



**NOTICE OF REGULAR MEETING AND AGENDA**  
**Nacogdoches City Council**  
**5:30 p.m., Tuesday, November 20, 2012**  
**City Council Room – City Hall - 202 E. Pilar Street**

PLEASE LIMIT PRESENTATIONS TO THREE MINUTES  
(UNLESS PRIOR APPROVAL IS OBTAINED)

1. Call to order.
2. Invocation.
3. **PRESENTATIONS AND RECOGNITIONS:**
4. Items to be removed from Consent Agenda.
5. **CONSENT AGENDA:** Items included under the Consent Agenda require little or no deliberation by the Council. Approval of the Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
  - A. Consider approval of minutes from regular session of November 6, 2012. (City Secretary)
  - B. Consider approval of the Historic Restoration Grant budget for FY 2012-2013. (Community Services)
  - C. Consider budget amendment for FY 2012-2013 for replacement of air conditioning unit at airport. (Finance Director)

**REGULAR AGENDA:**

6. **PUBLIC HEARING:** Consider the request for a zoning change from A, Agricultural to I-1, Light Industrial for all parcels contained within the A..L. Mangham, Jr. Regional Airport, located on FM 225. This is a City-initiated request. A more detailed property description may be obtained by contacting the Nacogdoches City Planner. ZON2012-06 (City Planner)
7. Consider renaming the area which encompasses 505 S. Fredonia, 507 S. Pecan and 102 Cox Street, known as "Festival Plaza" to "Festival Park"; and adopting an ordinance amending Chapter 74 "Parks and Recreation", Article III "Regulations" making the name change. (Main Street Manager)
8. Consider approving contract between public library and Overdrive, an electronic books vendor for libraries. (Library Director)
9. Adjourn.

  
Lila Fuller, City Secretary



This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact the Attorney General of Texas at 1-800-252-8011; the City Secretary at 936/559-2504 or visit the City of Nacogdoches web site at [www.ci.nacogdoches.tx.us](http://www.ci.nacogdoches.tx.us).

The Nacogdoches City Council Chambers are wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (936) 559-2504 or FAX (936) 559-2912 for further information.

**CERTIFICATION**

I certify that the above notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on Friday, November 16, 2012 at 5:00 p.m.

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Lila Fuller, City Secretary

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the directory outside of City Hall on the \_\_\_\_\_day of November 2012.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

ITEM NO. 5-A

## **CITY OF NACOGDOCHES AGENDA INFORMATION SHEET:**

**PROJECT:**                   **CONSENT AGENDA:** Consider approval of minutes from regular session of November 6, 2012.

**MEETING DATE:**       **November 20, 2012**

**CITY CONTACT:**       **Lila Fuller, City Secretary - 559-2504**

**ATTACHMENTS:**       **Minutes**

**MINUTES**  
**Regular Session**  
**Nacogdoches City Council**  
**November 6, 2012 – 5:30 p.m.**  
City Council Room – City Hall  
202 E. Pilar Street

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**Regular Session:**

**Those Present:**

Mayor Roger Van Horn; Council members Shelley Brophy, Roy Boldon, Bob Dunn and David Norton; City Manager Jim Jeffers, City Attorney Rob Atherton and City Secretary Lila Fuller.

**Call to Order.**

Mayor Van Horn at 5:30 p.m. A quorum was established.

**2. Invocation.**

Council member Boldon gave the invocation.

**3. Presentations and Recognitions.**

Mayor Van Horn recognized Boy Scout Troop 100 who was in attendance and who led the Pledge of Allegiance.

**4. Items to be removed from the Consent Agenda.**

None.

**5. CONSENT AGENDA:** Items included under the Consent Agenda require little or no deliberation by the Council. Approval of the Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.

**A. Consider approval of minutes from regular session of October 16, 2012.**

*Approved as submitted.*

Council member Dunn moved to accept the consent agenda as presented. The motion was seconded by Council member Norton and unanimously passed.

**REGULAR AGENDA:**

**6. PUBLIC HEARING:** Consider the request for a Zone Change from R-2 single family residential to B-2 General Business for Lot 1, Hunter Russell Subdivision, City Block 42 located at 1202 Douglass Road. This request has been submitted by Army Curtis. ZON2012-05.

Larissa Philpot, city planner stated the applicant was requesting this property be rezoned to make improvements to the property. She stated the zone change would make the entire lot business to match what is on the street frontage.

Mayor Van Horn opened the public hearing.

Army Curtis appeared and stated he desired to make improvements to the property for a potential light manufacturing business that was interested in the property.

There being no one else present desiring to be heard, Mayor Van Horn closed the public hearing.

Minutes unofficial until approved by City Council

Council member Norton moved to approve the zone change from R-2 to B-2 for Lot 1, Hunter Russell Subdivision, City Block 42 located at 1202 Douglass Road as requested. The motion was seconded by Council member Boldon and unanimously passed. (Ordinance No. 1610-11-12)

**7. PUBLIC HEARING: Consider the request for a Specific Use Permit to locate a light manufacturing/assembly operation on Lot 1, Hunter Russell Subdivision, City Block 42 located at 1202 Douglass Road. This request has been submitted by Army Curtis. SUP2012-01.**

Larissa Philpot, city planner stated the specific use permit would allow the applicant to have a fabrication business on the property.

Mayor Van Horn opened the public hearing.

Army Curtis, property owner, had explained that a company was interested in locating on the property that would have a metal fabrication operation of oil/gas drill bits.

There being no one present desiring to be heard, Mayor Van Horn closed the public hearing.

Council member Dunn moved to approve a specific use permit to allow a light manufacturing/assembly operation on Lot 1, Hunter Russell Subdivision, city Block 42 located at 1202 Douglass Road as requested. The motion was seconded by Council member Norton and unanimously passed.

**8. Consider budget amendment for FY 2013 for the Nacogdoches Convention and Visitors Bureau.**

Melissa Sanford, executive director of the Nacogdoches Convention and Visitors Bureau appeared and stated due to cost saving measures by her staff, they had \$197,950 in surplus funds from the FY 2011-12 budget. She stated they would like to apply those funds to the FY 2012-13 budget and reviewed the line items that they would like to spend on as follows:

Transfer to Reserves	\$ 25,000
Festival Plaza Restroom Facilities	\$ 75,000
Wayfinding Signage Project	\$ 25,000
Civic Center Expenditures	\$ 50,000
Key Pad Lock/back door	\$ 650
Special Events Trailer	\$ 3,300
Volunteer Shirts	\$ 600
Extra Security Cameras	\$ 1,500
Website Redesign/Refresh	\$ 15,000
Plaza Principal Plantings	\$ 1,900
<b>Total Budget Expenditures</b>	<b>\$197,950</b>

Council member Boldon questioned the use of funds for Civic Center expenditures.

