

NOTICE OF REGULAR COUNCIL MEETING

NOTICE IS HEREBY GIVEN THAT THE CITY COUNCIL OF THE CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS, WILL MEET IN REGULAR SESSION OPEN TO THE PUBLIC AS FOLLOWS:

DATE: Tuesday, February 18, 2014
TIME: 7:00 p.m.
PLACE: Rosenberg City Hall
City Hall Council Chamber
2110 4th Street
Rosenberg, Texas 77471
PURPOSE: Regular City Council Meeting, agenda as follows:

The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by Title 5, Chapter 551, of the Texas Government Code.

Call to order: City Hall Council Chamber

Invocation and Pledge of Allegiance. (Pastor Frankie Rodriquez, Living Stones Church, Sugar Land)

Presentation of Certificate of Recognition to Anthony Ray Becerra for the Unsung Hero Award. (Vincent M. Morales, Jr., Mayor)

GENERAL COMMENTS FROM THE AUDIENCE.

Citizens who desire to address the City Council with comments of a general nature will be received at this time. Each speaker is limited to three (3) minutes. In accordance with the Texas Open Meetings Act, the City Council is restricted from discussing or taking action on items not listed on the agenda. It is our policy to have all speakers identify themselves by providing their name and residential address when making comments.

COMMENTS FROM THE AUDIENCE FOR CONSENT AND REGULAR AGENDA ITEMS.

Citizens who desire to address the City Council with regard to matters on the Consent Agenda or Regular Agenda will be received at the time the item is considered. Each speaker is limited to three (3) minutes. Comments or discussion by the City Council Members will only be made at the time the agenda item is scheduled for consideration. It is our policy to have all speakers identify themselves by providing their name and residential address when making comments.

CONSENT AGENDA

1. Review of Consent Agenda.
All Consent Agenda items listed are considered to be routine by the City Council and may be enacted by one (1) motion. There will be no separate discussion of Consent Agenda items unless a City Council Member has requested that the item be discussed, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Regular Agenda.
 - A. Consideration of and action on Regular Meeting Minutes for January 21, 2014, and Workshop Meeting Minutes for January 28, 2014. (Cernosek)
 - B. Consideration of and action on Resolution No. R-1750, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a Property Disposition Service Agreement for professional auction services, by and between the City and PropertyRoom.com. (Cernosek)
 - C. Consideration of and action on Resolution No. R-1748, a Resolution authorizing the City Manager to execute, for and on behalf of the City, an Agreement for Video Streaming Services, by and between the City and Swagit Productions, LLC, for video recording and streaming of City Council meetings, in the base amount of \$6,719 for capital equipment purchase of Streaming Video Hardware, \$24,453 for capital equipment purchase of Cosmos Broadcast System, and \$1,135 a month for an initial term of one year for Streaming Video Monthly Managed Services. (Fritz)
 - D. Consideration of and action on Ordinance No. 2014-09, an Ordinance granting consent to the Fort Bend County Municipal Utility District No. 159 for the sale and issuance of Unlimited Tax Bonds, Series 2014, in an amount not to exceed \$2,700,000. (Kalkomey)
 - E. Consideration of and action on Resolution No. R-1757, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a Lease Extension on City-owned property for hay production, by and between the City and P. F. Vacek, Jr., for a two-year term. (Maresh)

- F. Consideration of and action on Quarterly Financial Report and Quarterly Investment Report for quarter ending December 31, 2013. (Vasut)
- G. Consideration of and action on authorization to offer for sale a proposed list of surplus radio equipment items. (Warren)

REGULAR AGENDA

- 2. Consideration of and action on a second reading of Ordinance No. 2014-05, an Ordinance amending the Code of Ordinances by deleting all of Section 28-41 (b) and (d), Stop Signs Designated, of Article II, Division 2 of Chapter 28, Stop Streets, and substituting therefor a new Section 28-41 (b) and (d) of Article II, Division 2 of Chapter 28 thereof; providing a penalty in an amount of not less than \$1.00 or more than \$200.00 for violation of any provision hereof; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith; and providing for severability. (Maresh)
- 3. Receive public comment from Fort Bend County Municipal Utility District No. 162 regarding the increase in monthly fire protection fee pursuant to the Restated and Amended Fire Protection Agreement. (Lenzsch)
- 4. Consideration of and action on Resolution No. R-1753, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 14-07 in the amount of \$11,469.15, for the annual Summer Park Owner's Association Assessment Fees. (Vasut)
- 5. Consideration of and action on Resolution No. R-1754, a Resolution regarding the Financial Management Policies of the City of Rosenberg. (Vasut)
- 6. Consideration of and action on Resolution No. R-1755, a Resolution regarding a funding arrangement by and between the City of Rosenberg and the Rosenberg Development Corporation for the infrastructure improvements to serve the Rosenberg Business Park. (Vasut)
- 7. Consideration of and action on Resolution No. R-1756, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 14-08 in the amount of \$44,538.81, to fund a change order as approved by the Rosenberg Development Corporation for the Seatex/State Highway 36 Drainage Project. (Vasut)
- 8. Consideration of and action on Resolution No. R-1758, a Resolution awarding a bid for the July 04, 2014, Family 4th Celebration fireworks display; and, authorizing the City Manager to negotiate and execute, for and on behalf of the City, an Agreement, and/or all necessary documentation regarding same. (Acosta)
- 9. Consideration of and action on a proposal to combine the Special Events Committee and Parks and Recreation Board. (McCarthy)
- 10. Consideration of and action on Ordinance No. 2014-10, an Ordinance amending the Code of Ordinances by deleting Articles I, II, and III of Chapter 12 and substituting therefor new Articles I, II, and III of Chapter 12 thereof; providing for general definitions and guidelines for flood prevention and control, administrative procedures, and provisions for flood hazard reduction; providing a penalty not to exceed \$500 for violation of any provision hereof; and providing for severability. (Kalkomey)
- 11. Consideration of and action on Ordinance No. 2014-08, an Ordinance amending the Code of Ordinances by amending subsections (a)(4) and (a)(7) and by adding new subsections (a)(8), (a)(9) and (a)(10) to Section 6-362.2 of Article XIII of Chapter 6 thereof, providing for expanded boundaries of Sign District "B"; by adding a new Section 6-362.3 of Article XIII of Chapter 6 thereof, establishing Sign District "C" and regulations for Sign District "C"; by adding a new Section 6-362.4 of Article XIII of Chapter 6 thereof, establishing a Sign District map; providing a penalty in an amount as provided in Section 1-13 of this Code for violation of any provision hereof; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith; and providing for severability. (Tanner)
- 12. Consideration of and action on Ordinance No. 2014-04, an Ordinance ordering a Special Election to be held on May 10, 2014, for the purpose of submitting to the qualified voters, for adoption or rejection, a proposed ordinance and/or resolution prohibiting the City from donating specified real property for the "One-Way Pairs" Project; and making provisions for the conduct of the election. (Cernosek)
- 13. Consideration of and action on Resolution No. R-1752, a Resolution authorizing the Mayor to execute and the City Secretary to attest, for and on behalf of the City, a Joint Election Agreement and Contract for Election Services for the 2014 Special Election, by and between the City and Fort Bend County, Texas. (Cernosek)
- 14. Announcements.
- 15. Adjournment.

