

**CITY OF GONZALES, TEXAS
CALLED CITY COUNCIL MEETING
GONZALES MUNICIPAL BUILDING 820 ST. JOSEPH STREET
AGENDA –JUNE 21, 2022 4:30 P.M.**

CALL TO ORDER

HEARING OF RESIDENTS

This time is set aside for any person who wishes to address the City Council. Each person should fill out the speaker's register prior to the meeting. Presentations should be limited to no more than 3 minutes.

All remarks shall be addressed to the Council as a body, and not to any individual member thereof. Any person making personal, impertinent, or slanderous remarks while addressing the Council may be requested to leave the meeting.

Discussion by the Council of any item not on the agenda shall be limited to statements of specific factual information given in response to any inquiry, a recitation of existing policy in response to an inquiry, and/or a proposal to place the item on a future agenda. The presiding officer, during the Hearing of Residents portion of the agenda, will call on those persons who have signed up to speak in the order they have registered.

ACTION ITEMS

- 1.1 Discuss, Consider & Possible Action on **Resolution #2022-59** Canvassing the Returns and Officially declaring the results of the June 14, 2022 City of Gonzales Mayoral Runoff Election
- 1.2 Issuance of the Certificate of Election and Swearing in of City of Gonzales Mayor Steve Sucher
- 1.3 Discuss, Consider & Possible Action on **Resolution #2022-60** Accepting the Proposals and Awarding the Contract for the 2021 Sidewalk Improvement Plans to M&C Fonseca Construction Co., Inc

CONSENT AGENDA ITEMS

The Consent Agenda is considered self-explanatory and will be enacted by the Council with one motion. There will be no separate discussion of these items unless they are removed from the consent Agenda upon the request of the Mayor or a Councilmember.

- 2.1 Discuss, Consider & Possible Action on **Resolution #2022-61** Approving a termination of original agreement by and between the Gonzales Economic Development Corporation and Arnulfo and Ruth Guerra, D/B/A A. Guerra Enterprise, LLC, A Texas Limited Liability Company
- 2.2 Discuss, Consider & Possible Action on **Resolution #2022-62** Approving a termination of original agreement by and between the Gonzales Economic Development Corporation and Arnulfo And Ruth Guerra, D/B/A Sleep Inn & Suites

- 2.3 Discuss, Consider & Possible Action on **Resolution #2022-63** Authorizing and approving the Gonzales Economic Development Corporation, A Type B Economic Development Corporation and a Texas Non-Profit Corporation, to Execute a Commercial Real Estate Sales Contract and any and all documents necessary to Acquire Block 33, Lot Pt 2, Gonzales Blocks Addition, an addition to the City of Gonzales, Gonzales County, Texas, and Generally Located at 510 Saint Paul Street, Gonzales, Texas

RECESS

JOINT CITY COUNCIL AND GONZALES ECONOMIC DEVELOPMENT CORPORATION MEETING

Call the City Council to order (Mayor Sucher)
Call GEDC to order (Board President)

CLOSED SESSION OF CITY COUNCIL AND GONZALES ECONOMIC DEVELOPMENT CORPORATION. BOTH THE CITY COUNCIL AND GONZALES ECONOMIC DEVELOPMENT CORPORATION MAY MEET JOINTLY AND/OR SEPARATELY IN CLOSED SESSION WITH THEIR RESPECTIVE LEGAL COUNSEL TO DELIBERATE THE FOLLOWING MATTERS

- 3.1 (1) Pursuant to Section 551.087 of the Texas Government Code, the City of Gonzales will consult in closed session (1) to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).

A) Project 2022-6

RETURN TO OPEN SESSION

- 4.1 Discuss and Consider any Action Resulting from Closed Session as Necessary

ADJOURN:

Adjourn the City Council (Mayor Sucher)
Adjourn GEDC (Board President)

ADJOURN

EXECUTIVE SESSION: The City Council reserves the right to discuss any of the above items in Executive Closed Session if they meet the qualifications in Sections 551.071, 551.072, 551.073, 551.074, 551.076, 551.087, of Chapter 551 of the Government Code of the State of Texas.

I certify that a copy of the June 21, 2022 agenda of items to be considered by the Gonzales City Council was posted on the City Municipal Building bulletin board on the 17th day of June, 2022 at 5:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting. I further certify that the above agenda was removed on _____ day of _____, 2022 at _____am/pm. I further certify that the following News Media were properly notified of the above stated meeting: Gonzales Inquirer.

Kristina Vega, City Secretary

The meeting facility is wheelchair accessible and accessible parking spaces are available. Request for accommodations or interpretive services must be made 48 hours prior to this meeting. Please Contact the City Secretary's office at (830)672-2815 for further information.

COUNCIL AGENDA ITEM BRIEFING DATA



AGENDA ITEM

Discuss, Consider & Possible Action on Resolution #2022-59 Canvassing the Returns and Officially Declaring the Results of the June 14, 2022 City of Gonzales Mayoral Runoff Election

DATE: June 21, 2022

TYPE AGENDA ITEM:

Resolution

BACKGROUND:

The Charter of the City of Gonzales states in Section 5.07 that the Election Judges shall conduct the elections, determine, record and report the results as provided by general election laws of Texas within five days or as soon as practical after an election. The City Council shall meet, open the returns, canvass and officially declare the results of the election as to candidates and propositions and issue certificates of election to candidates elected as herein before provided.

Election Code Section 67.003 states that each local canvassing authority shall convene to conduct the local canvass at the time set by the canvassing authority's presiding officer not later than the eleventh day after election day and not earlier than the third day after election day or the date on which all ballots have been received and verified.

During the June 14, 2022 Mayor Runoff Election the candidates received the following votes:

CANDIDATE	Early Voting	Absentee	Election Day	TOTAL VOTES
S.H. "Steve" Sucher	331	32	181	544
Isaac Anzaldua	289	18	186	493
Total Votes Counted	620	50	367	1037

POLICY CONSIDERATIONS:

The Canvassing process is consistent with Texas Election Code Section 67.003.

FISCAL IMPACT:

N/A

STAFF RECOMMENDATION:

Staff respectfully recommends the approval of this resolution.

