

**AGREEMENT WITH THE CITY OF WOLFFORTH, TEXAS AND CITY BANK TRUST
DEPARTMENT AS DIRECTED CUSTODIAN OF RICK BETENBOUGH IRA.**

This Agreement ("Agreement") is entered into by and between the CITY OF WOLFFORTH of Lubbock County, Texas (hereinafter "CITY"), and CITY BANK TRUST DEPARTMENT AS DIRECTED CUSTODIAN OF INDIVIDUAL RETIREMENT ACCOUNT of RICK BETENBOUGH (hereinafter "IRA").

WITNESSETH:

WHEREAS, Wolfforth Code of Ordinances provides specifications regarding the construction of roads within the City limits;

WHEREAS, IRA is required to pave the eastern half of Alcove Avenue (the "Road") in accordance with the specification set forth in the Wolfforth Code of Ordinances (the "Road Construction") (Exhibit A) as part of the West Business Park development which is in the City of Lubbock;

WHEREAS, the City of Wolfforth City Council approved the plat for the West Business District on June 21, 2021;

WHEREAS, Lubbock County is currently in the process of initiating improvements as a part of a bond package which will include the Road Construction;

WHEREAS, it is expected Lubbock County will complete the improvements which include the Road Construction within the next five years;

WHEREAS, if the Road Construction was made prior to the improvements by Lubbock County, the Road Construction would likely have to be removed when Lubbock County completed its improvements;

WHEREAS, IRA desires to postpone the required Road Construction to determine if Lubbock County will complete the Road Construction in the course of its improvements to the Road;

WHEREAS, IRA agrees to segregate a portion of its assets equal to the construction cost for the Road Construction plus 10% in a certificate of deposit (CD) to be used to complete the Road Construction in the event Lubbock County does not complete improvements to the Road within seven years; and

WHEREAS, the CITY agrees to allow IRA to postpone the required Road Construction in consideration for the agreement of IRA to segregate IRA assets in the CD and to complete the Road Construction if Lubbock County does not complete the improvements to the Road .

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, CITY and IRA hereby agree as follows:

I. REPRESENTATIONS

1.1 Within ninety (90) days of the Effective Date of this Agreement, IRA will segregate a portion of its assets equal to the cost of Road Construction plus 10% to account for increased costs and invest such amount in a CD. IRA will maintain control and custody of the CD and will be entitled to any interest earned by the CD.

1.2 IRA acknowledges its responsibility to complete the Road Construction and nothing in this Agreement absolves IRA of such responsibility if Lubbock County does not complete improvements to the Road within eight (8) years of the execution of this Agreement. If IRA completes the Road Construction, IRA is responsible for the full cost of the Road Construction even if such cost is greater than the CD.

1.3 IRA acknowledges its responsibility to obtain a maintenance bond as set forth in the Wolfforth Code of Ordinances if it completes the Road Construction.

1.4 In the event Lubbock County does not start the improvements to the Road within seven (7) years after the execution of this Agreement, IRA will complete the Road Construction in accordance with the Wolfforth Code of Ordinances in place at such time.

1.5 In the event neither IRA nor Lubbock County has started improvements to the Road within eight (8) years after the execution of this Agreement, IRA will pay to City the full amount of the CD plus any amount necessary to cover the cost of the Road Construction if such costs are greater than the amount of the CD.

1.6 CITY will not require IRA to begin and complete the required Road Construction until the dates set forth in this Agreement.

1.7 With the execution of this Agreement, the City acknowledges that IRA has complied with all City requirements necessary to proceed with the development of West Business Park.

1.8 If IRA completes the Road Construction, CITY will accept maintenance of the Road in accordance with the Wolfforth Code of Ordinances in place at the time of the completion.

II. DEFAULT

2.1 If IRA fails to commence Road Construction, fails to complete Road Construction of the Road, or fails to perform any other obligation in accordance with the terms of this Agreement, CITY shall promptly send IRA notice of IRA's failure, and IRA shall have thirty (30) calendar days to take adequate steps to cure such failure. If IRA does not take adequate steps to cure its failure within thirty (30) calendar days, the CITY may immediately require Road Construction.