[EXECUTION PAGE TO FOLLOW]

DATED AND POSTED this the _____ day of _____ 2014, at _____ m.,

by _____.

Attest:
Christine Krahn, Acting City Secretary

Approved for Posting:
Robert Gracia, City Manager

Approved:
Vincent M. Morales, Jr., Mayor

Reasonable accommodation for the disabled attending this meeting will be available; persons with disabilities in need of special assistance at the meeting should contact the City Secretary at (832) 595-3340.

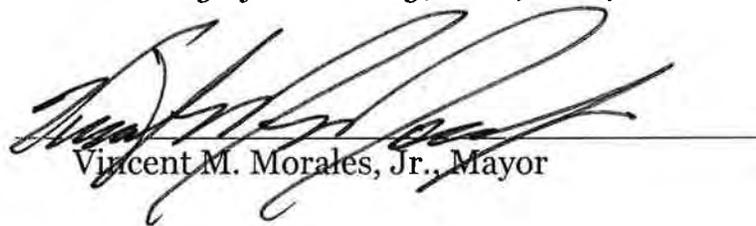
**Presentation of a Certificate of Recognition
to Anthony Ray Becerra for the Unsung Hero
Award.**

CERTIFICATE OF RECOGNITION

Anthony Ray Becerra *“Unsung Hero Award”*

In recognition of “going beyond the call of duty” and doing exceptional good deeds for your fellowman, those in need and those unable to care for themselves. You are being recognized as a leader in our community that has unselfishly sacrificed much without pay or expecting praise or recognition, to improve the health and welfare of our fellow citizens, as well as to better the City through the fostering of exemplary community outreach and involvement. Anthony’s dedication and selfless work for the good of others has earned him a place of high esteem in the hearts and minds of the people of this City.

In testimony whereof, witness my hand and Seal of the City of Rosenberg, this the 18th day of February, A.D., 2014.


Vincent M. Morales, Jr., Mayor



General Comments from the Audience:

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Comments from the Audience for Consent and Regular Agenda Items:

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ITEM 1

Review of Consent Agenda.

All Consent Agenda items listed are considered to be routine by the City Council and may be enacted by one (1) motion. There will be no separate discussion of Consent Agenda items unless a City Council Member has requested that the item be discussed, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Regular Agenda.

ITEM A

Minutes:

- 1. Regular City Council Meeting Minutes – January 21, 2014**
- 2. City Council Workshop Meeting Minutes – January 28, 2014**

CITY OF ROSENBERG
REGULAR COUNCIL MEETING MINUTES
*****DRAFT*****

On this the 21st day of January, 2014, the City Council of the City of Rosenberg, Fort Bend County, Texas, met in a Regular Session, in the Rosenberg City Hall Council Chamber, located at 2110 4th Street, Rosenberg, Texas.

PRESENT

Vincent M. Morales, Jr.	Mayor
William Benton	Councilor at Large, Position 1
Cynthia McConathy	Councilor at Large, Position 2
Jimmie J. Pena	Councilor, District 1
Susan Euton	Councilor, District 2
Dwayne Grigar	Councilor, District 3
Amanda Bolf	Councilor, District 4

STAFF PRESENT

Robert Gracia	City Manager
Linda Cernosek	City Secretary
John Maresh	Assistant City Manager
Jeff Trinker	Assistant to the City Manager
Lora Lenzsch	City Attorney
Charles Kalkomey	City Engineer
Joyce Vasut	Finance Director
Rachelle Kanak	Interim Economic Development Director
Dallis Warren	Interim Police Chief
Wade Goates	Fire Chief
Travis Tanner	Planning Director
Tonya Palmer	Building Official
Darren McCarthy	Parks and Recreation Director
Lydia Acosta	Recreation Programs Coordinator
John Johnson	Police Officer
Angela Fritz	Communications Director
Tommy Havelka	Police Officer
Kaye Supak	Executive Assistant

CALL TO ORDER.

Mayor Morales called the meeting to order at 7:00 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE.

Reverend Charles Surovik, New Covenant Fellowship, Rosenberg gave the invocation and led the pledge of allegiance to the flag.

PRESENTATION OF CERTIFICATES OF APPRECIATION TO 2013 GAZEBO LIGHTING VOLUNTEERS AND SPONSORS.

Mayor Morales and Lydia Acosta, Recreation Programs Coordinator presented Certificates of Appreciation to 2013 Gazebo Lighting Volunteers and Sponsors:

- First United Methodist Church of Rosenberg
- Girl Scout Troop 3503
- St. Paul's Lutheran Church
- Whataburger

REGULAR AGENDA

2. **RECEIVE PUBLIC COMMENT FROM FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 162 REGARDING INCREASE IN MONTHLY FIRE PROTECTION FEE PURSUANT TO THE RESTATED AND AMENDED FIRE PROTECTION AGREEMENT.**

Executive Summary: The Board of Directors for Municipal Utility District No. 162 (MUD No. 162) has requested an Agenda item to address City Council regarding the Restated and Amended Fire Protection Agreement (2012) as it relates to Resolution No. R-1701, which extended the compliance deadline for the provision of fire services to September 30, 2016.

Key discussion points:

- Lora Lenzsch, City Attorney stated that a representative from the MUD was supposed to be here to address Council.
- No one from the MUD was present at the meeting.
- No action was taken.

3. **CONSIDERATION OF AND ACTION ON A RESOLUTION OF THE ROSENBERG PLANNING COMMISSION SUPPORTING THE CONTINUATION OF THE COMMISSION'S ESTABLISHED MEETING SCHEDULE OF THE FOURTH WEDNESDAY OF EACH MONTH, EXCLUDING NOVEMBER AND DECEMBER; AND, SUPPORTING THE ABILITY OF CITIZEN VOLUNTEERS SERVING EACH CITY BOARD, COMMITTEE, COMMISSION, AND TASK FORCE TO DETERMINE THE BEST MEETING DATE AND TIME TO PERFORM THE BUSINESS OF SAID BOARD, COMMITTEE, COMMISSION, AND TASK FORCE.**

Executive Summary: Rosenberg Planning Commission (Commission) is one volunteer group impacted by this change in policy as it meets on the fourth Wednesday of each month. In deference to the Commission's published meeting schedule and plat submittal deadlines, City Council has allowed the Commission to continue to meet as scheduled until June 2014.