RESOLUTION NO. 2022-59

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS CANVASSING THE RETURNS AND OFFICIALLY DECLARING THE RESULTS OF THE JUNE 14, 2022 CITY OF GONZALES MAYORAL RUNOFF ELECTION; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, Election Code Section 67.003 states that each local canvassing authority shall convene to conduct the local canvass at the time set by the canvassing authority's presiding officer not later than the 11th day after election day and not earlier than the third day after election day; and

WHEREAS, on June 14, 2022 the said election was duly and legally held in conformity with the election laws of the state of Texas, and

WHEREAS, the City Council of the City of Gonzales, Texas canvassed the election returns on June 21, 2022 and hereby declare the result of such runoff election.

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

Section 1. The foregoing recitals and legislative findings are hereby incorporated and made an effective and enforceable part of this Resolution.

Section 2. A total of ballots cast for the runoff election during early voting for Mayor were 620 by personal appearance, 50 absentee ballots, and 367 votes were cast on Election Day. Total number of votes cast for Mayor in this election was 1037.

Section 3. The City Council of the City of Gonzales, Texas hereby finds that the results of the runoff election as set forth below reflect the reported votes, and the canvass of votes is hereby approved.

CANDIDATE	Early Voting	Absentee	Election Day	TOTAL VOTES
S.H. "Steve" Sucher	331	32	181	544
Isaac Anzaldua	289	18	186	493
Total Votes Counted	620	50	367	1037

Section 4. The City Council of the City of Gonzales, Texas hereby declares S.H. "Steve" Sucher elected to the office of Mayor.

Section 5. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 6. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 7. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 8. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 9. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND APPROVED this 21st day of June, 2022.

Mayor, Connie L. Kacir

ATTEST:

Kristina Vega, City Secretary

Summary Results Report
2022 Special Election
June 14, 2022

OFFICIAL RESULTS

Gonzales County

City of Gonzales, Mayor

Vote For 1

	TOTAL	Absentee	Early Voting	Election Day
S.H. "Steve" Sucher	544	32	331	181
Isaac Anzaldua	493	18	289	186

COUNCIL AGENDA ITEM BRIEFING DATA



AGENDA ITEM

Discuss, Consider & Possible Action on Resolution #2022-60 Accepting the Proposals and Awarding the Contract for the 2021 Sidewalk Improvement Plans to M&C Fonseca Construction Co., Inc.

DATE: June 21, 2022

TYPE AGENDA ITEM:

Resolution

BACKGROUND:

The City has received bids for the 2021 Sidewalk Improvement Plans. These plans include the replacement of the sidewalk in Texas Heroes Square, along the 400 Block of St. James Street and include drainage and grading improvements to the 400 Block of St. James Street.

POLICY CONSIDERATIONS:

As funds are available, the city should consider reconstructing and upgrading sidewalks to be accessible and compliant with ADA and TAS regulations.

FISCAL IMPACT:

This agenda item will expend \$773,750 as the base contract amount. In addition to the construction cost, the project has incurred the previously approved amounts of \$70,000 for engineering, \$30,000 for Grant Administration and \$10,000 for environmental services associated with the grant funding for a total fiscal impact of \$883,750. Funding for this project will come from GEDC (\$50,000), CDBG-DR Grant (\$500,000), Water Fund (\$30,500), General Fund (\$303,250). The budget to perform the work in this contract was determined two years ago at approximately \$500,000. A budget amendment to reflect this will be presented on a future agenda.

ATTACHMENTS:

Bid tabulation

STAFF RECOMMENDATION:

Staff respectfully recommends the contract be awarded to M&C Fonseca Construction Co., Inc. in the amount of \$773,750 for construction of the 2021 Sidewalk Improvement Plans.

RESOLUTION NO. 2022-60

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS ACCEPTING THE PROPOSALS AND AWARDING THE CONTRACT FOR THE 2021 SIDEWALK IMPROVEMENT PLANS TO M&C FONSECA CONSTRUCTION CO., INC.; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Capital Improvement Plan for Fiscal Year Budget 2021-2022 included the 2021 Sidewalk Improvement Plans to be competitively bid as per Chapter 252 of the Local Government Code; and,

WHEREAS, the advertisements for the Request for bids were published in the newspaper for three consecutive weeks beginning April 14, 2022; and,

WHEREAS, the bids were due to be received by the City of Gonzales on May 12, 2022 at 2:00 p.m.; and,

WHEREAS, bids were received from, Diamond X Construction, Inc., Inc., M&C Fonseca Construction Co., Inc., by the due date published; and,

WHEREAS, Local Government Code Section 252.043(a) states that if the competitive bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods and services at the best value for the municipality; and,

WHEREAS, the City Engineer evaluated the proposals and recommends awarding the contract to M&C Fonseca Construction Co., Inc. who is the lowest responsible bidder with a base bid amount of \$773,750; and,

WHEREAS, the City Council finds that entering into an agreement for the 2021 Sidewalk Improvement Plans is in the best interest of the City and its citizens and will further promote the public health, safety, and general welfare of the City.

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

Section 1. The City Council of the City of Gonzales hereby awards the contract for the 2021 Sidewalk Improvement Plans to M&C Fonseca Construction Co., Inc. and authorizes the City Manager to execute the agreement.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND APPROVED this 21st day of June, 2022.

Mayor, S.H. Sucher

ATTEST:

Kristina Vega, City Secretary

BID TABULATION - Base Bid Sheet **CITY OF GONZALES**

PROJECT NAME: 2021 Sidewalk Project		PROJECT MANAGER: Todd Remschel
PRE-BID CONFERENCE DATE & TIME: N/A	BID DATE & TIME: May 12, 2020 2:00 PM	PROJECT CONSULTANT: J. KEITH SCHAUER, P.E., DOUCET & ASSOCIATES, INC.
BID OPENING LOCATION: Gonzales City Hall, 820 Saint Joseph Street, Gonzales, Texas 78629		

	BIDDER / FIRM NAME	Base Bid	Bid Alternate 1	Addendum 1	Bid Bond
1	M&C Fonseca Construction	\$773,750.00	NA	✓	✓
2	Diamond X Contracting	\$821,653.50	NA	✓	✓
3					
4					
5					
6					
7					
8					
9					
10					

COUNCIL AGENDA ITEM BRIEFING DATA



AGENDA ITEM

Discuss, Consider & Possible Action on Resolution #2022-61 Approving a Termination of Original Agreement by and Between the Gonzales Economic Development Corporation and Arnulfo and Ruth Guerra, D/B/A A. Guerra Enterprise, LLC, and Providing for an Immediate Effective Date.

