consistent with Section 33-8 of the Longview City Code and that the Company and the Project otherwise comply with the applicable requirements of Section 33-7 of the Longview City Code; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LONGVIEW, TEXAS:

Section 1. That the findings set out in the preamble to this resolution are hereby in all things approved and adopted.

Section 2. That the City Manager is hereby authorized and directed to execute an agreement by and between the City and the Company substantially in the form of Exhibit A attached hereto, which exhibit is made a part of this resolution for all purposes.

Section 3. That the meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

Section 4. That this resolution shall become effective immediately from and after its passage.

PASSED AND APPROVED this 26th day of January, 2017.

Dr. Andy Mack
Mayor

ATTEST:

Shelly Ballenger
City Secretary

APPROVED AS TO FORM:

Jim Finley
City Attorney

R CM ECON DEV CH 380 PRGRM EVEREST REHAB HOSPITAL 1-26-17

Exhibit A

CHAPTER 380 AGREEMENT

This Agreement by and between Everest Rehabilitation Hospitals, LLC, a Texas corporation (hereinafter called the “Company”), and the City of Longview, Texas (hereinafter called the “City”).

WITNESSETH:

WHEREAS, the Company does not currently own or operate any facilities in the City or its surrounding area; and,

WHEREAS, the Company currently has a contractual right to purchase a vacant tract of land located 750 feet east of the intersection of Loop 281 and Tryon Road on the north side of Loop 281, as said tract is further described in Exhibit “A” attached hereto and incorporated herein by reference (hereinafter called the “Property”); and,

WHEREAS, the Company intends to construct on the Property a new physical rehabilitation hospital (hereinafter called the “Project”) which is expected to contain 35,380 square feet and 36 beds; and,

WHEREAS, in order to encourage the Company to carry out the Project, the City is willing to enter into a Chapter 380 agreement upon the terms and conditions hereinafter provided; and,

WHEREAS, a portion of the Property currently lies outside the corporate limits of the City; and,

WHEREAS, both the Company and the City desire that the entire Property be included within the corporate limits of the City;

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the Company and the City agree as follows:

Article I. Company's Obligations

The Company covenants and agrees that it shall undertake and complete the Project. In connection with the construction of the Project, the Company agrees as follows:

- A. To construct on the Property a rehabilitation hospital containing a minimum of 30,000 square feet and at least 30 patient beds. The Company shall commence said construction on or before May 12, 2017, and complete said construction on or before December 15, 2017. The Company shall commence use of the Project as a rehabilitation hospital on or before March 1, 2018.
- B. To petition the City for annexation of all portions of the Property not currently lying within the corporate limits of the City using such forms as the City may reasonably require and to cooperate with City to complete said annexation. The Company shall submit said petition requesting annexation within sixty (60) days of the later to occur of the following: (i) the closing of the Company's purchase of the Property or (ii) the execution of this Agreement by both the City and the Company. The Company shall cooperate with the City in good faith to complete the timely and fully valid annexation of the Property by the City.
- C. To comply with all relevant local, state and federal laws and regulations including but not limited to, all of the codes of the City, such as the Zoning Ordinance, Building Code, Plumbing Code, Electrical Code, Mechanical Code, and Fire Code.
- D. To provide access to and authorize inspection of the Project, the Property, and records pertinent to the construction of the Project by agents or representatives of the City to ensure that the improvements are made according to the terms, conditions, and specifications of this Agreement and/or that the Company is otherwise in compliance with this Agreement.

Article II. City's Obligations

The City agrees to construct the publicly owned infrastructure required to provide municipal water and sewer utility service to the Property. The City shall complete said construction on or before the date on which the Company commences use of the Project as a rehabilitation hospital, provided, however, that nothing in this Agreement requires the City to complete said construction before October 31, 2017.

Article III. Termination

This Agreement may be terminated by the City, in whole, or from time to time, in part, upon determination by the City that the Company has failed to timely complete construction of the Project, refused to comply with any relevant local, state or federal laws and regulations including, but not limited to, all of the City's codes such as the Zoning Ordinance, Building Code, Electrical Code, Mechanical Code, Plumbing Code, and Fire Code, or has otherwise failed to comply with this Agreement (such failure being hereafter referred to as the "Deficiency"). The City shall give the Company written notice of the Deficiency by delivering to the Company a written Notice of Proposed Termination informing the Company of the Deficiency. Notice of Proposed Termination shall be considered given when placed in the United States mail either by registered or certified mail, postage prepaid, and addressed to the Company at its address shown herein. The Company shall have sixty (60) days from the date on which said notice is given in which to cure the Deficiency. In the event the Company fails to cure the Deficiency within the sixty-day period, this Agreement may be terminated, in whole or in part, by the City without further notice to the Company. In the event that this Agreement is terminated by the City for the Company's failure to cure a Deficiency, the Company shall, within sixty (60) days of termination of this Agreement, pay to the City all costs incurred by the City to design and construct the infrastructure necessary to provide water and sewer utility service to the Property. For purposes of this Agreement, the costs incurred by the City to design and construct the infrastructure required by this Agreement include, without limitation, the costs of engineering design, construction, mobilization, and contingency and the costs of mitigation and remediation of any