In light of City Council's decision, staff scheduled a Commission Agenda item for November 20, 2013, for the Commission to consider alternative meeting days and times. The Commission discussed this policy change at its November meeting, and on December 18, 2013, and has prepared the attached Resolution in support of continuing to meet on its established meeting schedule and in support of all citizen volunteers serving the City to determine mutually agreeable meeting schedules for each group.

The Commission, while cognizant that its members serve at the pleasure of City Council, respectfully submits the attached Resolution and requests that the City Council revisit this policy change and let citizen volunteers determine their own group's meeting schedule.

Speakers:

- The following citizens spoke at the meeting:
- **Mike Parsons, 2635 Sequoia, Rosenberg, Texas.**
- On the topic of assigned non-meeting dates, once again, at the probable risk of not being re-elected to the Planning Commission for the next term, I will suggest that City Council extend their focus to what the City of Rosenberg will be 20 to 25 years from now, rather than micro-manage Volunteer Committees. We all realize that various religious organizations meet on various days. That being said, you regularly schedule workshops on Saturday where citizens of Jewish preference attend services. You continue to hold Council Meetings on Tuesday where the Knights of Columbus, a Catholic Organization meets.
- Why not simply leave the decisions of meeting dates to the volunteers themselves and allow the majority rule. That appears to be the feelings of four of the six members on Council trend with regards to the One Way Pairs....Council we simply see some consistency in your directions?
- With regards to growth, like it or not the City will grow. There is absolutely no question to that fact. How it grows is somewhat dependent on the foresight of Council. I understand that some Council Members scoff at the growth of Katy, Fulshear, Sugar Land and/or Pearland in their emails. If that is not what you want for Rosenberg I would assume at the next election you might inform us exactly what you would like it to be 20-25 years from now and how that is in contrast to

Due to the complexity of the Ordinance provisions, staff determined the best of course of action would be to prepare a separate Ordinance to address the impact fees associated with landscape irrigation meters. Therefore, staff has prepared Ordinance No. 2014-03 which if adopted, would establish the number of living equivalent units (LUEs) for all water meters exclusively used for landscape irrigation systems as zero and subsequently no water impact fees would be collected. This provision is currently limited to landscape irrigation meters that serve only public rights-of-way and not privately owned property.

Ordinance No. 2014-01 that would adopt the updated land use assumptions, capital improvements plan and both the maximum and effective water and wastewater impact fees will again be considered as the next Agenda Item.

Speakers:

- The following citizens spoke at the meeting.
- **Mike Parsons, 2635 Sequoia, Rosenberg, Texas.**
- I have been a member of the Water and Wastewater Task Force since its inception. The purpose of an impact fee is to share the cost of the infrastructure with the new population so that rates alone do not have to exponentially increase for the population that has already paid their fair share.
- The proposition that adding a meter for an irrigation system will increase the use of water is preposterous. In fact, as an individual who installed an irrigation system years ago, I can attest to the fact that it reduces water usage through its efficiency. Rather than spend hours watering your property with a hose or setting a sprinkler that you forget to turn off it allows you to water multiple areas and regulate the water used based on what you are watering. The use of a sprinkler to do that is often the cause of excessive use of water which ultimately ends up in the sewer in an era where water conservation is a must. If that is disputed please feel free to analyze my residential use of water both pre and post installation to convince yourself. I looked at the addition of an additional meter when it was installed and came to the conclusion that the amount of time it might take to actually offset the cost of the meter to save the sewer costs was excessive and not worth the investment. It was worth the time and pain in watering my one half acre manually. As a matter of fact, the installation of second meters by established residents have been sparse to none since 2010.
- It took years to convince the City to investigate and agree to a study on Impact Fees for Water and Wastewater, I know because I pestered City Council after City Council to do so. In the end the initial cost of approximately \$152,000 (of which \$75,918 was external) perhaps growing to \$200,000 to date – which seems like a lot of money, but has yielded \$2,028,031 through 2013. I'm not sure how many of you all invest but that's a very healthy return on the investment for four years. In fact, in a study done a year or so back calculated that with the homes approved for platting at that time would yield an estimated \$27,000,000. Fiscal year alone yielded \$538,359, second only to 2012 which yielded \$975,311.
- Rather than continue to whine about debt, which process is intended to reduce, this Council should be looking for what Rosenberg needs to be in the next 25 years and rather than debate a recommendation of a Task Force on water and waste meters, that has studied the subject for years. They should consider a study and the options of a Roads and Thoroughfares Impact Fee, which has been recommended to them repetitively for three years. These Impact Fees will seek to reduce the need for some additional debt and offset the costs of other taxes and fees to sustain the growth that will come, no matter what you believe. Just go look at the balance of the County and Rosenberg's growth to date.
- **Fran Naylor, 1424 Callender Street, Rosenberg, Texas.**
- I am here to discuss the water tap fee. What brought this to my attention was, our church, St. Paul Lutheran, 5th Street, and I'm not speaking for the church and have not talked to anybody there. They want to put a sprinkler system in and the water tap fee is in the range of \$4,400 and the reason for doing it is that you don't have people at the church all of the time. We would like to beautify our church which is something that the City and Council promotes throughout the community.
- Once you pay for the City fees you still have to hire a plumber and run lines. We are just talking