DATE: June 21, 2022

Type Agenda Item

Resolution

BACKGROUND:

At its May 27, 2022, meeting, the GEDC board of directors made a motion to act on the outstanding loan agreement with Arnulfo and Ruth Guerra, A. Guerra Enterprise, LLC, a Texas limited liability company, in reference to outstanding loans on the Sleep Inn & Suites and Holiday Inn Express.

The Holiday Inn Express has an original loan amount of \$360,000. The current unpaid balance is \$200,290.63. The GEDC have an agreement with the Developer to repay \$100,000 of the unpaid balance by September 30, 2022. Once the \$100,000 have been paid, the loan, all original agreements, and all amendments will be terminated.

POLICY CONSIDERATIONS:

Sections 501.101, 501.103, 501.105, and 505.158 of the Texas Local Government Code authorizes the GEDC to provide financial assistance consistent with the terms of those statutes.

The GEDC wishes to resolve all current and defaulted loans while recouping funds distributed given in the form of loans in the past.

FISCAL IMPACT:

The GEDC will recoup \$100,000 in funds from the outstanding loan.

ATTACHMENTS:

Termination of Loan Agreement and Amendments-Holiday Inn Express

STAFF RECOMMENDATIONS:

Staff recommends City Council to act as deemed necessary.

RESOLUTION NO. 2022-61

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS, APPROVING A TERMINATION OF ORIGINAL AGREEMENT BY AND BETWEEN THE GONZALES ECONOMIC DEVELOPMENT CORPORATION AND ARNULFO AND RUTH GUERRA, D/B/A A. GUERRA ENTERPRISE, LLC, A TEXAS LIMITED LIABILITY COMPANY, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Gonzales Economic Development Corporation is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended (hereinafter referred to as the “GEDC”); and

WHEREAS, on or about January 29, 2013, the GEDC and Developer entered into the original Loan Agreement concerning the economic development project located within the City of Gonzales, Texas (hereinafter referred to as the “Original Agreement”); and

WHEREAS, on March 13, 2020, the President of the United States declared the COVID-19 outbreak a national health emergency beginning on March 1, 2020; and

WHEREAS, on March 13, 2020, the Governor of the State of Texas declared a state of disaster for all counties in Texas in response to the COVID-19 outbreak and as of the Effective Date of this Termination Agreement the state of disaster remains ongoing; and

WHEREAS, pursuant to the terms of the Original Agreement Arnulfo and Ruth Guerra were required to repay the loan consistent with the terms of the Original Agreement; and

WHEREAS, pursuant to the terms of the Original Agreement Arnulfo and Ruth Guerra were required to repay a loan in the amount of **Three Hundred Sixty Thousand and No/100 Dollars (\$360,000.00)**; and

WHEREAS, Arnulfo and Ruth Guerra with the payment of One Hundred Thousand and No/100 Dollars (\$100,000.00) to GEDC will have repaid an amount equal to or exceeding fifty percent (50%) of the original loan amount; and

WHEREAS, the GEDC and Arnulfo and Ruth Guerra now desire to terminate the Original Agreement and any amendments related thereto consistent with the terms of the Termination Agreement, a copy of which is attached hereto as ***Exhibit A***.

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

Section 1. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 2. The City Council of the City of Gonzales, Texas, does hereby approve the Termination of the Original Agreement by and between the Gonzales Economic Development Corporation and Arnulfo and Ruth Guerra, a copy of which is attached hereto as ***Exhibit A***, and is incorporated herein for all purposes.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND APPROVED this 21st day of June, 2022.

Mayor, S.H. Sucher

ATTEST:

Kristina Vega, City Secretary

TERMINATION OF ORIGINAL AGREEMENT

This Termination of Original Agreement (hereinafter referred to as the “Termination Agreement”) is hereby entered into on the ____ day of _____, 2022, by the **GONZALES ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “GEDC”) and **ARNULFO AND RUTH GUERRA**, d/b/a A. Guerra Enterprise, LLC, a Texas limited liability company (hereinafter referred to as the “Developer”).

RECITALS:

WHEREAS, on or about January 29, 2013, the GEDC and Developer entered into the original Loan Agreement concerning the economic development project located within the City of Gonzales, Texas (hereinafter referred to as the “Original Agreement”); and

WHEREAS, pursuant to the terms of the Original Agreement Developer was required to repay the loan consistent with the terms of the Original Agreement; and

WHEREAS, pursuant to the terms of the Original Agreement Developer was required to repay a loan in the amount of **Three Hundred Sixty Thousand and No/100 Dollars (\$360,000.00)** (the “Repayable Loan”), and Section 5(b) of the Original Agreement provided that Forty Thousand and No/100 Dollars (\$40,000.00) of an original Fifty Thousand and No/100 Dollars (\$50,000.00) concerning the Sleep Inn and Suites Hotel (the “Forgivable Loan”) was forgiven; and

WHEREAS, the Developer has a current unpaid balance of **Two Hundred Thousand Two Hundred Ninety and 63/100 Dollars (\$200,290.63)** on the Repayable Loan; and

WHEREAS, GEDC and Developer covenant and agree when Developer has paid the sum of **One Hundred Thousand and No/100 Dollars (\$100,000.00)** to GEDC the Original Agreement with any amendments to said agreement shall terminate and neither party shall have any remaining obligation to the other party under the Original Agreement, and amendments thereto, the Repayable Loan or Forgivable Loan (which was previously forgiving).

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, GEDC and Developer covenant and agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Termination Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERMINATION OF ORIGINAL AGREEMENT AND ANY AMENDMENTS.

- (a) The Original Agreement and any amendments related thereto, the Repayable Loan, and the Forgivable Loan by and between the GEDC and Developer are hereby terminated upon Developer's payment of the sum of **One Hundred Thousand and No/100 Dollars (\$100,000.00)** to the GEDC.
- (b) GEDC and Developer covenant and agree that each party shall have no further obligation to the other party under the Original Agreement and any amendments related thereto, the Repayable Loan, and the Forgivable Loan upon Developer's payment of the sum of **One Hundred Thousand and No/100 Dollars (\$100,000.00)** to the GEDC.
- (c) In the event the Developer has not paid the sum of **One Hundred Thousand and No/100 Dollars (\$100,000.00)** to the GEDC by **September 30, 2022**, this Termination Agreement shall terminate and have no effect by and between the parties, and the Original Agreement, and amendments thereto, and the Repayable Loan shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Termination Agreement on the day and year first above-written (the "Effective Date").