environmental problems necessitated by or necessary for the construction of said infrastructure. The costs of said infrastructure also include, without limitation, the costs associated with the relocation, encasement, lowering, or other modification of existing third-party pipelines when such relocation, encasement, lowering, or other modification is associated with the construction of said infrastructure.

Notwithstanding anything contained in this Agreement to the contrary, in the event the funds appropriated by the City's governing body in any fiscal period of the City for any City expenditures required under this Agreement are insufficient therefor, this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever.

Unless earlier terminated as provided herein, this Agreement shall terminate on the first to occur of the following: (a) the date on which both the Company and the City have fulfilled all their obligations under this Agreement; or (b) at the end of the day on September 30, 2018; provided, however, that any obligation of the Company to make payment to the City pursuant to this Agreement shall survive the termination of this Agreement.

Article IV. Status of the Company as Independent Contractor

Nothing herein shall be construed as creating a partnership or joint enterprise between the City and the Company. It is expressly agreed that no officer, director, member, agent, employee, contractor, subcontractor, program participant, licensee or invitee of the Company is in the paid service of the City. The Company shall have exclusive control of, and the exclusive right to control, the details of the tasks performed pursuant to this Agreement by the Company, its officers, directors, members, agents,

employees, contractors, subcontractors, program participants, licensees or invitees. The City has no authority nor right to control any actions of the Company, its officers, directors, members, agents, employees, contractors, subcontractors, program participants, licensees or invitees by virtue of this Agreement. In no event shall any officer, agent, servant or employee of the City participate in the capital investment and job creation program of the Company provided for in this Agreement. Accordingly, the parties hereto acknowledge and agree as follows:

- A. THE CITY SHALL BE NEITHER RESPONSIBLE NOR LIABLE FOR THE ACTS OR OMISSIONS OF THE COMPANY, AND THE CITY SHALL BE NEITHER RESPONSIBLE NOR LIABLE FOR THE ACTS OR OMISSIONS OF THE COMPANY'S OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES.**
- B. THE COMPANY SHALL BE NEITHER RESPONSIBLE NOR LIABLE FOR THE ACTS OR OMISSIONS OF THE CITY, AND THE COMPANY SHALL BE NEITHER RESPONSIBLE NOR LIABLE FOR THE ACTS OR OMISSIONS OF THE CITY'S OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES.**
- C. The doctrine of respondeat superior shall not apply between the City and the Company, nor between the City and any officer, director, member, agent, employee, contractor, subcontractor, program participants, licensees or invitees of the Company.
- D. The doctrine of respondeat superior shall not apply between the Company and the City nor between the Company and any officer, director, member, agent, employee, contractor, subcontractor, program participants, licensees or invitees of the City.

Article V. Force Majeure

Neither party to this Agreement will be liable for delays in the performance of this Agreement arising out of causes that are beyond the control and without the default or negligence of the nonperforming party and that directly impact the nonperforming party's ability to perform hereunder ("force majeure"). Such causes may include, but

are not limited to, Acts of God, acts of war, civil unrest, strikes, fires, floods, epidemics, quarantine restrictions, and unusually severe weather. In any such event, the nonperforming party shall be granted an extension of time within which to perform its obligations hereunder provided that it seeks to remove that inability to perform with all reasonable diligence. In the event of such a delay beyond the nonperforming party's reasonable control, any deadlines imposed hereunder will be extended by one day for each day that the nonperforming party's performance is delayed. The nonperforming party shall notify the other party hereto in writing of the beginning of a force majeure event as soon as reasonably practicable after the nonperforming party becomes aware of said event. The nonperforming party shall notify the other party hereto in writing of the end of a force majeure event as soon as reasonably practicable after the end of such an event. The other party hereto may require the nonperforming party to provide the other party hereto with any and all documents and other evidence reasonably necessary for the other party to verify the duration of the force majeure event and determine the extent to which said event warrants any delay or suspension of the provisions of this Agreement.