Jim Elder, county commissioner, appeared and stated the County had requested the CVB participate in funding for furnishings to get the Civic Center ready for events, which would bring tourism into Nacogdoches.

City Attorney Atherton was asked to comment on the legality of expenditures of hotel occupancy tax funds. Atherton stated because the primary use of the building was as a civic center, hotel occupancy tax funds were allowable to help furnish the building.

Susan Reents, owner of Hotel Fredonia, appeared and questioned the use of the civic center building, as it was constructed as an emergency shelter and received grant funds as such. Ms. Reents questioned the legality of the use of funds, as it was constructed with the purpose of sheltering in an emergency event.

Jim Elder again appeared and stated that the construction of the building was funded through the Office of Rural and Community Affairs to be used for economic development. He stated the building was constructed for use as an emergency shelter

during an event, but was never intended to not be utilized during other times. He stated any use that brings tourism to Nacogdoches benefits all of Nacogdoches, and meets the economic development definition.

After considerable discussion on the intended use and primary use of the civic center building, Council member Brophy moved to approve the expenditures of surplus funds by the Convention and Visitors Bureau as requested, acknowledging that the Festival Plaza restroom facilities would not be paid from hotel tax funds. Mayor Van Horn seconded the motion for discussion.

Council member Boldon voiced concern with the legality of funding the civic center with hotel tax funds.

City Attorney Atherton referred to a Texas Attorney General opinion that stated the primary use of a building the majority of the time determined the definition rather than the name on the building. Atherton stated he is satisfied that the primary use of the Nacogdoches County Civic Center is as a civic center and would be the deciding factor for expenditures of hotel occupancy tax funding.

Mayor Van Horn called for a vote and the motion passed as follows:

AYES: Mayor Van Horn, Council member Brophy, Dunn and Norton

NAYES: Council member Boldon

**9. Consider budget amendment appropriating \$25,000 for an Energy Manager and authorization for City Manager to enter contract for energy manager services.**

City Manager Jeffers stated Reggie Hudson, who serves as the Nacogdoches ISD energy manager, was specifically trained in energy management and the city would like to contract with Mr. Hudson to review the City's energy policies and behaviors for energy cost savings. He expected the savings to be at least \$50,000 over the course of a year.

Jeffers stated Hudson's contract would be \$25,000 per year divided between the three major funds, and could be terminated at any point with 30 days written notice.

Council member Brophy moved to authorize a budget amendment appropriating \$25,000 for an energy manager and authorizing the city manager to enter into a contract for energy manager services. The motion was seconded by Council member Dunn and unanimously approved.

**10. Consider adoption of budget amendments for prior year carryover and current year adjustments to departmental expenditures.**

Jack Sparks, finance director, stated there were several projects budgeted in FY 2011-12 that were not completed by budget year end. The request was to make a budget amendment to add the unexpended funds to the FY 2012-13 budget.

Council member Brophy moved to authorize the budget amendment for prior year carryover and current year adjustments to departmental expenditures as requested. The motion was seconded by Council member Dunn and unanimously passed. (Ordinance No. 1612-11-12)

**11. Consider removal of the traffic signal located at the intersection of Hospital Street and Fredonia Street, replacing it with a 4-way stop sign configuration.**

City Engineer Steve Bartlett stated maintenance costs for this traffic signal were expected to increase significantly due to the age of the signal. He explained staff tested the intersection with a flashing red signal in both directions for the past month and received no complaints or accidents. He stated replacing this signal with a 4-way stop configuration would save the immediate repair costs and will reduce long-term maintenance efforts.

Council member Dunn moved to approve the removal of the traffic signal located at the intersection of Hospital Street and Fredonia Street, replacing it with a 4-way stop sign

configuration as presented. The motion was seconded by Council member Norton and unanimously passed.

**12. Adjourn.**

Mayor Van Horn adjourned the meeting at 6:38 p.m.

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Mayor Roger Van Horn  
City Council  
City of Nacogdoches

ATTEST:

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Lila Fuller, City Secretary

DRAFT

Minutes approved November 20, 2012.

**CITY OF NACOGDOCHES  
AGENDA INFORMATION SHEET:**

**PROJECT:** CONSENT AGENDA: Consider approval of the Historic Restoration Grant budget for FY 2012-2013

**MEETING DATE:** November 6, 2012

**DESCRIPTION:** The Historic Restoration Grant fund is used to aid in the preservation of historic structures located within the Historic Overlay. Since the program began in 1989 the city has awarded approximately \$625,000 in grant funds used to complete approximately \$3,005,000 worth of exterior restoration projects. For this grant cycle approximately \$9,794.09 in grants funds will help complete approximately \$33,994.42 in exterior renovations. The Historic Landmark Preservation Committee met on November 5, 2012 and recommended a budget that will match an average of 31% of each project. Each application was scored based on criteria such as National Historic Register Status, the structure's availability to the public, the age of the structure, and the current condition of the structure. The Historic Landmark Preservation Committee then used the grant scores to determine the attached budget.

**COST:** \$9,794.09

**BUDGET AMENDMENT REQUIRED?:** No

**FUNDING FROM CURRENT BUDGET**

FUNDING:	Acct. Name & No.	Balance	Requested
	<u>Hotel Motel Tax</u>	<u>\$40,034.53</u>	<u>\$9,794.09</u>

**SCHEDULE:** The grant funds will be disbursed upon completion of each project. Each of the approved applicants will have one year to complete their project.

**RECOMMENDED ACTION:** The Historic Landmark Preservation Committee recommends approval of the attached budget for the FY 2012-2013 Historic Restoration Grant funding.