GEDC:

***GONZALES ECONOMIC
DEVELOPMENT CORPORATION,***
a Texas non-profit corporation

By: _____
Andy Rodriguez, President
Date Signed: _____

DEVELOPER:

ARNULFO GUERRA

By: _____
Date Signed: _____

RUTH GUERRA

By: _____
Date Signed: _____

COUNCIL AGENDA ITEM BRIEFING DATA



AGENDA ITEM

Discuss, Consider & Possible Action on Resolution #2022-62 Approving a Termination of Original Agreement by and between the Gonzales Economic Development Corporation and Arnulfo and Ruth Guerra, d/b/a Sleep Inn & Suites, and Providing for an Immediate Effective Date.

DATE: June 21, 2022

Type Agenda Item

Resolution

BACKGROUND:

At its May 27, 2022, meeting, the GEDC board of directors made a motion to act on the outstanding loan agreement with Arnulfo and Ruth Guerra, A. Guerra Enterprise, LLC, a Texas limited liability company, in reference to outstanding loans on the Sleep Inn & Suites and Holiday Inn Express.

The Sleep Inn & Suites has an original loan amount of \$200,000. The current unpaid balance is \$28,570.38. The GEDC and Developer have an agreement that once the unpaid balance is paid in full by September 30, 2022, the loan, and all original agreements as well as all amendments will be terminated.

POLICY CONSIDERATIONS:

Sections 501.101, 501.103, 501.105, and 505.158 of the Texas Local Government Code authorizes the GEDC to provide financial assistance consistent with the terms of those statutes.

The GEDC wishes to resolve all current and defaulted loans while recouping funds distributed given in the form of loans in the past.

FISCAL IMPACT:

The GEDC will recoup \$28,570.38 in funds from the outstanding loan.

ATTACHMENTS:

Termination of Loan Agreement and Amendments-Sleep Inn Suites

STAFF RECOMMENDATIONS:

Staff recommends City Council to act as deemed necessary.

RESOLUTION NO. 2022-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS, APPROVING A TERMINATION OF ORIGINAL AGREEMENT BY AND BETWEEN THE GONZALES ECONOMIC DEVELOPMENT CORPORATION AND ARNULFO AND RUTH GUERRA, d/b/a SLEEP INN & SUITES, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Gonzales Economic Development Corporation is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended (hereinafter referred to as the “GEDC”); and

WHEREAS, on or about July 29, 2008, the GEDC and Arnulfo and Ruth Guerra (hereinafter referred to as the “Developer”) entered into the original Economic Development Program Agreement (hereinafter referred to as the “Original Agreement”) regarding financial assistance to construct and operate the Sleep Inn & Suites Hotel; and

WHEREAS, on or about April 11, 2017, the Board of Directors of the GEDC approved an amendment to the Original Agreement modifying the terms of repayment of the \$200,000.00 loan under the Original Agreement by the Developer (hereinafter referred to as the “First Amendment”); and

WHEREAS, pursuant to the terms of the Original Agreement as amended by the First Amendment Developer was required to repay the loan consistent with the terms of the Original Agreement as amended by the First Amendment; and

WHEREAS, pursuant to the terms of the Original Agreement Developer was required to repay a loan in the amount of **Two Hundred Thousand and No/100 Dollars (\$200,000.00)** (the “Repayable Loan”); and

WHEREAS, the Developer has a current unpaid balance of **Twenty-Eight Thousand Five Hundred Seventy and 38/100 Dollars (\$28,570.38)** on the Repayable Loan; and

WHEREAS, GEDC and Developer covenant and agree when Developer has paid the sum of **Twenty-Eight Thousand Five Hundred Seventy and 38/100 Dollars (\$28,570.38)** to GEDC the Original Agreement, the First Amendment, with any other amendments to said agreement shall terminate and neither party shall have any remaining obligation to the other party under the Original Agreement, First Amendment, and any other amendments thereto, and the Repayable Loan; and

WHEREAS, the GEDC and Arnulfo and Ruth Guerra now desire to terminate the Original Agreement and any amendments related thereto consistent with the terms of the Termination Agreement, a copy of which is attached hereto as *Exhibit A*.

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

Section 1. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 2. The City Council of the City of Gonzales, Texas, does hereby approve the Termination of the Original Agreement and any amendments related thereto consistent with the terms of the Termination Agreement by and between the Gonzales Economic Development Corporation and Arnulfo and Ruth Guerra, a copy of which is attached hereto as ***Exhibit A***, and is incorporated herein for all purposes.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND APPROVED this 21st day of June, 2022.

Mayor, S.H. Sucher

ATTEST:

Kristina Vega, City Secretary

Exhibit A

[Termination of Original Agreement]

TERMINATION OF ORIGINAL AGREEMENT

This Termination of Original Agreement (hereinafter referred to as the "Termination Agreement") is hereby entered into on the ____ day of _____, 2022, by the **GONZALES ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the "GEDC") and **ARNULFO AND RUTH GUERRA**, d/b/a Sleep Inn & Suites (hereinafter referred to as the "Developer").

RECITALS:

WHEREAS, on or about July 29, 2008, the GEDC and Developer entered into the original Economic Development Program Agreement (hereinafter referred to as the "Original Agreement") regarding financial assistance to construct and operate the Sleep Inn & Suites Hotel; and

WHEREAS, on or about April 11, 2017, the Board of Directors of the GEDC approved an amendment to the Original Agreement modifying the terms of repayment of the \$200,000.00 loan under the Original Agreement by the Developer (hereinafter referred to as the "First Amendment"); and

WHEREAS, pursuant to the terms of the Original Agreement as amended by the First Amendment Developer was required to repay the loan consistent with the terms of the Original Agreement as amended by the First Amendment; and

WHEREAS, pursuant to the terms of the Original Agreement Developer was required to repay a loan in the amount of **Two Hundred Thousand and No/100 Dollars (\$200,000.00)** (the "Repayable Loan"); and

WHEREAS, the Developer has a current unpaid balance of **Twenty-Eight Thousand Five Hundred Seventy and 38/100 Dollars (\$28,570.38)** on the Repayable Loan; and

WHEREAS, GEDC and Developer covenant and agree when Developer has paid the sum of **Twenty-Eight Thousand Five Hundred Seventy and 38/100 Dollars (\$28,570.38)** to GEDC the Original Agreement, the First Amendment, with any other amendments to said agreement shall terminate and neither party shall have any remaining obligation to the other party under the Original Agreement, First Amendment, and any other amendments thereto, and the Repayable Loan.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, GEDC and Developer covenant and agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Termination Agreement and shall be considered part of the mutual covenants, consideration and promises that

bind the parties.