III. INDEMNIFICATION

3.1 IRA covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS, CITY and its elected officials, employees, officers, directors, and representatives of CITY, individually or collectively, from and against any costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal injury or death and property damage, made**

upon CITY; provided, however, that IRA's indemnification of the CITY and its elected officials, employees, officers, directors, and representatives of CITY shall be limited to those costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, which arise directly or indirectly out of, resulting from or related to IRA's negligence, willful misconduct or criminal conduct in its activities under this Agreement, including any such acts or omissions of IRA, any agent, officer, director, representative, employee, consultant or subconsultants of IRA, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without, however, waiving any government immunity available to CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The provisions of this INDEMNIFICATION shall not apply to any costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, relating to the Public Improvements after the Public Improvements have been dedicated. IRA shall promptly advise CITY in writing of any claim or demand against CITY and/or IRA known to IRA related to or arising out of IRA's activities under this Agreement and shall see to the investigation and defense of such claim or demand at IRA's cost to the extent required under the indemnity in this Section. CITY shall have the right, at its option and at their its expenses, to participate in such defense without relieving IRA of any of its obligations under this paragraph.

IV. NON-WAIVER

4.1 Any provisions for this Agreement may be waived if done in writing and is signed by CITY, with approval by its City Council, and by the authorized custodian of the IRA on behalf of the IRA.

V. ENTIRE AGREEMENT

5.1 This written Agreement embodies the final and entire agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

5.2 The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except if there is a conflict between an exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the exhibit.

VI. CHANGES AND AMENDMENTS

6.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by CITY and by the authorized custodian of the IRA on behalf of the IRA and approved by the City Council.

6.2 The custodian of the IRA may not sell or transfer its rights and obligations under this Agreement without written approval and consent of the CITY. Any transfer or assignment to which there has been consent shall be by instrument in writing in form reasonably satisfactory to the CITY and shall be executed by the transferee or assignee who shall agree in writing for the benefit of the CITY to be bound by and to perform the terms, covenants and conditions of this Agreement. Failure to first obtain, in writing, the CITY's consent or failure to comply with the provisions herein contained shall operate to prevent any such transfer or assignment from becoming effective. In the event the CITY approves the assignment or transfer of this Agreement, the IRA shall be released from such duties and obligations.

VII. SEVERABILITY

7.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Code, or ordinances of the City of Wolfforth, Texas, then and in such event it is the intention of the parties hereto such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement which is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provisions as may be possible, legal, valid and enforceable.

VIII. VENUE, GOVERNING LAW AND ATTORNEY'S FEES

8.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

8.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Lubbock County, Texas.

8.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

IX. NOTICE

9.1 Any notice sent under this Agreement (except as otherwise expressly required) must be written and mailed with sufficient postage, sent by certified mail, return receipt requested, or delivered personally to an officer of the receiving party at the following addresses:

CITY

City Secretary

City of Wolfforth
P.O. Box 36
Wolfforth, Texas 79382

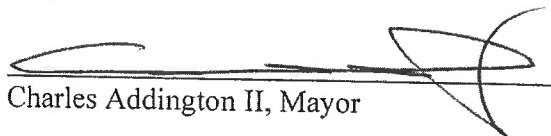
IRA
Rob Dean, Trust Officer
City Bank Trust Department
P.O. Box 5060
Lubbock, Texas 79408

9.2 Each party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile transmission shall be deemed delivered when receipt of such transmission is acknowledged. Any communication so delivered in person shall be deemed received when receipted for by or actually received by an officer of the party to whom the communication is properly addressed.

X. EFFECTIVE DATE


10.1 This Agreement shall become effective on the date it is executed by the final party to this Agreement to execute this Agreement.

CITY OF WOLFFORTH


Charles Addington II, Mayor

8.2.2021
Date

IRA


Rob Dean, Trust officer of City Bank
Directed Custodian of the Individual Retirement
Account of Rick Betenbough

8.2.21
Date

EXHIBIT A

20th Street Proposed Design