Article VI. Notices

All notices required or contemplated by this Agreement shall be addressed as follows:

City of Longview
Attention: City Manager
P.O. Box 1952
Longview, Texas 75606

The Company
Everest Rehab Developers, LLC
7420 Golden Pond, Suite 100
Amarillo, TX. 79121

Article VII. Undocumented Workers Prohibited

As required by Chapter 2264 of the Texas Government Code (said chapter entitled "RESTRICTIONS ON USE OF CERTAIN PUBLIC SUBSIDIES") or any successor statute of said chapter, Company certifies that Company or a branch, division, or department of Company, does not and will not knowingly employ an undocumented worker, as the term "undocumented worker" is defined in said Chapter 2264 of the Texas Government Code. If Company is convicted of a violation under 8 U.S.C. Section 1324a(f), Company will be in substantial violation of this Agreement, entitling the City to any and all remedies available at law, in equity or under this Agreement. Company is not liable for a violation of this article by a subsidiary, affiliate, or franchisee of Company, or by a person with whom Company contracts. If, after the City has incurred any cost to design and construct the infrastructure necessary to provide water and sewer utility service to the Property pursuant to this Agreement, Company, or a branch, division, or department of Company, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company shall pay to the City all costs incurred by the City to design and construct the infrastructure necessary to provide water and sewer utility service to the Property, plus interest at the lower of (i) the highest rate allowed by applicable law or (ii) the prime rate, as most recently reported by The Wall Street Journal's bank survey as of the date of conviction. For purposes of this Agreement, the costs incurred by the City to design and construct the infrastructure required by this Agreement include, without limitation, the costs of engineering design, construction, mobilization, and contingency and the costs of mitigation and remediation of any environmental problems necessitated by or necessary for the construction of said

infrastructure. The costs of said infrastructure also include, without limitation, the costs associated with the relocation, encasement, lowering, or other modification of existing third-party pipelines when such relocation, encasement, lowering, or other modification is associated with the construction of said infrastructure. The Company shall pay to the City all amounts required by this article not later than the 120th day after the date the City notifies the Company of a violation under this article.

Article VIII. Miscellaneous

The following provisions shall apply to this Agreement:

- A. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.
- B. The Company may assign this Agreement to any party who purchases all or substantially all of the Property and the Project from the Company at any time during the term of this Agreement, with the written approval of the City, which permission shall not be unreasonably withheld.
- C. This Agreement sets forth the entire understanding between the parties, and may not be modified except by a written document referring to this Agreement which is signed by all parties hereto.
- D. Without regard to any rules on conflicts of law, the laws of the State of Texas shall govern the interpretation of this Agreement, and Gregg County shall be the venue for the resolution of all matters of fact and law.
- E. This Agreement shall not be subject to binding arbitration.
- F. Any term or condition of this Agreement or the breach of any such term or condition may be waived only by the express, written consent of all parties hereto. Unless specified otherwise in writing, the waiver of any breach of a term or condition of this Agreement does not waive any other breach of that term or condition or any breach of any other term or condition of this Agreement.
- G. The parties agree that this Agreement shall not be construed in favor of or against any party on the basis that the party did or did not author this Agreement.

- H. This Agreement and any related documents and any amendments hereto or thereto may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
- I. Upon the expiration or termination of this Agreement for any reason, the obligations of the parties hereunder shall thereupon cease, but the provisions of this Agreement which confer rights upon any party hereto and which limit or delineate the responsibility of any party hereto shall remain in effect as to the parties' conduct prior to expiration of this Agreement.
- J. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context requires otherwise.
- K. By signing this Agreement, each person executing this Agreement on behalf of a party hereto personally warrants and represents that (i) he or she has full authority to execute this Agreement on behalf of the party that he or she represents and bind said party in accordance with the terms and provisions hereof and (ii) said party has taken all necessary action to enter into and make the agreements set forth herein.
- L. The parties agree that the titles of the articles of this Agreement are for the convenience of the parties only and shall have no effect on the interpretation of this Agreement.
- M. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the parties hereto, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of each of the parties hereto and not for the benefit of any other party.
- N. **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT.**

SIGNED AND AGREED TO THIS THE _____ DAY OF _____, 20__.

ATTEST:

THE CITY OF LONGVIEW, TEXAS

 Shelly Ballenger
 City Secretary

 David Willard
 City Manager

ATTEST:

THE COMPANY

Secretary