SECTION 2. TERMINATION OF ORIGINAL AGREEMENT AND ANY AMENDMENTS.

- (a) The Original Agreement, First Amendment, and any other amendments thereto, and the Repayable Loan by and between the GEDC and Developer are hereby terminated upon Developer's payment of the sum of **Twenty-Eight Thousand Five Hundred Seventy and 38/100 Dollars (\$28,570.38)** to the GEDC.
- (b) GEDC and Developer covenant and agree that each party shall have no further obligation to the other party under the Original Agreement, First Amendment, and any other amendments thereto, and the Repayable Loan upon Developer's payment of the sum of **Twenty-Eight Thousand Five Hundred Seventy and 38/100 Dollars (\$28,570.38)** to the GEDC.
- (c) In the event the Developer has not paid the sum of **Twenty-Eight Thousand Five Hundred Seventy and 38/100 Dollars (\$28,570.38)** to the GEDC by **September 30, 2022**, this Termination Agreement shall terminate and have no effect by and between the parties, and the Original Agreement, First Amendment, and any other amendments thereto, and the Repayable Loan shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Termination Agreement on the day and year first above-written (the "Effective Date").

GEDC:

***GONZALES ECONOMIC
DEVELOPMENT CORPORATION,***
a Texas non-profit corporation

By: _____

Andy Rodriguez, President

Date Signed: _____

DEVELOPER:

ARNULFO GUERRA

By: _____
Date Signed: _____

RUTH GUERRA

By: _____
Date Signed: _____

COUNCIL AGENDA ITEM BRIEFING DATA



DATE: June 21, 2022

AGENDA ITEM

Discuss, Consider & Possible Action on Resolution #2022-63 Authorizing and approving the Gonzales Economic Development Corporation, a Type B Economic Development Corporation and a Texas Non-Profit Corporation, to Execute a Commercial Real Estate Sales Contract and any and all documents necessary to acquire Block 33, Lot Pt 2, Gonzales Blocks Addition, an Addition to the City of Gonzales, Gonzales County, Texas, and Generally Located at 510 Saint Paul Street, Gonzales, Texas

TYPE AGENDA ITEM:

Resolution

BACKGROUND:

At its May 23rd, 2022, meeting the GEDC unanimously approved awarding Lisa Grove with Phyllis Browning Co. the contract for Third-party real estate broker to market and sell Gonzales Economic Development Corporation property-Lynn Theatre.

The GEDC originally received three (3) proposals. The proposals were scored, and the scores were as follows; Phyllis Browning Co. 100%, Jackson Properties 85%, and Garen Shae Reese 65%.

POLICY CONSIDERATIONS:

The GEDC is authorized to enter into contracts for Professional Services.

FISCAL IMPACT:

Once the property sells the GEDC will receive the funds from the sale as well as the third-party broker receiving a six (6) percent commission.

ATTACHMENTS:

Proposal from Phyllis Browning Co.
Third-Party Brokerage Proposal Official Scoring Sheet
All other proposals available in the GEDC office upon request

STAFF RECOMMENDATIONS:

Staff recommends the City Council to award the contract to highest scoring proposal.

RESOLUTION NO. 2022-63

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GONZALES, TEXAS, AUTHORIZING AND APPROVING THE GONZALES ECONOMIC DEVELOPMENT CORPORATION, A TYPE B ECONOMIC DEVELOPMENT CORPORATION AND A TEXAS NON-PROFIT CORPORATION, TO EXECUTE A COMMERCIAL REAL ESTATE SALES CONTRACT AND ANY AND ALL DOCUMENTS NECESSARY TO ACQUIRE BLOCK 33, LOT PT 2, GONZALES BLOCKS ADDITION, AN ADDITION TO THE CITY OF GONZALES, GONZALES COUNTY, TEXAS, AND GENERALLY LOCATED AT 510 SAINT PAUL STREET, GONZALES, TEXAS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, City Council of the City of Gonzales, Texas, authorizes and approves that the Gonzales Economic Development Corporation, a Type B economic development corporation, and a Texas non-profit corporation (hereinafter referred to as the “GEDC”), execute a Commercial Real Estate Listing Agreement Exclusive Right to Sell Agreement, a copy of which is attached hereto as *Exhibit A* of this Resolution, and any and all real estate closing documents necessary for the GEDC to acquire Block 33, Lot PT 2, Gonzales Blocks Addition, an addition to the City of Gonzales, Gonzales County, Texas, and generally located at 510 St. Paul Street, City of Gonzales, Gonzales County, Texas (hereinafter referred to as the “Property”).

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

Section 1. That the foregoing recitals are hereby found to be true and correct findings of the City Council of the City of Gonzales, Texas, and are fully incorporated into the body of this Resolution.

Section 2. That the City Council of the City of Gonzales, Texas, does hereby authorize the GEDC President and/or Executive Director to execute the Commercial Real Estate Listing Agreement Exclusive Right to Sell Agreement, a copy of which is attached hereto as *Exhibit A* of this Resolution, and is incorporated herein for all purposes, and any and all real estate closing documents necessary for GEDC to acquire the Property, and authorizes GEDC President, staff, and officers to take all actions necessary under said Farm and Ranch Contract.

Section 3. All resolutions or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City

Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND APPROVED this 21st day of June, 2022.

Mayor, S.H. Sucher

ATTEST:

Kristina Vega, City Secretary

Exhibit A

[Commercial Real Estate Listing Agreement
Exclusive Right to Sell Agreement]

510 St. Paul Street



COMMERCIAL REAL ESTATE LISTING AGREEMENT EXCLUSIVE RIGHT TO SELL

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED.
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1. PARTIES: The parties to this agreement (this Listing) are:

Seller: **Gonzales Economic Development Corp.**

Address: **PO Box 547**

City, State, Zip: **Gonzales, Tx. 78629**

Phone: **(830)672-2815**

Fax: _____

E-Mail: **gedc@gonzales.texas.gov**

Broker: **Phyllis Browning Company**

Address: **6061 Broadway**

City, State, Zip: **San Antonio, TX 78209**

Phone: **(210)824-7878**

Fax: **(210)857-7085**

E-Mail: **lgrove@phyllisbrowning.com**

Seller appoints Broker as Seller's sole and exclusive real estate agent and grants to Broker the exclusive right to sell the Property.