- Mayor Morales stated we are talking about when the meter is put in it is to help to pay for capital improvements in that system down the line. John Maresh stated the well capacity, distribution lines, etc.
- Mayor Morales stated we have not had any residential meters because you cannot recoup your cost for 10 to 15 years and it does not make any sense. From the commercial side we will have some expense as far as capital improvement on the system. John Maresh stated potentially yes.
- Councilor Benton stated an impact fee for commercial sounds more reasonable.
- Councilor Bolf stated she understands what this ordinance does.
- Councilor Grigar stated it appears that nobody was paying for it and \$20,000 collected over four years is not a lot of money, \$5,000 per year. He thinks we should go with this request and take a look at it in a couple of years and see what the impact is. I don't think there will be a lot of people waiting at the front door at City Hall to get a meter. He'd like to take a look at it in two years and see how we are doing.
- Councilor Pena agreed with the proposed ordinance.
- Councilor Euton stated she agrees that the impact fee is excessive but is there a fee for the meter and the work.
- John Maresh stated the impact fee is just one component and that is where the system capital improvements and separate from that is the tap fee for the individual meter.
- Councilor Euton stated this would exempt it from the impact fee but not the tap fee. John Maresh stated correct.
- Councilor Grigar referenced Page 2 it says "if a landscape irrigation meter is purchased exclusively to provide water for an irrigation system the number of Living Unit Equivalents (LUE's) shall be considered zero and no fees shall be collected". It says no fees.
- John Maresh stated in the context of the ordinance it is limited this provision specifically relating to the impact fees.
- Councilors Grigar and Euton stated it needs to say "no impact fees".
- Councilor Benton stated he has no problem charging for reading of the meters, installation, cost of the meter. It was just the impact fee. When you turn it on you will pay water fees. He does not see how the City could lose money. In fact we are losing by not doing it because we are losing accounts and customers. We are in the water business.
- Mayor Morales stated, "Councilor, you understand this is going to waive all impact fees for commercial, non-profit and residential?"
- Councilor Benton stated it is not his preference that we do it for commercial but if we have to in order to get residential and non-profit he will go along with it. He suggested we limit it to residences and non-profits and leave in the commercial aspect.
- Mayor Morales stated it is for a 2" meter depending on how the system is setup. It can use a lot of water.
- Lora Lenzsch stated her understanding is if it is not going to apply then it is not going to apply across the board and the City cannot isolate a particular group whether it is commercial to assess the fee. It has to be either assessed or not.
- Mayor Morales stated he does not know of another City from his experience that differentiates between the two.
- Lora Lenzsch stated that is her understanding. If you are not going to assess for residential then you will not assess that fee at all.
- John Maresh stated that is correct. We have looked at ordinances of other cities and it is across the board. There is not a distinction.
- Councilor McConathy stated related to something Councilor Grigar suggested. This is to be reviewed by Council every five years. Can we change the interval in which the impact fee is being reviewed?
- John Maresh stated the Task Force looks at this twice a year and then they file a report to Council. We could look at those collections and it could be included in that report. Statutorily Council is required to go through the update process once every five years.
- Councilor McConathy asked Lora Lenzsch by separating this apart from the general impact fee provision are we subject to changing the timeframe in which we are required to make a decision on the impact fee?

- My concerns were about the previous discussion. I have an underground water sprinkler system. It is currently hooked up through my household meter. I looked into the possibility of getting a meter to alleviate having to pay the wastewater fees. When I found out these fees were so excessive and that there was a possibility they could go up, that brought great concern to me. I have several neighbors that have underground systems with a separate meter and they tell me they have substantial decrease in their overall bill. The concern I have is you charge people four or five thousand dollars to put this in there is no way they will recoup that. I don't think there are a lot of people in this town that have an extra \$5,000 in their back pocket that they can dish out for this. We are already paying the water fees even with a separate tap you will still pay your water fees in the winter time when you don't have to water you will still pay that minimum bill the City will get that. I have concerns on initiating all of these fees and being in the retail grocery business for forty years I know that if you have a product on your shelf and it don't sell you get rid of it. You don't increase the price on it because that gives the wrong impression. I commend you for passing that ordinance that there will be no impact fee for the irrigation meter. Thank you.
- **George Zepeda, 4905 Greenwood Drive, Rosenberg, Texas.**
- Several years ago I purchased a separate meter for the simple reasons of the other fees that were added on to my home meter I was watering my yard with. Which I have an excellent yard. These fees may not let me do it anymore. You all go with fees and fees. We just got through the permit fees now we are going to these water fees. I just don't see it, I really don't. I have checked with Sugar Land, Richmond, League City, and Pearland. I can confirm they don't charge these fees. The commercial end I can see charging fees for the simple reason because of the maintenance on these systems. I have seen them working when it is raining. I have seen a meter shoot up in the air when the sprinkler system is broke. Someone needs to go out and maintain these things. If I have one bad I fix it right away. I disagree on all of these fees, I really do. Thank you very much.

Key discussion:

- Mayor Morales stated this item is for impact fees on domestic meters which will have a tremendous impact on development and commercial. The reason that Task Force was setup in 2010 was because our wastewater budget was upside down and we had to figure out a way to achieve capital improvements of our systems. That was the way to do it. He asked John Maresh how that is done in other areas. A lot of times it is done through development agreements.
- John Maresh stated impact fees are through agreements, MUD districts, etc. If the City enters into a contract or development agreement you can determine what that fee will be contractually. The other process is through the development of an actual impact fee. That is what we have here and that was done in 2008 when it was adopted. Essentially, that takes your capital improvement plan, looks at a ten year window of what capital improvements you anticipate that are directly related to new development. Anything that is maintenance or taking care of existing infrastructure cannot be part of that impact fee. Our rates have to cover our operational and maintenance type costs.
- Through that process we look at the capital improvements, new water wells, transmission lines, storage tanks, etc., that are attributed to new development. What you are doing by assessing that fee, is that new development helps pay for those infrastructure costs rather than having to finance the complete cost of those improvements when the time comes to construct those improvements. It is a way to make the new development pay their share of those capital improvement costs versus existing customers paying 100% of those costs.
- Councilor Benton asked for clarification of "domestic".
- Mayor Morales stated it is only the developer when they develop the neighborhood. Then the developer pays for an impact fee to set that meter. No existing resident would have to pay another impact fee if they want to add an irrigation meter.
- John Maresh stated if they were to expand or enlarge their house and they needed a larger size meter then they would have to pay the difference. They would get a credit for the existing size meter and would pay the difference.
- Mayor Morales stated this is to help for future development--new construction, commercial and residential.

The winning bid was from City Group Global Markets with a true interest cost of 3.16997 percent. We are pleased with the results. The rate is exceptional.