**CITY CONTACT:** Brian W. Bray, Director of Community Services, 936-559-2935, [brayb@ci.nacogdoches.tx.us](mailto:brayb@ci.nacogdoches.tx.us)

**ATTACHMENTS:** Historic Restoration Grants FY 2012-2013 project list and budget.



## FY 2012-2013 HRG Proposed Budget

Case	Project Address	Applicant	Project Estimate	% Awarded	Amount Granted	Project Description
HRG 2013-001	902 Old Tyler Rd	Deborah & Fank Leonard	\$17,813.00	22.00%	\$ 3,918.86	Gutters, downspouts, underground pipe, wall reinforcement, doors, windows, roof
HRG 2013-002	422 E. Hospital	Earl Herrera & W. Scott Henderson	\$1,362.50	34.00%	\$ 463.25	Replace rotten wood and paint front porch
HRG 2013-003	702 W. Cox	Ben Oliver	\$850.00	20.00%	\$ 170.00	Repaint exteior of home (materials only)
HRG 2013-004	515 N. Mound St.	NISD/Federation of Womens' Clubs	\$5,256.52	50.00%	\$ 2,628.26	Install exterior post lighthing in courtyard
HRG 2013-005	613 Logansport	Earl & Deborah Hererra	\$8,712.40	30.00%	\$ 2,613.72	Replace rotten wood, re-roof and repaint carport
TOTAL			\$33,994		\$ 9,794.09	
AVERAGE				31%	\$ 1,958.82	

ITEM NO. 5-C

**CITY OF NACOGDOCHES  
AGENDA INFORMATION SHEET:**

**PROJECT:** CONSENT AGENDA: Consider adoption of Budget Amendment for replacement of air conditioning unit at airport.

**MEETING DATE:** November 20, 2012.

**DESCRIPTION:** The air conditioner at the airport went out and was not repairable. This budget amendment is for the replacement of the air condition unit which was not budgeted for in the FY 2013 Budget.

**COST:** None

**BUDGET AMENDMENT REQUIRED?:** Yes

<b>FUNDING:</b>	<b>Acct. Name &amp; No.</b>	<b>Original Budget</b>	<b>Requested</b>
	32-13-620.20	\$2,000.00	\$3,850.00
	Building Maintenance		

**SCHEDULE:**

**RECOMMENDED ACTION:** Approval of budget amendment

**CITY CONTACT:** Jack C. Sparks, Finance Director - 559-2533

**ATTACHMENTS:** Budget Amendment

AN ORDINANCE AMENDING ORDINANCE NO. 1606-9-12 APPROPRIATING VARIOUS AMOUNTS IN ACCORDANCE WITH BUDGET ADOPTED FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2012 AND ENDING SEPTEMBER 30, 2013.

WHEREAS, the City Council of the City of Nacogdoches, Texas has approved and adopted the budget for said city for the ensuing fiscal year beginning October 1, 2012 and ending September 30, 2013.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Nacogdoches that sums of money as herein set forth in said budget are hereby appropriated and amended for the payment of operating expenses and capital outlays of the city government of the City of Nacogdoches as follows:

<b>Fund</b>	<b>Dept.</b>	<b>Acct.</b>	<b>Description</b>	<b>Amt.</b>
32	13	620.00	Building Maintenance	\$3,850

PASSED AND APPROVED this the 20<sup>th</sup> day of November, 2012.

\_\_\_\_\_  
 Roger Van Horn, Mayor  
 City of Nacogdoches

ATTEST:

\_\_\_\_\_  
 Lila Fuller, City Secretary

Approved as to form: \_\_\_\_\_  
 Rob Atherton, City Attorney

Approved as to content: \_\_\_\_\_  
 Jack C. Sparks, Director of Finance

## CITY OF NACOGDOCHES AGENDA INFORMATION SHEET:

**PROJECT:** PUBLIC HEARING: Consider the request for a zoning change from A, Agricultural to I-1, Light Industrial for all parcels contained within the A.L. Mangham, Jr. Regional Airport, located on FM 225. This is a City initiated request. A more detailed property description may be obtained by contacting the Nacogdoches City Planner. ZON2012-06.

**MEETING DATE:** November 20, 2012

**DESCRIPTION:** Description of the Request  
Upon annexation into the City limits, all properties are initially zoned Agricultural. The A.L. Mangham, Jr. Regional Airport was annexed into the City in 2007. To ensure the airport property is fully compliant with the zoning ordinance, and to support economic development planning currently underway for the area, it is necessary to rezone the property to a commercial or industrial zoning classification. Staff has selected I-1 Light Industrial zoning for the area, because it offers the most versatility of the commercial and industrial zoning districts.

**COST:** N/A

**BUDGET AMENDMENT REQUIRED?:** No

FUNDING:	<u>FUNDING FROM CURRENT BUDGET</u>			
	Acct. Name & No.	Adopted Budget	Balance	Requested
	N/A			

**SCHEDULE:** The request is tentatively scheduled to be heard by the City Council on November 20, 2012. If the request for rezoning is approved, it will become effective 10 days after publication in the newspaper.