2. PROPERTY:

A. "Property" means the following real property in Texas:

Address: **510 St. Paul**

City: **Gonzales**

County: **Gonzales**

Zip: **78629**

Legal Description (*Identify exhibit if described on attachment*): **Block 33, Lot PT 2**

B. Except as otherwise provided in this Listing, Broker is to market the Property together with:

- (1) all buildings, improvements, and fixtures;
- (2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, easements and rights-of-way;
- (3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
- (4) Seller's interest in all licenses and permits related to the Property;
- (5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
- (6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
- (7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except: _____

(Describe any exceptions, reservations, or restrictions in Special Provisions or an addendum. If the Property is a condominium, attach Condominium Addendum to Listing (TXR-1401).)

3. LISTING PRICE:

- A. Seller instructs Broker to market the Property at the following gross sales price: \$ 499,000.00
Four Hundred Ninety-Nine Thousand
(Listing Price).
- B. Seller agrees to sell the Property for the Listing Price or any other price acceptable to Seller. Seller will pay all typical closing costs charged to sellers of commercial real estate in Texas (seller's typical closing costs are those set forth in the commercial contract forms published by Texas REALTORS®) except n/a

4. TERM:

- A. This Listing begins on June 10, 2022 and ends at 11:59 p.m.
on June 9, 2023. Seller may terminate this Listing on notice to Broker any time
after June 10, 2022.
- B. If Seller enters into a binding written contract to sell the Property before the date this Listing begins and the contract is binding on the date this Listing begins, this Listing will not commence and will be void.

5. BROKER'S FEE:

- A. Fee: When earned and payable, Seller will pay Broker a fee of:

☒ (1) 6.000 % of the sales price.
☐ (2) _____

- B. Earned: Broker's fee is earned when any one of the following occurs during this Listing:
- (1) Seller sells, exchanges, agrees to sell, or agrees to exchange all or part of the Property to anyone at any price on any terms;
 - (2) Broker individually or in cooperation with another broker procures a buyer ready, willing, and able to buy all or part of the Property at the Listing Price or at any other price acceptable to Seller;
 - (3) Seller grants or agrees to grant to another person an option to purchase all or part of the Property;
 - (4) Seller transfers or agrees to transfer all or part of Seller's interest (stock or shares) in any entity that holds title to all or part of the Property for the purpose of conveying all or part of the Property to another person; or
 - (5) Seller breaches this Listing.
- C. Payable: Once earned, Broker's fee is payable either during this Listing or after it ends at the earlier of:
- (1) the closing and funding of any sale or exchange of all or part of the Property;
 - (2) Seller's refusal to sell the Property after Broker's Fee has been earned;
 - (3) Seller's breach of this Listing; or
 - (4) at such time as otherwise set forth in this Listing.

Broker's fee is not payable if a sale of the Property does not close or fund as a result of: (i) Seller's failure, without fault of Seller, to deliver to a buyer a deed or a title policy as required by the contract to sell; (ii) loss of ownership due to foreclosure or other legal proceeding; or (iii) Seller's failure to restore the Property, as a result of a casualty loss, to its previous condition by the closing date set forth in a contract for the sale of the Property.

D. Other Fees:

- (1) Lease of Property: If, during this Listing, Broker procures a tenant to lease all or part of the Property and Seller agrees to lease all or part of the Property to the tenant, Seller will pay Broker at the time the lease is executed the fee described below. If, during the term of the lease, the tenant agrees to purchase all or part of the Property, Seller will pay Broker the fee specified in Paragraph 5A in addition to the amount described below.

☐ (a) n/a % of all base rents to be paid over the term of the lease and the same percentage of the following items to be paid over the term of the lease: ☐ expense reimbursements; and ☐ n/a .

☐ (b) n/a _____

_____.

- (2) Renewals, Extensions, or Expansions of Property: If, during this Listing or after it ends, Seller renews, extends, or expands the lease, Seller will pay Broker, at the time the renewal, extension, or expansion becomes effective, a fee of:

☐ (a) n/a % of all base rents to be paid over the term of the renewal or extension and the same percentage of the following items to be paid over the same term: ☐ expense reimbursements based on initial amounts ☐ _____;

☐ (b) n/a % of all base rents to be paid over the term of the expansion and the same percentage of the following items to be paid over the same term: ☐ expense reimbursements based on initial amounts ☐ _____; or

☐ (c) n/a _____.

In addition to their ordinary meanings, "extensions", "renewals," and "expansions" include new leases for more, less, or different space in the building or complex in which the property is located.

- (3) Breach by Buyer Under Contract: If Seller collects earnest money, the sales price, or damages by suit, compromise, settlement or otherwise from a buyer who breaches a contract for the sale of all or part of the Property entered into during this Listing, Seller will pay Broker, after deducting attorney's fees and collection expenses, an amount equal to the lesser of one-half of the amount collected after deductions or the amount of the Broker's Fee stated in Paragraph 5A. Any amount paid under this Paragraph 5D(3) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.

- (4) Service Providers: If Broker refers Seller or a prospective buyer or tenant to a service provider (e.g., mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral. Any referral fee Broker receives under this Paragraph 5D(4) is in addition to any other compensation Broker may receive under this Listing.

- (5) Other Fees and/or Reimbursable Expenses: any special marketing that goes over and above Phyllis Browning standard. Any special marketing to be approved in writing by Seller prior to ordering. _____
_____.

E. Protection Period:

- (1) "Protection period" means that time starting the day after this Listing ends and continuing for 14 days.

- (2) Not later than 10 days after this Listing ends Broker may send Seller written notice specifying the names of persons whose attention Broker has called to the Property during this Listing. If Seller agrees to sell or lease all or part of the Property during the protection period to a person named in the notice or to a relative or business associate of a person named in the notice, Seller will pay Broker, upon the closing of the sale or upon execution of the lease, the amount Broker would have been entitled to receive if this Listing were still in effect.
- (3) "Person" means any person in any capacity whether an individual or entity. "Sell" means any transfer of any interest in the Property whether by agreement or option.
- (4) This Paragraph 5E survives termination of this Listing.