- Tab #3 included the debt service schedule that represents the semi-annual interest and the annual principal payments. We did principal payments that are approximately equal which will give you a declining debt service schedule over time. That is one of the credit strengths the City has is you have a rapid pay off of your debt. We have tried to maintain that.
- Tab #4 included the Moody Investors Service report. Since we were selling a smaller amount we only paid for one credit rating. They affirmed your AA3 rating. Cash reserves and the strength of your financial management is one of the things they highlight. Growth in the tax base is one of the things that leads to a higher rating.
- On the flip side of that, one of the things they say is a drag on your credit rating is level of debt outstanding. He clarified that because the level of debt they refer to is an overall debt burden. When we look at the direct debt of the City it is 2.4% of your taxable assessed valuation and that is low. Lamar CISD has a very large amount of debt outstanding and approximately \$80 million of that is tied or shared with your taxable assessed value. That is one of the schedules they prepare is overlapping debt. They look at the school district, the county and all the municipal utility districts within the City. They will be working with the rating agencies because as you grow with utility districts within and they continue to issue debt they take that ratio and apply it against the whole city. They have expressed that it is not an accurate way to review the entire city. That is one of the things they noted. It is not of a concern in the sense you continue to grow with your taxable assessed valuation. Every growing city has to deal with this. Primarily the school district is driving that metric for you. Today's sale results are excellent and they recommend that the bonds be awarded.
- Councilor Grigar stated this was in the bond election in 2006 and he is glad to see this is the final one that will help with Dry Creek. He has been with that project since that time and trying to improve that creek and moving water out of our City and around City Hall. That is all in the flood plain and with those improvements it will lower that flood plain and take most of the City out of the flood plain. He is glad to see this go and he encouraged Council to come together and vote it up instead of down.
- Mayor Morales stated this is for Dry Creek Drainage.

Action: Councilor Grigar made a motion, seconded by Councilor Bolf to approve Ordinance No. 2014-02, an Ordinance authorizing and ordering the issuance of the City of Rosenberg, Texas, General Obligation Bonds, Series 2014; awarding the sale thereof; and containing matters incident thereto. The motion carried by a unanimous vote.

7. **REVIEW AND DISCUSS PROPOSED AGREEMENT FOR VIDEO STREAMING SERVICES, AND TAKE ACTION AS NECESSARY.**

Executive Summary: Video recording and streaming of City Council meetings was funded in the FY2014 Budget. In addition to adding recording equipment in the City Council Chamber, project implementation will require several additional improvements including: upgrading existing municipal channel design and broadcast equipment (ongoing); executing an Agreement for the installation of recording, production, and dissemination of meeting videos (Agreement attached for discussion here); and, possible additional improvements to Council Chamber technology to better facilitate communications for the public, City Council, and staff.

Project implementation will require an up-front investment in equipment (both for recording/streaming, and for municipal channel station management) which will be funded via the Public, Education, Government (PEG) Capital Fund; as well as ongoing fees for production and streaming services (funded through the General Fund). An Agreement was attached in the agenda documentation for City Council's review and comment and is for the video recording/streaming portion of the project. The Agreement includes: \$24,453 for video recording equipment and installation; \$6,719 for streaming equipment; and a recurring \$1,135/month (\$13,620/year) for on-demand, live video streaming, and remote-switching (off-site production, indexing, etc.).

- **Evelyn Ward, 1317 Mille Street, Rosenberg:**
- Councilor Benton stated that Evelyn Ward has laryngitis and he would help her speak. She has seen a lot of accidents and it scares her.
- Councilor Benton stated that Evelyn has been home a lot recently, since she has been sick, and has seen a lot of near misses. Before he was on Council, Evelyn, along with the Dresner's and others, have expressed concern about the danger and near misses of accidents. There is fast traffic and requested Council to consider a four way stop sign at that location.
- **Wanda Sebesta, 1220 Millie Street, Rosenberg:**
- She has lived there for approximately thirteen (13) years and for thirteen (13) years the speeding traffic has been an issue. There is a four way stop on the north side of Millie Street and Avenue K, which slows down the traffic on the north side, but once they clear that four way stop, it has increased speed all the way to Avenue N. I am here to ask that you give us consideration in placing a four way stop at Avenue L and Millie Street. Thank you.
- **Nina Davis, 1217 Millie Street, Rosenberg:**
- She lives directly across the street from Wanda Sebesta and has lived there for just over ten (10) years and wants to express the same concern as the other. The traffic is exceptionally fast. The cars seem to have no concern for anybody on the street or close to the street. We have children that walk to school and walk home down to the corner where there is no stop sign. There seems to be a cross through from the Walgreens and the bank down the street for people to get to Avenue N. It is quite a thoroughfare day and night, so please consider putting the four way stop signs in at Avenue L and Millie Streets. Thank you.
- **Mike Parsons, 2635 Sequoia Lane, Rosenberg:**
- While I have little issue with any individual or individuals suggesting that stop signs be placed on their street, I would assume that the Council person or persons who represent them have explained in detail the process in which streets are considered. In addition, I would suggest that this Council or Councils in the future use uniform methods to arrive at those decisions or every corner in Rosenberg may find itself with four way stops.
- Trust me when I say that there would be no problem to attain 19 to 20 signatures for a number of stop signs on Mons Avenue--a street, which was "improved" at the disfavor of the citizens who live on it or live on streets that have direct access.
- A street where the average speed was verified to be 38 miles per hour (mph), with highs to 50 to 60 mph after an accident at the corner of Mons Street and Sequoia Lane several years back. A street where I encourage the Rosenberg Police Department and any other law enforcement agency to use my driveway to monitor speeds and issue tickets thereon, including access to my house, facilities if they so desire.
- Once Council goes down the silly road (no pun intended) of petitions they will be smothered with petition after petition to deal with, rather than focus and concentrate on the long term growth of Rosenberg.
- It is of interest that some members of this Council scoff at the recorded instances of traffic issues as it has to do with Avenues H (Highway 90) and I (FM 1640), but appear not to have considered accident rates on either Avenue L or Millie Street? Could this be a prelude to the addition of other requests for four way stops on other streets in the area having been sought for years?
- Council might consider some consistency in making decisions regarding streets with regard to safety, in my humble opinion. Suggest a traffic study in the area and determine if safety incidents appear to require a four way stop, as has been done in the past and make a uniform and consistent decision on the topic. It is these kinds of issue that appear to be, at best, a simulation of politics at a national level. Thank you.

Key discussion points:

- Councilor Benton stated that Council has received a copy of the request signed by nineteen (19) individuals that live closest to the area and are most affected by the lack of traffic control. He respectfully asked that Council place a four way stop sign at the intersection of Avenue L and Millie Street. He doesn't object to Mr. Parson's comments that there are a lot of intersections around town that need stop signs, but you can't finish until you start, and we have folks that are interested and four folks here tonight. I don't think as representatives of folks we cannot help

- Mayor Morales stated one thing brought up by Councilor Pena is that like the truck there may be some no parking that needs to be done. This is where the traffic study comes in and not us guessing what needs to be done.

Action: Councilor Benton made a motion, seconded by Councilor Pena to approve the four way stop signs at the intersection of Avenue L and Millie Street. The motion carried 4-3, as follows: **Ayes: Councilors Benton, McConathy, Pena, and Bolf. Noes: Mayor Morales, Councilors Euton and Grigar.**

Mayor Morales stated he respects the vote, but thinks a traffic study should be done. Thank you very much.