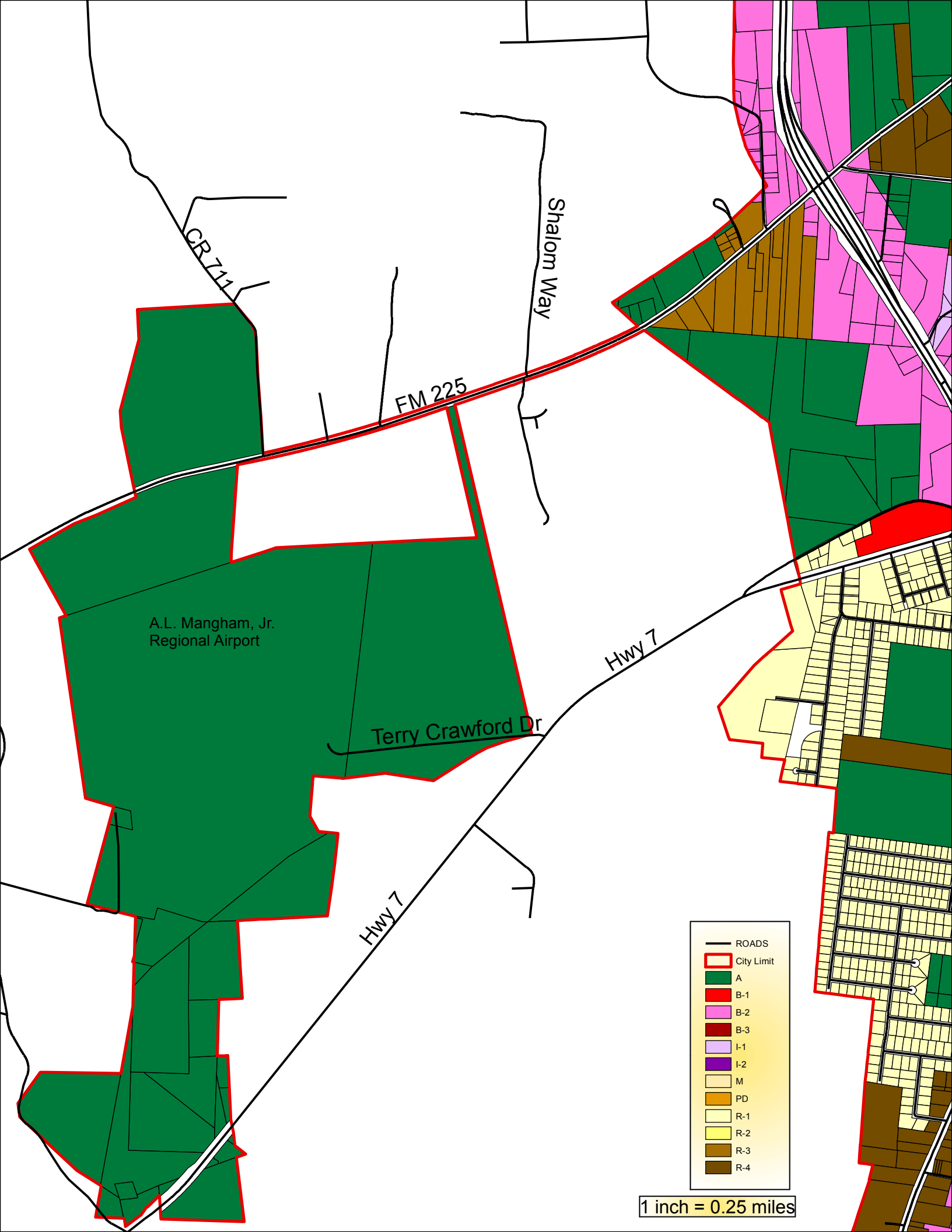
### RECOMMENDED

**ACTION:** Conditions for approval to be considered (staff comments are underlined):  
(1) Compatibility. The specific use will be compatible with and not injurious to the use and enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity. A large percentage of properties in the immediate vicinity are undeveloped. The use of the airport should not be injurious to the use and enjoyment of the other property in the immediate vicinity.

- (2) Orderly growth and development. The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property.  
The zoning change has been requested to support continued development of the airport and surrounding area. The approval of this zoning change will not impede the normal and orderly development and improvement of surrounding vacant property.
- (3) Supporting facilities. Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided.  
There are adequate supporting facilities. As the area develops, utilities will be extended per the City's utility extension policy. The area is accessed through two TxDOT roads: Hwy 7 and FM 225. Any new development inside the City limits must follow the City's drainage policy.
- (4) Drives and parking. The design, location and arrangement of all driveways and parking spaces provided for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments.  
Any development will have to meet the off street parking standards as required by the zoning ordinance.
- (5) Nuisances. Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration.  
City nuisance ordinances will apply. No odor, fumes, dust, noise, or vibration is expected as residential development is proposed.
- (6) Lighting. Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties.  
All lighting will have to meet the City's outdoor lighting ordinance.
- (7) Landscaping. Sufficient landscaping and screening to ensure harmony and compatibility with adjacent properties exists or will be provided.  
The City's landscaping ordinance requirements will apply.
- (8) Comprehensive plan. The proposed use is in accordance with the comprehensive plan.  
This property was outside the City Limits when the City's Comprehensive Plan was adopted, therefore no land use is suggested for this property.

CITY CONTACT: Larissa Philpot, City Planner; 559-2572, [philpotl@ci.nacogdoches.tx.us](mailto:philpotl@ci.nacogdoches.tx.us)

