

advance by the City in writing for acquisition (in the City's sole and absolute discretion) regardless of whether or not the property is initially identified by NTXUS or the City ("Approved Property").

1.3. **Contract for Properties.** Once approved by City, NTXUS shall diligently pursue negotiation and execution of a purchase contract for an Approved Property with NTXUS, or its designated entity, as purchaser pursuant to a standard Texas Real Estate Commission form agreement; provided, however, other forms of purchase agreements may be used if reviewed and approved by the City Attorney in advance. No contract for an Approved Property shall be for a purchase price exceeding the purchase price approved by City, as applicable, in writing.

1.4. **Approval.** Approval for the purchase of a property may be granted by the City Administrator, or authorized designee of the City from time to time in writing, subject to City Council approval.

1.5. **Funding.** City agrees to provide funds to the title company at closing to fund the purchase price and all of purchaser's closing costs relating to the purchase of each Approved Property (the "Purchase Funds"). Upon delivery of the Purchase Funds to the title company, NTXUS, and/or its acquisition entity, shall become irrevocably obligated to convey to the City indefeasible fee simple title to the Approved Property not later than ten (10) business days after completion of the demolition and/or remediation of the Approved Property, as applicable, by special warranty deed, free and clean of all liens and encumbrances, but subject to all existing easements and prior conveyances of oil, gas and other minerals appearing of record in the real property records of Dallas County, Texas.

1.6. **Contracts Entered by NTXUS Pending Designation of Approved Property.** NTXUS understands, acknowledges, and agrees that NTXUS acts at its sole risk if NTXUS enters a purchase contract for a property which is proposed to be an Approved Property, but which has not been designated by the City as an Approved Property in accordance with Section 1.2 herein. The City shall be under no obligation to provide Purchase Funds for a property which has not been designated by the City as an Approved Property in accordance with Section 1.2 herein.

17. **Current Year Property Taxes.** City shall be responsible for the payment of real property taxes due for the current year in which an Approved Property is purchased, including, but not limited to, the period of time between closing on the purchase of the Approved Property by NTXUS and conveyance of the Approved Property to the City.

Article II Compensation

2.1. **Sales Commission.** For the services provided pursuant to this Agreement, NTXUS (or its designated broker affiliate) shall receive at closing on the purchase of an Approved Property either (a) if the Approved Property was listed and being offered for sale prior to entering the purchase contract, the stated/offered commission rate for the Approved Property; or (b) four percent (4%) of the purchase price for Approved Properties that were not listed for sale ("Sales Commission"). NTXUS shall attempt to negotiate each contract for purchase of an Approved Property such that seller is responsible for payment of the Sales Commissions from seller's

proceeds. However, if NTXUS is unsuccessful in such endeavor, NTXUS shall advise the City Administrator, or designee, prior to signing the contract to purchase the Property, in which case, the City agrees to pay the Sales Commission to NTXUS (or its designated broker affiliate) if the City Administrator, or designee, fails to reject the contract provision.

2.2. **Expenses.** City agrees to reimburse NTXUS for its reasonable and necessary actual out of pocket expenses incurred in pursuit of an Approved Property not later than thirty (30) calendar days following written request therefor; provided said expense reimbursement request is accompanied by reasonably detailed substantiation of such expenses or such other documentation as deemed necessary in the City's sole and absolute discretion.

Article III Term; Exclusive Agreement

3.1 **Term.** This Agreement shall become effective on Effective Date and shall continue until such time that either Party gives at least thirty (30) calendar days prior written notice to the other Party of the date this Agreement shall terminate.

3.2 **Exclusive Agreement.** City agrees that it shall not hereafter enter into an agreement with any third party to provide to the City the same or substantially similar services provided by NTXUS pursuant to this Agreement.

Article IV Devotion of Time; Personnel; and Equipment

4.1 NTXUS shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should City require additional services not included under this Agreement, NTXUS shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the City as applicable; and without decreasing the effectiveness of the performance of services required under this Agreement.

4.2 NTXUS shall furnish, at its sole cost and expense, any and all facilities, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement, unless otherwise provided herein.

Article V Miscellaneous

5.1 **Entire Agreement.** This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

5.2 **Assignment.** NTXUS may not assign this Agreement in whole or in part without the prior written consent of the City. In the event of an assignment by NTXUS to which the City

have consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

5.3 **Successors and Assigns.** Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

5.4 **Governing Law; Venue.** The laws of the State of Texas shall govern this Agreement; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.5 **Amendments.** This Agreement may be amended by the mutual written agreement of the Parties.