F. County: All amounts payable to Broker are to be paid in cash in Gonzales
County, Texas.

G. Escrow Authorization: Seller authorizes, and Broker may so instruct, any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect and disburse to Broker all amounts payable to Broker under this Listing.

NOTICE: Under Chapter 62, Texas Property Code, Broker is entitled to claim a lien against the Property to secure payment of an earned commission.

6. EXCLUSIONS:

- A. Under a prior listing agreement Seller is obligated to pay another Texas licensed broker a fee if Seller sells or leases all or part of the Property before n/a to any of the following persons: n/a (named exclusions).
- B. If Seller enters into a contract to sell or lease all or part of the Property to a named exclusion before the date specified in Paragraph 6A, Seller will not be obligated to pay Broker the fees under Paragraph 5 of this Listing, but Seller will pay Broker, upon the closing of the sale or upon execution of the lease, a fee equal to:
- (1) n/a % of the sales price if Seller sells the Property;
- (2) n/a % of all base rents to be paid over the term of the lease if Seller leases the Property and the same percentage of the following items to be paid over the term of the lease: ☐ expense reimbursements; ☐ n/a; and
- (3) n/a.
- C. If Seller enters into a contract to sell or lease all or part of the Property to a named exclusion, Broker ☐ will ☒ will not assist Seller in negotiating and closing the sale or lease to the named exclusion.

7. **ACCESS TO THE PROPERTY:** Authorizing access to the Property means giving permission to another person to enter the Property, disclosing security codes necessary to enter the Property to such person, and lending a key to the Property to such person. To facilitate the showing and sale of the Property, Seller instructs Broker and Broker's associates to: (i) access the Property at reasonable times; (ii) authorize other brokers, inspectors, appraisers, lenders, engineers, surveyors, and repair persons to enter the Property at reasonable times; and (iii) duplicate keys to facilitate convenient and efficient showings.

8. **COOPERATION WITH OTHER BROKERS:** Broker will allow other brokers to show the Property to prospective buyers. If the other broker procures a buyer who purchases the Property, Broker will offer to pay the other broker a portion of Broker's fee under Paragraph 5.

9. INTERMEDIARY: (Check A or B only.)

- ☒ A. **Intermediary Status:** Broker may show the Property to interested prospective buyers or tenants who Broker represents. If a prospect who Broker represents offers to buy or lease the Property, Seller authorizes Broker to act as an intermediary and Broker will notify Seller that Broker will service the parties in accordance with one of the following alternatives.
- (1) If a prospect who Broker represents is serviced by an associate other than the associate servicing Seller under this Listing, Broker may notify Seller that Broker will: (a) appoint the associate then servicing Seller to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller; and (b) appoint the associate then servicing the prospect to the prospect for the same purpose.
 - (2) If a prospect who Broker represents is serviced by the same associate who is servicing Seller, Broker may notify Seller that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospect; and (b) appoint the associate servicing the Seller under this Listing to the Seller for the same purpose.
 - (3) Broker may notify Seller that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.
- ☐ B. **No Intermediary Status:** Seller agrees that Broker will not show the Property to prospects who Broker represents.

Notice: If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:

- # may not disclose to the prospect that Seller will accept a price less than the asking price unless otherwise instructed in a separate writing by Seller;
- # may not disclose to Seller that the prospect will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the prospect;
- # may not disclose any confidential information or any information Seller or the prospect specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property;
- # may not treat a party to the transaction dishonestly; and
- # may not violate the Real Estate License Act.

10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker may not disclose to Seller any information obtained in confidence regarding any other person Broker represents or may have represented except as required by law.

11. BROKER'S AUTHORITY:

- A. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, and negotiate the sale of the Property.
- B. In addition to other authority granted by this Listing, Broker may:
- (1) advertise the Property by means and methods as Broker determines is appropriate in any media, including but not limited to:
 - (a) placing a "For Sale" sign or similar marketing sign on the Property; and
 - (b) creating and placing information about the Property (including interior and exterior photographs or videos):

- (i) on the Internet on Broker's website and on other websites as Broker determines;
 - (ii) in any advertisements whether in print or electronic media; and
 - (iii) into listing services that may publicize the information on the Internet or by other means;
- (2) reproduce, display, and distribute information about the Property, including the information described under Paragraph 11B(1), for the purposes of marketing the Property;
 - (3) furnish comparative marketing and sales information about other properties to prospects;
 - (4) disseminate information about the Property to other brokers and prospects, including applicable disclosures, notices, or other information that Seller is required to make under law or a contract;
 - (5) obtain information from any holder of any note secured by a lien on the Property;
 - (6) accept, in trust, any earnest money, option fee, security deposit, or other money related to the purchase or lease of the Property and deliver such money for deposit in accordance with a contract for the sale or lease of the Property;
 - (7) disclose the sales price and terms of a sale or a lease to other brokers, appraisers, other real estate professionals, and any listing services into which information about the Property is placed;
 - (8) place information about this Listing and a transaction for the Property on an electronic platform (an electronic platform is typically an Internet-based system where professionals related to the transaction, such as title companies and lenders, may receive, view, and input information); and
 - (9) advertise that Broker "sold" or "leased" the Property after the closing of a sale or execution of a lease of the Property in which Broker was involved.

NOTICE: Any submission of information to a listing service must be made in accordance with listing service's rules.

- C. Broker is not authorized to execute any document in the name of or on behalf of Seller concerning the Property.
- D. Photographs, videos, and compilations of information submitted to a listing service are the property of the listing service for all purposes.

12. REPRESENTATIONS:

- A. Except as provided otherwise in this Listing, Seller represents that:
 - (1) Seller has fee simple title to and peaceable possession of the Property and all its improvements and fixtures thereon, unless rented, and the legal capacity to convey the Property;
 - (2) Seller is not bound by a listing agreement with another broker for the sale, exchange, or lease of the Property that is or will be in effect during this Listing;
 - (3) no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;
 - (4) there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property;
 - (5) the Property is not subject to the jurisdiction of any court;
 - (6) Seller owns sufficient intellectual property rights in any materials which Seller provides to Broker related to the Property (for example, brochures, photographs, drawings, or articles) to permit Broker to reproduce and distribute such materials for the purposes of marketing the Property or for other purposes related to this agreement; and
 - (7) all information relating to the Property Seller provides to Broker is true and correct to the best of Seller's knowledge.
- B. Seller and Broker must disclose any known material defect in the Property to a prospective buyer. *(Check only one box.)*
 - ☐ (1) Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TXR-1408). Seller authorizes Broker to furnish prospective buyers and other brokers with a copy of the Commercial Property Condition Statement (TXR-1408).