ATTACHMENTS: Current Zoning Map  
Aerial Photograph



A.L. Mangham, Jr.  
Regional Airport

Terry Crawford Dr

CR 711

FM 225

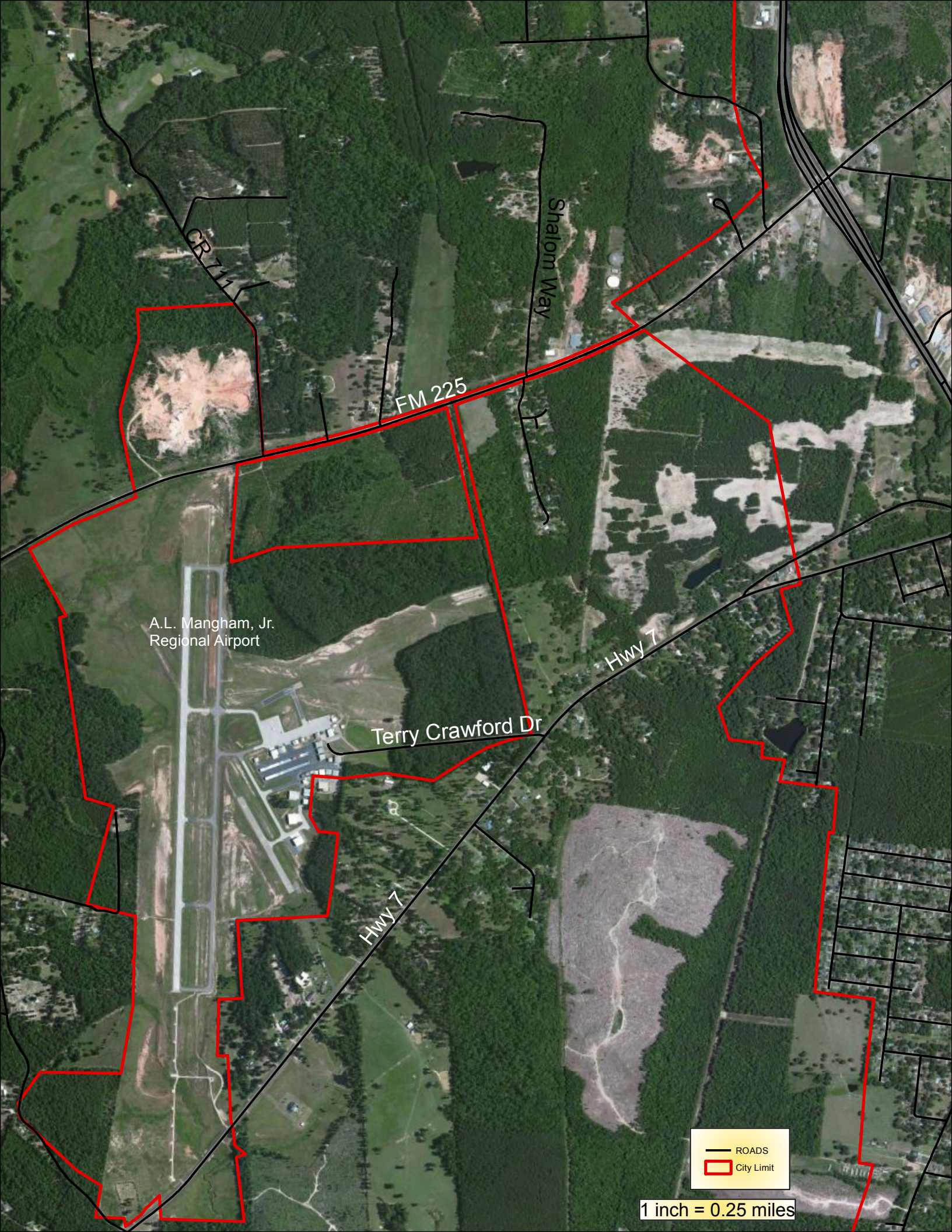
Shalom Way

Hwy 7

Hwy 7

- ROADS
- City Limit
- A
- B-1
- B-2
- B-3
- I-1
- I-2
- M
- PD
- R-1
- R-2
- R-3
- R-4

1 inch = 0.25 miles



CR 711

Shalom Way

FM 225

A.L. Mangham, Jr.  
Regional Airport

Terry Crawford Dr

Hwy 7

Hwy 7

— ROADS  
□ City Limit

1 inch = 0.25 miles

## CITY OF NACOGDOCHES AGENDA INFORMATION SHEET:

**PROJECT:** Consider renaming the area which encompasses 505 S. Fredonia, 507 S. Pecan, and 102 Cox Street, known as "Festival Plaza" to "Festival Park" and adopting an ordinance amending Chapter 74 "Parks and Recreation", Article III "Regulations" making the name change.

**MEETING DATE:** November 20, 2012

**DESCRIPTION:** A Plaza is defined as a public square or marketplace. The name "Plaza Principal" or the square reflects Nacogdoches' Spanish heritage. The naming of "Festival Plaza" was intended to honor that same heritage. Kiwanis Park also lies within the boundaries of the above mentioned area. Staff consistently deals with issues and confusion from the public concerning the proper name and location of said area. Historically the Main Street department has been responsible for renting out Festival Plaza, and the Parks Department rents out Kiwanis Park. With continued development of the area as an ideal site to host festivals and events, it is important that the location be effectively branded. Since the "Plaza" is not a plaza, but a park, staff is seeking approval to rename the entire area Festival Park.

**COST:** N/A

**BUDGET AMENDMENT REQUIRED:**

<b>FUNDING:</b>	<b>Acct. Name &amp; No.</b>	<b>Original Budget</b>	<b>Requested</b>
	N/A		

**CITY CONTACT:** Sarah E. O'Brien, Main Street Manager 936-559-2573  
[Obriens@ci.nacogdoches.tx.us](mailto:Obriens@ci.nacogdoches.tx.us)

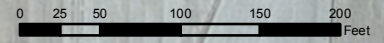
Brian W. Bray, Director of Community Services, 936-559-2935  
[brayb@ci.nacogdoches.tx.us](mailto:brayb@ci.nacogdoches.tx.us)

**ATTACHMENTS:** Map of Festival Park





1 inch = 120 feet



SOUTH ST

S PECAN ST

MONK ST

W COX ST

E COX ST

Festival Plaza

S FREDONIA ST

MAGNOLIA ST

Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

## Existing Ordinance

### Chapter 74. Parks and Recreation

#### Article III. Regulations

##### Section 74-62 – Consumption and possession of alcoholic beverages.

- (a) It shall be unlawful for any person to possess or consume alcoholic beverages within any City owned property, without the appropriate permissions:
- (b) Alcoholic beverages may be allowed in foregoing areas provided the appropriate application and deposit, and a reservation agreement is issued.
- (c) The following guidelines and procedures apply to alcoholic beverages in all areas listed in Section 74-62(a) above, except for the designated area of Festival Plaza:
  - a. Consumption of alcohol on these properties is permitted during special events that are approved by the City of Nacogdoches.
  - b. Applicant must submit an event application at least 10 days prior to the proposed event.
  - c. Alcoholic beverages must only be consumed in accordance with state law.
- (d) The following guidelines and procedures apply to alcoholic beverages in the designated area of Festival Plaza:
  - 1. Alcohol is allowed only during a festival or event that is approved by the City of Nacogdoches.
  - 2. Applicant must submit a festival/event permit application at least 90 days prior to the proposed festival that includes the following documentation:
    - a. A map depicting the following:
      - 1. The boundaries of the festival area;
      - 2. Locations of fencing and type of fencing material to be approved by the city manager;
      - 3. Locations of entrance and exit points; and
      - 4. Locations of alcohol sales.
    - b. Proof of required licenses, permits and paid fees mandated by state and local law for the sale of alcoholic beverages.
  - 3. Applicant must present the request to the city council for consideration.
  - 4. The sale and/or consumption of alcoholic beverages shall be limited to the area(s) indicated on the festival/event permit application.
  - 5. If the event is gated with controlled access:
    - a. Alcohol may be sold throughout the gated, controlled access area of Festival Plaza.
    - b. The gating and access control must be approved by the city manager.
  - 6. If the event is not gated with controlled access:

- a. Alcohol may only be sold in areas designated in the festival/event permit application.
- a. Each designated area shall be "double-fenced" of a material approved by the city manager with a four-foot space between fences for security personnel and minimum height of 48 inches.
- b. The designated area shall meet all applicable health and safety codes.
- c. The designated area shall have no more than one public entrance.
- 7. Peace officers licensed in the state must be on site throughout the event's operation and outside the perimeter to provide security. The city manager shall determine the number of officers required for the event. The event holders will pay for the service of the peace officers.
- 8. Alcoholic beverages may only be sold or consumed in accordance with state law.
- 9. No glass containers will be allowed in Festival Plaza.
- 10. The applicant will be responsible for the proper disposal of all trash on any property, public or private, which was utilized by the organizer during the event. Proper disposal of trash shall occur no later than 24 hours following the end of the event.