5.6 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

5.7 **Independent Contractor.** It is understood and agreed by and between the Parties that NTXUS, in satisfying the conditions of this Agreement, is acting independently, as an independent contractor for all purposes, and that the City does not assume any responsibility or liabilities to any third party in connection with these actions. All services to be performed by NTXUS pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. NTXUS shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

5.8 **Notice.** Any notice required or permitted to be delivered hereunder may be sent by electronic mail, first class mail, overnight courier, or by confirmed telefax or facsimile to the address specified below, or to such other Parties or addresses as a Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City, to:

City of Hutchins, Texas
Attn: James W. Quin
City Administrator
321 North Main Street
P. O Box 500
Hutchins, Texas 75141
Phone: (972) 225-6121
j.quin@cityofhutchins.com

With a copy to:

Joseph J. Gorfida, Jr.
Nichols | Jackson
500 North Akard
1800 Ross Tower
Dallas, Texas 75201
Phone: (214) 965-9900
jgorfida@njdhs.com

If intended for NTXUS:

North Texas Urban Services
Attn: Stephen Paz, Principal
7400 Gaylord Parkway
Frisco, Texas 75034
stevep@ntxus.com

5.9 **Counterparts.** This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

5.10 **Insurance.** NTXUS shall during the entire term hereof maintain in full force and affect a policy of automobile liability insurance covering any vehicles owned and/or operated by NTXUS, its officers, agents, and employees, and used in the performance of this Agreement.

5.11 **INDEMNIFICATION AND HOLD HARMLESS.** TO THE FULLEST EXTENT PROVIDED BY LAW, NTXUS HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, DIRECTORS, AGENTS, REPRESENTATIVES, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE “INDEMNIFIED PARTY”) FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, LIENS, INJURIES, DAMAGES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES) TO THE EXTENT ARISING FROM NTXUS’ NEGLIGENCE IN THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THIS INDEMNIFICATION SHALL NOT EXTEND TO ANY LIABILITY, CLAIM, LIEN, INJURY, DAMAGE, COST AND EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES) ARISING FROM OR IN ANY MANNER CONNECTED WITH ANY WILLFUL ACT OR OMISSION OF THE INDEMNIFIED PARTY. THIS INDEMNIFICATION OBLIGATION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

5.12 **Dispute Resolution; Legal Expenses.** In the event a dispute arises between the Parties to this Agreement, it is hereby agreed that the Parties shall endeavor to resolve such dispute via mediation before resorting to litigation in a court of competent jurisdiction. In the event that legal action is taken by either Party to enforce any rights or remedies under this Agreement, it is hereby agreed that the successful or prevailing Party shall be entitled to receive any costs, disbursements, and reasonable and necessary attorneys’ fees.

5.13 **Default; Remedies.** Failure of either Party to timely comply with or perform any term, obligation, covenant, or condition contained in this Agreement shall be an event of default. Upon the occurrence of an event of default hereunder, the non-defaulting parties shall give written notice to the other parties of any default, and the defaulting party shall have thirty (30) calendar days to completely and adequately cure said default. Should said default remain uncured, the non-

defaulting parties shall have the rights and remedies as specified under this Agreement and applicable law, the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event of default, and all of such rights and remedies (both at law or in equity) shall be considered cumulative.

5.14 **Waiver**. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of any Party’s right to subsequently enforce and compel strict compliance with every provision of this Agreement.

5.15 **Acknowledgement**. The Parties represent and warrant that they fully and completely understand the terms and conditions of this Agreement, and, with this full and complete understanding, voluntarily enter into this Agreement as evidenced by signing and executing it below. The Parties also represent and warrant that they are legally competent to execute this Agreement and that they do so voluntarily and of their own free will and accord without reliance on any representations of any kind or character not expressly set forth herein.

5.16 **Drafting Provisions; Interpretation**. This Agreement shall be deemed to have been drafted equally by each Party hereto. The language of all parts of this Agreement shall be constructed as a whole according to its fair and common meaning and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are inserted for the conveniences of the Parties only and, accordingly, are not intended to be used in construing this Agreement.

5.17 **Binding Authority**. The Parties warrants and represents that the individual executing this Agreement on each Party’s behalf has full authority to execute this Agreement and bind it to the same.

EXECUTED this _____ day of _____, 2024.

City of Hutchins, Texas

By: _____
James W. Quin, City Administrator

Approved as to form:

By: _____
Joseph J. Gorfida, Jr., City Attorney
(07-11-2024: 4860-1837-2815)

EXECUTED this _____ day of _____, 2024.

North Texas Urban Services

By: _____
Stephen Paz, Broker & Principal

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