9. **CONSIDER MOTION TO ADJOURN FOR EXECUTIVE SESSION.**

Action: Councilor McConathy made a motion, seconded by Councilor Benton to adjourn for executive session. The motion carried by a unanimous vote.

10. **HOLD EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE SECTION 551.074 TO DELIBERATE THE APPOINTMENT OF THE POLICE CHIEF; AND, FOR DELIBERATIONS REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS AS AUTHORIZED BY SECTION 551.087 OF THE TEXAS GOVERNMENT CODE.**

An Executive Session was held pursuant to Texas Government Code Section 551.074 to deliberate the appointment of the police chief; and, for deliberations regarding economic development negotiations as authorized by Section 551.087 of the Texas Government Code.

11. **ADJOURN EXECUTIVE SESSION, RECONVENE INTO REGULAR SESSION, AND TAKE ACTION AS NECESSARY AS A RESULT OF EXECUTIVE SESSION.**

12. **REVIEW AND DISCUSS POLICE CHIEF POSITION, AND TAKE ACTION AS NECESSARY.**

Executive Summary: This Agenda item has been included for City Council to take action if deemed necessary following Executive Session.

No action to be taken as a result of executive session.

13. **ANNOUNCEMENTS.**

- Councilor McConathy congratulated the City of Rosenberg Parks Department for their recognition by the Houston-Galveston Area Council particularly the Texas Master Naturalists for all the work they have done in the parks. The City received a big recognition on behalf of the Parks and the Texas Master Naturalists today.
- Mayor Morales recognized the Police Department and Sergeant Ariel Soltura for the positive national media attention.

14. **ADJOURNMENT.**

There being no further business, Mayor Morales adjourned the meeting at 9:45 p.m.

Linda Cernosek, TRMC, City Secretary

CITY OF ROSENBERG
REGULAR COUNCIL MEETING MINUTES
*****DRAFT*****

On this the 28th day of January, 2014, the City Council of the City of Rosenberg, Fort Bend County, Texas, met in a Special Session, in the Rosenberg City Hall Council Chamber, located at 2110 4th Street, Rosenberg, Texas.

PRESENT

Vincent M. Morales, Jr.	Mayor
William Benton	Councilor at Large, Position 1
Cynthia McConathy	Councilor at Large, Position 2
Jimmie J. Pena	Councilor, District 1 (arrived at meeting at 7:18 p.m.)
Susan Euton	Councilor, District 2
Amanda Bolf	Councilor, District 4

ABSENT

Dwayne Grigar	Councilor, District 3
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STAFF PRESENT

Robert Gracia	City Manager
Linda Cernosek	City Secretary
John Maresh	Assistant City Manager
Jeff Trinker	Assistant to the City Manager
Lora Lenzsch	City Attorney
Charles Kalkomey	City Engineer
Joyce Vasut	Finance Director
Rachelle Kanak	Interim Economic Development Director
Dallis Warren	Interim Police Chief
Wade Goates	Fire Chief
Travis Tanner	Planning Director
John Johnson	Police Officer
Angela Fritz	Communications Director
Karl Zwahr	Public Works Director
Tommy Havelka	Police Officer
Kaye Supak	Executive Assistant

CALL TO ORDER.

Mayor Morales called the meeting to order at 6:00 p.m.

AGENDA

1. REVIEW AND DISCUSS THE LEASE OF CITY-OWNED PROPERTY FOR HAY PRODUCTION, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: This item has been placed on the Workshop Agenda to offer City Council the opportunity to discuss extending the Lease of Real Property for Hay Production (Lease). A copy of the current Lease Agreement, which includes maps identifying the locations of the properties, is included in the packet. The Lease includes approximately 209 acres of open acreage. The annual Lease payment generates a positive cash flow of \$3,858.60. Based on the current right-of-way mowing contract rate for open acreage (\$17.50/acre X 6 mowing cycles), it would cost the City approximately \$21,945.00 per year to keep the property mowed if it were not leased for hay production. The initial two-year Lease will expire on April 01, 2014. The Lease does provide the City with the option to extend for two (2) additional one-year terms. The present "Lessee" is Pete F. Vacek, Jr., and he has abided by the terms of the Lease and staff has not encountered any issues or problems during the past two (2) years.

Staff is recommending City Council approve both of the additional one-year terms at this time, thereby extending the current Lease with Pete F. Vacek, Jr., until April 01, 2016, in the amount of \$3,858.60 per year.

Key discussion points:

- John Maresh, Assistant City Manager read the Executive Summary regarding the item.
- Councilor Benton asked if Council could get a list of City owned property.
- Robert Gracia, City Manager stated staff is in the process of doing an inventory of all City owned property.
- Councilor McConathy stated her only concern is that the City maintains the appropriate buffer especially around the business.
- No action was taken on the item.

2. REVIEW AND DISCUSS SANITARY SEWER COLLECTION SYSTEM, LIFT STATION AND WASTEWATER TREATMENT PLANT REHABILITATION PROJECT, AND COST ESTIMATES FOR WASTEWATER TREATMENT PLANT 1-A SERVICE AREA, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: This item has been placed on the Workshop Agenda to offer City Council the opportunity to discuss the overall condition of the sanitary sewer collection system within the Wastewater Treatment Plant No. 1-A service area and providing funding for the required improvements to protect the health, safety and welfare of our citizens. While efforts have been made over the past five (5) year period to replace as many of the sewer lines as possible, the overall system remains in poor condition. In many instances, the sewer collection lines have deteriorated to the point the pipe is non-existent resulting in street cave-ins and complete line stoppages that often necessitate emergency repairs.

Staff has prepared and included in the packet, cost estimates for the for the following projects:

1. Collection system line replacement within Wastewater Treatment Plant No. 1-A service area
2. Lift Station rehabilitation/replacements
3. Conversion of Wastewater Treatment Plant No. 1A effluent disinfection from chlorine gas to liquid bleach

In order to protect the health, safety and welfare of the public and the environment, the above listed projects will need to be considered for funding and construction at the earliest time possible.