#### Proposed Ordinance

#### Chapter 74. Parks and Recreation

#### Article III. Regulations

#### Section 74-62 – Consumption and possession of alcoholic beverages.

- (a) It shall be unlawful for any person to possess or consume alcoholic beverages within any City owned property, without the appropriate permissions:
- (e) Alcoholic beverages may be allowed in foregoing areas provided the appropriate application and deposit, and a reservation agreement is issued.
- (f) The following guidelines and procedures apply to alcoholic beverages in all areas listed in Section 74-62(a) above, except for the designated area of Festival **PlazaPark**:
  - a. Consumption of alcohol on these properties is permitted during special events that are approved by the City of Nacogdoches.
  - b. Applicant must submit an event application at least 10 days prior to the proposed event.
  - c. Alcoholic beverages must only be consumed in accordance with state law.
- (g) The following guidelines and procedures apply to alcoholic beverages in the designated area of Festival **PlazaPark**:
  - 11. Alcohol is allowed only during a festival or event that is approved by the City of Nacogdoches.

12. Applicant must submit a festival/event permit application at least 90 days prior to the proposed festival that includes the following documentation:
  - a. A map depicting the following:
    1. The boundaries of the festival area;
    2. Locations of fencing and type of fencing material to be approved by the city manager;
    3. Locations of entrance and exit points; and
    4. Locations of alcohol sales.
  - b. Proof of required licenses, permits and paid fees mandated by state and local law for the sale of alcoholic beverages.
13. Applicant must present the request to the city council for consideration.
14. The sale and/or consumption of alcoholic beverages shall be limited to the area(s) indicated on the festival/event permit application.
15. If the event is gated with controlled access:
  - a. Alcohol may be sold throughout the gated, controlled access area of Festival PlazaPark.
  - b. The gating and access control must be approved by the city manager.
16. If the event is not gated with controlled access:
  - a. Alcohol may only be sold in areas designated in the festival/event permit application.
  - d. Each designated area shall be "double-fenced" of a material approved by the city manager with a four-foot space between fences for security personnel and minimum height of 48 inches.
  - e. The designated area shall meet all applicable health and safety codes.
  - f. The designated area shall have no more than one public entrance.
17. Peace officers licensed in the state must be on site throughout the event's operation and outside the perimeter to provide security. The city manager shall determine the number of officers required for the event. The event holders will pay for the service of the peace officers.
18. Alcoholic beverages may only be sold or consumed in accordance with state law.
19. No glass containers will be allowed in Festival PlazaPark.
20. The applicant will be responsible for the proper disposal of all trash on any property, public or private, which was utilized by the organizer during the event. Proper disposal of trash shall occur no later than 24 hours following the end of the event.

**CITY OF NACOGDOCHES  
AGENDA INFORMATION SHEET:**

**PROJECT:** Consider approving contract between public library and Overdrive, an electronic books vendor for libraries.

**MEETING DATE:** November 20, 2012

**DESCRIPTION:** Overdrive is a vendor of electronic books. The public library would be subscribing to the database of electronic books. Public library customers would be allowed access to the database for the purposes of downloading electronic books onto their electronic devices. There is no charge to the customer. The contract covers all licensing fees. The terms of the contract are for three years with an option to renew at the end of each year.

**COST:** \$8,000 for first year. \$10,000 for subsequent years, if renewed.

**BUDGET AMENDMENT REQUIRED:** No

**FUNDING:** Connie Moses Bequest- 24.21.630.72 \$ 24,512.50 remaining in account fund.

**SCHEDULE:** Upon approval, Overdrive will begin establishing the library database. Library customers should be able to access the database sometime in late December 2012

**RECOMMENDED ACTION:** Authorize the Library Director to enter into this contract.

**CITY CONTACT:** Mercedes Franks, Library Director, 559-2945, [franksm@ci.nacogdoches.tx.us](mailto:franksm@ci.nacogdoches.tx.us)

**ATTACHMENTS:** Terms and Conditions and Order Form.

# **OverDrive Digital Library Reserve Terms and Conditions for Judy B. McDonald Public Library (Nacogdoches, TX)**

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## **1. Digital Library Reserve Application Services**

1.1 OverDrive will create and host a Library Website for Library's use of the Application Services. OverDrive shall provide the Application Services to the Library under the terms of the Order Form and these Terms and Conditions (collectively referred to as the "Agreement").

1.2 OverDrive shall create an account in OverDrive's content selection platform, for Library to select Digital Content to make available at the Library Website to Authorized Patrons and to access reports.

1.3 OverDrive will use commercially reasonable efforts to make the Application Services perform substantially in accordance with the terms herein. From time to time, OverDrive may make modifications or updates to the operation, performance, or functionality of the Application Services as it sees fit or as required by OverDrive's suppliers. Library may be required to complete additional forms, documents or other associated materials provided by OverDrive. Library shall use commercially reasonable efforts to complete the documents in a timely manner.

1.4 OverDrive will use commercially reasonable efforts to provide Secondary Support to Library.

1.5 OverDrive shall have sole discretion to approve any and all libraries that seek to participate in Library's DLR Service, as well as approve any other terms and conditions related to such expansion of the DLR Service to additional libraries. OverDrive shall have sole discretion to honor any prior version of an order form, participation form or related material completed by Library. OverDrive may require Library to complete an updated version of the same.

1.6 If Library seeks a modification of the Application Services or integration of the Application Services beyond those offered on the Order Form, the Parties shall cooperate to agree on the specifications for the additional services and any associated terms and conditions.

1.7 Nothing under the Agreement grants any right to Library to the use of, or access to, any Application Services source code. Library does not have the right to reproduce the Application Services, to distribute copies or versions of any modules of the Application Services to any third parties including its Authorized Patrons, or to make and/or sell variations or derivative works of the Application Services. Sole ownership of copyrights and other intellectual proprietary rights shall remain solely with OverDrive or its suppliers. OverDrive reserves the right, at its sole discretion, to display its branding, trademarks, logos, and/or third party marketing or promotional materials on the Library Website.