- ☒ (2) Except as otherwise provided in this Listing, Seller is not aware of:
- (a) any subsurface: structures, pits, wastes, springs, or improvements;
 - (b) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (c) any environmental hazards or conditions that materially affect the Property;
 - (d) whether the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (e) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants) or other pollutants or contaminants of any nature now exist or have ever existed on the Property;
 - (f) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (g) any threatened or endangered species or their habitat on the Property;
 - (h) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (i) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (j) any material physical defects in the improvements on the Property; or
 - (k) any condition on the Property that violates any law or ordinance.

(List any exceptions to (a)-(k) in Special Provisions or an addendum.)

13. SELLER'S ADDITIONAL PROMISES: Seller agrees to:

- A. cooperate with Broker to facilitate the showing and marketing of the Property;
- B. not negotiate with any prospective buyer who may contact Seller directly, but refer all prospective buyers to Broker;
- C. not enter into a listing agreement with another Broker for the sale or exchange of the Property to become effective during this Listing;
- D. not enter into a listing agreement for the lease of all or part of the Property with another broker to become effective during this Listing without Broker's written permission;
- E. provide Broker with copies of the following, if any, relating to the Property: a current rent roll, all leases including any amendments, architectural plans and drawings, renderings, survey, a current operating statement, environmental inspection reports, engineering reports, and other relevant information that Broker may request during this Listing;
- F. advise Broker of any tenants moving in or out of the Property;
- G. complete any disclosures or notices required by law or a contract to sell the Property;
- H. amend any applicable notices and disclosures if any material change occurs during this Listing; and
- I. at Seller's expense, remove from the Property all:
 - (1) "For Sale" (or similarly worded) signs other than Broker's signs;
 - (2) "For Lease" (or similarly worded) signs from the Property unless the Property is listed for lease with another broker; and
 - (3) "For Information" (or similarly worded) signs other than Broker's signs.

14. LIMITATION OF LIABILITY:

- A. If the Property is or becomes vacant during this Listing, Seller must notify Seller's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.
- B. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker, including but not limited to injuries or losses caused by:
 - (1) other brokers, inspectors, appraisers, lenders, contractors, surveyors, engineers, and other persons who are authorized to access the Property;
 - (2) acts of third parties (for example, vandalism or theft);
 - (3) freezing or broken water pipes;
 - (4) a dangerous condition on the Property; and
 - (5) the Property's non-compliance with any law or ordinance.

C. Seller agrees to indemnify and hold Broker and Broker's associates harmless from any damages, costs, attorney's fees, and expenses:

- (1) that arise from Seller's failure to disclose any material information about the Property;
- (2) that are caused by Seller giving incorrect information to Broker, other brokers, or prospects;
- (3) that arise from any claim for misuse of intellectual property in any materials or information that Seller provided to Broker related to the Property or this agreement; or
- (4) that are otherwise caused by Seller or Seller's negligence.

15. SPECIAL PROVISIONS:

16. DEFAULT: If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount of Broker's fee specified in Paragraph 5A and any other fees Broker is entitled to receive under this Listing. If a sales price is not determinable in the event of any exchange or breach of this Listing, the Listing Price will be the sales price for the purpose of calculating Broker's fee. If Broker breaches this Listing, Broker is in default and Seller may exercise any remedy at law.

17. MEDIATION: The parties agree to negotiate in good faith in an effort to resolve any dispute that may arise between the parties. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the costs of mediation equally.

18. ATTORNEY'S FEES: If Seller or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party may recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

19. ADDENDA: Addenda or information that are part of this Listing are:

- ☒ A. Information About Brokerage Services (TXR-2501)
- ☐ B. Property Description Exhibit identified in Paragraph 2
- ☐ C. Condominium Addendum to Listing (TXR-1401)
- ☐ D. Commercial Property Condition Statement (TXR-1408)
- ☐ E. Information About On-Site Sewer Facility(TXR-1407)
- ☐ F. Information about Special Flood Hazard Areas (TXR-1414)
- ☒ G. **Lead Based Paint Addendum**

20. AGREEMENT OF THE PARTIES:

- A. Entire Agreement: This Listing is the entire agreement of the parties and may not be changed except by written agreement.
- B. Assignability: Neither party may assign this Listing without the written consent of the other party.
- C. Binding Effect: Seller's obligations to pay Broker an earned fee is binding upon Seller and Seller's heirs, administrators, executors, successors, and permitted assigns.
- D. Joint and Several: All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.
- E. Governing Law: Texas law governs the interpretation, validity, performance, and enforcement of this Listing.

- F. **Severability:** If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.
- G. **Partial Sales or Leases:** If Seller sells or leases part of the Property before the date this Listing ends, this Listing will continue for the remaining part of the Property through the term of this Listing.
- H. **Notices:** Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail specified in Paragraph 1.

21. ADDITIONAL NOTICES:

- A. **Broker's fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested, or maintained by Texas REALTORS®, its local affiliates, or any listing service. Broker's fees are negotiable.**
- B. **The Property must be shown and made available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances and the National Association of REALTORS® Code of Ethics may provide for additional protected classes (e.g., creed, status as a student, marital status, sexual orientation, or age).**
- C. **If the Property contains a residential dwelling built before 1978, federal law requires the Seller to: (1) provide the buyer with the promulgated lead hazard information pamphlet (TXR-2511); and (2) disclose the presence of any known lead-based paint or lead-based paint hazards.**
- D. **Broker cannot give legal advice. This is a legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**

Seller: Gonzales Economic Development Corp.

Broker:

Broker / Company Name: Phyllis Browning Company

By: Gonzales Economic Development Corp.

License No. 400203

By (signature): _____

By (signature): _____

Printed Name: Andy Rodriguez

Printed Name: Lisa D. Grove

Title: President Date: _____

Title: Listing Agent License No. 444720

Date: _____

By: _____

By (signature): _____

Printed Name: _____

Title: _____ Date: _____