Key discussion points:

- John Maresh read the Executive Summary regarding the item. Slides were shown pointing out the overall condition of the sanitary sewer collection system:
- Root intrusions in pipe
- Pipe completely deteriorated causing cave-ins.
- Cracks in joints and pipe separation
- Grease accumulation
- Cable and missing pipe in main line
- Mayor Morales asked if there are any recommendations prior to going to budget.
- John Maresh stated the system is in need of rehabilitation. The cost estimate we put together with the help of the City Engineer is \$12.5 million for the collection line work. The lift station in the worst condition is in the Wastewater Plant 2 service area, lift station #11 on B.F. Terry by Fort Bend Appraisal District office. We are keeping that lift station operating with a band aid right now. The approximate cost for that is \$1.1 million. The lift station in Service Area 1 at Fiesta. The Fiesta lift station is a very large lift station and is in bad shape and is approximately \$2.1 million project. Lift Station #4 is located at 1818 Jones Street is approximately \$700,000.
- From a safety aspect, Wastewater Plant 1A still operates using chlorine gas for disinfection and to convert that to bleach is approximately \$266,000 for the conversion.
- Mayor Morales asked if there is a recommendation from staff for Council.
- John Maresh stated it all needs attention. The budget aspect is Council's call. Staff can look at some options whether through CO's. We have to remember it is a health/safety issue and we

need to stay ahead of the regulatory agencies. We don't want to have an administrative order issued by the regulatory agency and we are on their time line. We need to stay ahead of that.

- Mayor Morales stated this is something Council should consider as Certificates of Obligation (CO's).
- John Maresh stated it would be better because this is a regulatory issue versus a bond election. This is a mandate to stay in compliance with these regulations. Certificates of Obligation would probably be better. This is not a "want or an extra" this is a need.
- Councilor Euton stated the total is well over our \$10 million a year that keeps us in the best borrowing status. Would you want to do this in phases and if so, which phases would you recommend?
- John Maresh stated we could not construct this in a one year period. Staff has not broken it down into phases. Depending on the amount of funding available we could tailor the project to fit.
- Councilor Euton asked if the lift stations, since they are a lesser amount, would they need to be done before or are they done together. If we move forward when could we start?
- John Maresh stated they need to be done together. The one in the worst condition is on B.F. Terry which is in the service area for Wastewater Plant #2. If funding were made available we could get the engineering portion started right away and go to construction as soon as the plans are put together.
- Joyce Vasut, Finance Director stated based on the cost of engineering we probably could start even sooner than we could issue Certificates of Obligation. We have a healthy water/sewer fund balance which could start the process for some engineering work.
- Councilor Bolf asked how long the pipes shown in the video have been there. When this is done is there any preventative or cleaning that can be done to maintain them?
- John Maresh stated it was probably when the system was originally installed many decades ago. Regarding a preventative maintenance program, due to our budget constraints and mandates to reduce expenses each year, we do not have a preventative maintenance program. We are strictly reactive fixing emergencies. That is the only funding we had available in the last five year period.
- If you look at the condition of the pipe in the pictures, in many cases if we are not doing a rehab project, we do more harm than good if we try to clean those lines because the high pressure water jet breaks a lot of the pipe out.
- Councilor Bolf stated she knows there is not a program in place but if the City could adopt one to maintain any new work done we would be ahead. Once we get this fixed we need to consider a preventative maintenance program.
- John Maresh pointed out that the pipe that was installed originally was either concrete or clay. Everything used now is PVC or polyethylene which is better and not subject to deterioration with the sewer gases.
- Robert Gracia stated we are in the process of doing a complete assessment of all of our assets and we have identified issues City wide from infrastructure to facilities and will be providing our findings during the budget workshop coming up in March. We have been aggressively identifying those problems.
- Councilor Benton concurred because this is not something frivolous he had no problem with certificates of obligation being issued for some of these costs.
- What are some examples of the band-aid solutions used for the B.F. Terry lift station?
- John Maresh stated an on-going issue is the pumps are so old you cannot get parts for them. New ones have to be bought and retrofit them. We replaced one and the pumps are still losing prime. It is difficult to trouble shoot because the pipe is old and corroded and that is an on-going problem. The new stations are all submersible pumps and motors and a lot of those issues are eliminated.
- Councilor Benton asked how long the \$12.5 million would be phased in – 3 to 4 years.
- John Maresh stated staff would have to look at that but that would be realistic. We could not do it at one time. It could be a five year program.
- Councilor Benton stated when folks pay their water bills they expect us to use those monies to improve or repair or expand. Hopefully, we have the cash flow to do that. Joyce Vasut seems to

think we do.

- Joyce Vasut clarified we would have cash to start the process. If we issue CO's for these projects that would all be CO's that we as the City would obligate water/sewer revenues to pay for. Depending on how much we did per year and how large the debt service that may require some increases in some sewer and water rates.
- Councilor McConathy referenced the first sheet showing the sanitary sewer lines – 167,031 linear feet of lines to be rehabbed. How does that equate to the read lines on the map? Are we talking about rehabbing all the lines throughout the City or just a portion? In terms of cost what is the cost of rehab versus new installation?
- John Maresh stated just a portion, the area within the service area for Plant 1A. The lines are being replaced because there is not a way to rehab where the pipe is gone. On large diameter lines a liner can be put inside the pipe and heat it and expand and forms a new pipe inside the existing pipe. That works well and is cost effective for the large diameter pipes but the typical lines that service the residential homes and alleys in many cases are 6" lines that are small and when you try to insert a sleeve you are restricting the size of that pipe. We have found it is more cost effective to pipe burst and pull a cable through the existing line and pull a new polyethylene pipe and install a new pipe. By doing that you are able to increase it and get more capacity in that line.
- Councilor McConathy asked if we are documenting where our water/wastewater lines are being placed for future generations of City employees to follow.
- John Maresh stated on what is being replaced as we go along. We need to work on mapping the existing water and sewer lines to get a general inventory of our system. We are doing that as we do replacement work but overall we have not been able to put the time and effort into that.
- Councilor McConathy does not disagree. This needs to be done. She will support this project.
- Mayor Morales asked Council, based on Joyce Vasut's comment, we would want to move forward with the engineering as soon as possible and want staff to come back with a plan of how we would proceed in phases with those costs tied to possible CO's.
- Councilor Benton stated the Timber Lane area, Damon, Louise, Georgina and Millie Streets were redone. A lot of the north side has been redone.
- John Maresh stated yes. We have been able to use the Community Development Block Grant (CDBG) grant funds for the north side. There are a few areas we cannot use CDBG funding for because some areas are in the flood plain and CDBG does not allow us those funds for lines that are within the flood plain. We would have to have the City fund that portion of that work. CDBG funds have been beneficial.