## **2. Library Website**

2.1 Library shall use commercially reasonable efforts to ensure that use of the Applications Services, the Library Website and the Digital Content are in compliance with this Agreement and with permitted uses as communicated by OverDrive to Library. Library shall use commercially reasonable efforts to prevent unauthorized use of the Digital Content from OverDrive by their users and Authorized Patrons.

2.2 Authorized Patrons may access the DLR Service and supported formats of Digital Content of the Library through the use of their personal device or through an OverDrive approved service, application or program. Within the physical library location(s), Authorized Patrons shall be permitted to download Digital Content directly to their personal device or through an OverDrive approved service, application or program. Library staff may download and demonstrate the use of the DLR Service and/or Digital Content within the physical library location(s) only on staff computers and devices, non-public computers and devices, or through an OverDrive approved service, application or program.

2.3 Library shall reasonably cooperate with OverDrive to limit access to the DLR Service to end users who are Authorized Patrons. In the event Library desires to provide access to the DLR Service to users other than Authorized Patrons, OverDrive reserves the right to limit availability of certain Digital Content, as may be required by supplying publishers. Online library card applications, with or without fees, that provide access,

temporary or permanent, to the DLR Service to users who do not otherwise qualify as Authorized Patrons shall not be permitted.

2.4 Library represents and warrants that it will not make any representations or create any warranties, expressed or implied, concerning the Application Services and Digital Content, and will take reasonable steps to ensure that its employees, agents, and others under its direction abide by the Agreement.

2.5 Library agrees to perform Primary Support for its Authorized Patrons, unless Library has completed the Front Line Tech Support Order Form and paid for Front Line Tech Support services. OverDrive will provide Library with training and documentation for Library's provision of Primary Support. Library will cooperate with OverDrive to implement customer support practices recommended by OverDrive, including but not limited to directing Authorized Patrons to OverDrive-supplied FAQs and support pages on its Library Website.

2.6 Library shall not access the Application Services in a manner not explicitly permitted by the Agreement, including but not limited to scraping the Library Website and/or web traffic or data to and from the Library Website, intercepting, redirecting, capturing or holding OverDrive-initiated email or other electronic communications, nor shall it allow any third party to access the Application Services in a manner as described in this paragraph.

2.7 OverDrive may employ commercially reasonable efforts to monitor and maintain the availability of its Application Services, including review of traffic for request volume levels, unusual behaviors or patterns, attempts to create a denial of service response, and/or excessive or abusive usage as determined by OverDrive, in its sole discretion.

### **3. Payments**

3.1 Library shall make payment to OverDrive for all Application Services fees and Digital Product costs according to OverDrive within thirty (30) days from Library's receipt of valid invoice. In the event of Library's late or non-payment of any and all amounts due to OverDrive for Application Services fees and cost of Digital Content, OverDrive may suspend access to the Application Services until such time as Library's account becomes current.

3.2 This Agreement is a commitment of the current revenues of the Library. If Library's governing body or similarly related entity fails to appropriate sufficient funds in any fiscal year for payments due under this Agreement, then a non-appropriation event shall be deemed to have occurred. If a non-appropriation event occurs, (1) Library shall give OverDrive immediate notice of such non-appropriation event and provide written evidence of such failure by Library's applicable governing body and (2) on or before sixty (60) days from OverDrive's receipt of notice of non-appropriation, the parties shall cooperate to determine an appropriate course of action as it relates to the OverDrive services provided under this Agreement. In the event that after such sixty (60) day period, no determination is reached on payment and continued provision of services is not possible, then the Agreement and all services hereunder shall terminate on the first day of the fiscal year in which funds are not appropriated.

### **4. Term and Termination**

4.1 The Term of the Agreement shall be governed by the OverDrive Digital Library Reserve Order Form between OverDrive and Library.

4.2 Either party shall have the right to terminate this Agreement as a result of a material breach of the Agreement by the other party that is not cured within thirty (30) days after written notice of such breach.

4.3 Upon termination of this Agreement, the access granted to Library by this Agreement shall be terminated immediately and Library shall make no further use of all or any part of the Application Services, or any confidential information received from OverDrive.

### **5. Warranties**

5.1 The parties represents and warrants to that each has the necessary permissions, ownership and intellectual property rights and licenses related to performance under this Agreement.

5.2 THE WARRANTIES SET FORTH UNDER THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL OVERDRIVE BE LIABLE TO LIBRARY OR ITS AUTHORIZED PATRONS AND OR END USERS FOR ANY DAMAGES ARISING FROM OR RELATED TO FAILURE OR INTERRUPTION OF THE APPLICATION SERVICES, OR FOR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PROFIT OR OPPORTUNITY, LOSS OF USE OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE LICENSE OR USE OF THE APPLICATION SERVICES. IN NO EVENT SHALL OVERDRIVE'S LIABILITY HEREUNDER EXCEED THE TOTAL AMOUNT RECEIVED BY OVERDRIVE UNDER THIS AGREEMENT.

## **6. General Terms**

6.1 Confidential Information. The parties acknowledge that each will receive confidential information from the other relating to the Application Services, technical and operational affairs of the other. Subject to any state and/or federal laws and regulations permitting public access to documents and information that are considered public, each party agrees that all confidential information of the other party shall be held in confidence and shall not be disclosed to any third party. Library shall not share its passwords and login credentials of Library's account in OverDrive's content selection portal with anyone, including any third party. Library shall take reasonable steps to prevent unwarranted intrusion into such information.

6.2 Taxes. Library shall at its own expense comply with all applicable laws in connection with the use of the Application Services. The payment obligations under this Agreement are exclusive of any federal, state, municipal or other governmental taxes, sales taxes, excise taxes or tariffs now or hereafter imposed on the production, storage, sale, transportation, import, export, licensing or use of the Application Services.

6.3 No Waiver. The failure of either party to exercise any right or the waiver of either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same of any other term of the Agreement.

6.4 Notice. All notices required to be given pursuant to the Agreement shall be in writing and shall be deemed to have been given, if sent by registered or certified mail, return receipt requested, postage prepaid, addressed to OverDrive at its' current address, Attention: General Counsel or addressed to Library at the address provided on the Order Form, Attention: Primary Contact (as designated on the Order Form), or as otherwise agreed by the parties.

6.5 Assignment. OverDrive may assign this Agreement. This Agreement may not be assigned by Library, nor any duty hereunder delegated by Library without the prior written consent of OverDrive, which shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, legal representatives, successors and permitted assigns. In the event OverDrive assigns this Agreement to a company that does not provide the same or similar scope of services, Library may elect to terminate this Agreement within thirty (30) days of such assignment.

6.6 Entire Agreement. The Order Form and these Terms and Conditions constitutes the entire Agreement and understanding of the parties and supersedes all prior and contemporaneous Agreements, understandings, negotiations and proposals, oral or written. Section headings are provided for convenience purposes only and do not provide any modifications or substantive meaning to the terms and conditions of this Agreement. OverDrive may modify the Order Form and these Term and Conditions from time to time.

6.7 All Disputes Arising From the Agreement. This Agreement shall be governed by the laws of the State of Ohio, United States of America without regard to any conflict of laws principles. Any dispute regarding this Agreement or the relationship that has been established by this Agreement shall be brought in the state or federal courts residing in the State of Ohio, USA, and the local laws of Ohio will apply to any such action related to the above. Both parties submit to venue and jurisdiction in these courts.



## 7. Definitions

As used throughout the Agreement, the following definitions shall apply:

7.1 “Application Services” or “DLR Service” shall mean the Library Website and digital content distribution service provided to Library, which utilize OverDrive<sup>®</sup> and other third party technologies and services.

7.2 “Authorized Patron(s)” shall mean those individuals who provide proof of residency, ownership of property, employment, or enrollment in school or similar institution in the Library’s service area and which the Library authorizes to download Digital Content from the Library Website or otherwise utilize the Application Services.

7.3 “Digital Content” shall mean the digital titles (e.g. eBooks, audiobooks, music and video) made available from OverDrive at the Library Website.

7.4 “Library” shall mean the organization or entity identified in the Library Information section of the Order Form.

7.5 “Library Website” shall mean the Internet-based application hosted and operated by OverDrive that provides Authorized Patrons access to Digital Content.

7.6 “Order Form” shall mean the OverDrive Digital Library Reserve Order Form completed by the Library.

7.7 “OverDrive” shall mean: OverDrive, Inc., a Delaware Corporation, and its subsidiaries and affiliates.

7.8 “Primary Support” shall mean the services provided by Library to its Authorized Patrons for its day-to-day help, support, technical aid and other assistance for their use of the Library Website and Digital Content.

7.9 “Secondary Support” shall mean the technical support services provided by OverDrive to Library including reasonable efforts to assist Library in providing Primary Support.



## OverDrive® Digital Library Reserve Order Form

Library Information	
Name of Library: Judy B. McDonald Public Library	
Address: 1112 North Street	
City, State/Province, Postal Code: Nacogdoches, Texas 75961	Country: USA
Total Annual Materials Circulations:	
Primary Contact	
Name: Mercedes Franks	Title: Director
Telephone: 936-559-2970	Email: franksm@ci.nacogdoches.tx.us
Accounting Contact (all invoices will be emailed to the contact listed below):	
Name:	Title:
Telephone:	Email:
Bill To Address:	
City, State/Province, Postal Code:	Country:

### OverDrive Content Service Plan Fee Schedule

**If Library executes and returns this OverDrive Digital Library Reserve Order Form to OverDrive by November 15, 2012:**

Library will be invoiced a **Fee of \$8,000** for the first year of service under this Agreement within thirty (30) days from the Effective Date of this Order Form. The \$8,000 Fee includes an allocation of \$4,000 to use toward the selection of Digital Content. For Years 2 and 3 of the initial Term, and all subsequent renewals, the Annual Fee will be \$10,000, which includes an allocation of \$5,000 to use toward the selection of Digital Content.

**If Library executes and returns this OverDrive Digital Library Reserve Order Form to OverDrive after November 22, 2012:**

Library will be invoiced an **Annual Fee of \$10,000** within thirty (30) days from the Effective Date of this Order Form. The \$10,000 Annual Fee includes an allocation of \$5,000 to use toward the selection of Digital Content.

All payments due to OverDrive under this Agreement are due within thirty (30) days of presentation of invoice.

### OverDrive Terms and Conditions:

The initial Term of this Agreement shall be for **three (3) years** from the Effective Date and shall automatically renew for successive Terms of two (2) years unless either party provides written notice of intention not to renew ninety (90) days prior to the expiration of the then-current term.

OverDrive Digital Library Reserve is licensed pursuant to the OverDrive Digital Library Reserve Terms and Conditions attached and incorporated herein.

### Acknowledgement and Acceptance:

On behalf of my Library, I represent and warrant that I have the authority to enter into this Agreement and my signature below indicates my Library's agreement and acceptance of the OverDrive Digital Library Reserve Terms and Conditions.

By (signature) \_\_\_\_\_ Title \_\_\_\_\_

Name (Print) \_\_\_\_\_ Effective Date \_\_\_\_\_  
 OverDrive, Inc. • 8555 Sweet Valley Drive • Cleveland, OH 44125 • P: +1 216-573-6886 • F: +1 216-573-6888

**OverDrive Digital Library features included with Annual Fee:**

<b><i>Collection</i></b>
Annual Collection Credit
More than 20,000 classic eBooks from Project Gutenberg – free
Web-based staff training to use collection development tools in OverDrive’s Content Reserve catalog of 700,000+ popular & educational eBooks, audiobooks, music & video
<b><i>Services</i></b>
Library-branded website plus system-wide updates
Authentication options
Web-based staff training – lead by expert trainer (live)
Web-based staff training – access to online Learning Center (recordings)
Reporting module
Customizable marketing resources to promote service to staff and community both inside & outside the library
Secondary-level user support
<b><i>Technology</i></b>
OverDrive Media Console™ apps for eBooks, audiobooks, music, video
Support for Kindle® (US only), NOOK™ and iPad®, plus all major devices
Configuration and license fee
Third-party licenses for digital rights management
Maintenance, hosting & support services
Bandwidth for all downloads

**Please complete this order form  
and return by fax to +1 216-573-6888 or email to [sales@overdrive.com](mailto:sales@overdrive.com).**

Thank you for your order!