3. REVIEW AND DISCUSS PROPOSAL FOR ENGINEERING SERVICES FOR PROVIDING CONSTRUCTION PROJECT REPRESENTATION SERVICES FOR 2014, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Session: This item has been placed on the Workshop Agenda to offer City Council the opportunity to discuss the Proposal for Engineering Services for Providing Construction Project Representation Services for 2014. The Proposal was initially presented to the Professional Services/Engineering Project Review Committee (Committee) on November 21, 2013. The Committee took action recommending the Proposal be placed on the next City Council Workshop Agenda to allow for further discussion. A copy of the Proposal was included in the agenda packet for review.

City Council has annually approved the Proposal from Jones & Carter, Inc., since its inception in 2009 as a means to provide consistent construction project oversight and to control the overall construction management costs for Capital Projects. The contracted inspection services have worked out well for the City during the past five (5) years and the inspectors have been able to monitor and observe numerous construction projects simultaneously. The inspectors are able to communicate with the City's Project Director on a daily basis. Jones & Carter, Inc. has a full-service construction phase department with adequate resources to manage multiple project inspections. They also have a sufficient number of inspectors that are familiar with the City of Rosenberg construction standards and are able to provide coverage when inspectors are unavailable due to vacations, illness or training. The current program also

provides the greatest amount of flexibility to the City when the number of Capital Projects increases or decreases, as the City only pays for the actual hours of inspection time required.

Prior to the City's engagement of contracted inspection services with Jones & Carter, Inc., the engineering firm responsible for a specific project design and construction also provided the inspection services which were limited to only that project. With multiple projects underway simultaneously, the City was paying for multiple inspectors and this was not cost effective. In some cases, the City hired an engineering firm to design a project, but the firm did not offer construction phase/inspection services so the City had to hire another firm to provide the required services. In other instances, third party inspectors were not familiar with the City of Rosenberg construction standards resulting in construction delays, incorrect interpretations of the standards, or the already limited City staff members having to expend time and effort to review construction phase work.

Should City Council direct staff to move forward, this Proposal will be placed on a future Agenda for final consideration.

Key discussion points:

- John Maresh, Assistant City Manager explained the executive summary as stated above.
- Councilor McConathy asked when the City had previously reviewed the companies that provide the services that Jones and Carter currently does for the City. John Maresh answered the Professional Services Committee has not reviewed other companies specifically for construction work.
- Councilor McConathy said the City reviews the various engineering firm's services from time to time to see if the City wants to hire or allow other companies to present to the City for the possibility of changing out those services. I know that one of the Council Members leading this charge is not here tonight, so I might suggest we review this item again when both Councilors Pena and Grigar are present. According to the notes from the Professional Services Committee, it is just a general lengthy discussion, so we don't know the details of what was discussed and what was motivating this to come before Council tonight.
- Councilor Benton stated he is a member of the Professional Services Committee, and he missed the meeting where this was discussed. Councilor Benton stated he would also like to put this item back on the agenda when Councilors Pena and Grigar return.
- Councilor Bolf also agreed and would like to hear what Councilors Pena and Grigar's opinions are.
- Councilor Euton asked if the City ever had an in-house City Engineer person to do this job rather than outsourcing. She asked why the City does it this way. John Maresh answered that the number of the projects fluctuate and it doesn't justify having a lot of inspectors when many multiple projects are going on at one time.
- Councilor Benton asked if someone on the payroll could do other types of inspecting. John Maresh stated this is a different type of inspection. The issue is when you have multiple projects going on Jones and Carter will have two or three inspectors here at the same time. During the busy time, they can be multiple places at one time.

4. REVIEW AND DISCUSS ORNAMENTAL STREET LIGHT POLICY, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: Staff has received an inquiry from the developer of Summer Lakes/Waterford Park (Fort Bend County MUD No. 144) regarding ornamental street lights. They would like to install ornamental street lights, as opposed to the standard "cobra" lights, in the Summer Park portion of the development (the portion of MUD No. 144 south of Reading Road off of August Green Drive). They would also like the City to accept and maintain the street lights as with standards lights.

Currently, per City regulations (Code of Ordinances, Sec. 25-71; and Design Standards, Sec. 2.9), the location of street lighting systems are designed by CenterPoint Energy and approved by the City. The developer pays for the cost of installation of the lights plus three (3) years' maintenance. The developer can install, and the City will accept, standard lights. If the City were to accept non-standard or

ornamental lights, it would require more lights to meet the same lighting standards because the ornamental lights are typically smaller. Therefore it would result in greater long-term costs to the City.

For example, in the subdivision for which this item is being discussed (Summer Park Section One), a standard street lighting system would require approximately thirty (30) lights. To utilize ornamental lights and still meet the same lighting standards would require approximately thirty-five (35) lights. If the lights cost approximately \$15 per light per month to maintain (a rough estimate), the ornamental lighting system would cost the City an additional \$900 annually if the City accepted the system. Under the current City Ordinance, however, there is the option to (1) use standard lighting or (2) have a private system that the Homeowners Association (HOA), not the City, would be responsible for maintaining.

The developer requested that this item be placed on a City Council Agenda to discuss further options whereby the HOA would not have to take on the lighting system in order to have upgraded street lights. There are not numerous examples of other cities' policies addressing this particular issue. Possibly the best example from the research staff conducted was the City of Missouri City, which will enter into an agreement where the HOA is responsible for additional ongoing costs above and beyond the standard number of street lights. The only risk in this case may be reliance on an HOA for the long term maintenance costs.

At this time, staff is requesting direction from City Council as to whether the City should (1) keep the current Ordinance as it is, or (2) proceed with an Ordinance Amendment similar to Missouri City's (attached) that would allow the developer to install ornamental lights provided the HOA is responsible for the costs associated with the additional lights. The latter could be done through an Amendment to the "Subdivision" Ordinance, and potentially the Design Standards. Should City Council direct staff to move forward with one of these options, this item will likely also need to be reviewed by the Planning Commission for their recommendation due to involving the "Subdivision" Ordinance and Design Standards?

Key discussion points:

- Travis Tanner, Planning Director gave an overview and presented a Power Point on the item.
- **Options Under Current Ordinance**
 - 1) Install standard lights and City accepts system and costs
 - 2) Install ornamental lights and HOA accepts costs
 - 3) Ornamental lights are smaller and require more lights to meet the same lighting standards
 - 4) Therefore ornamental lights would result in greater costs to the City if accepted by the City
- **Example**
 - Install standard lights and City accepts system and costs
 - Install ornamental lights and HOA accepts costs
 - Ornamental lights are smaller and require more lights to meet the same lighting standards
 - Therefore ornamental lights would result in greater costs to the City if accepted by the City
- **Recommendation**
 - Ornamental street light policy/ordinance that meets the following criteria:
 - No additional cost to the City
 - Does not discourage upgrading lights
 - Missouri City design standards allow City to accept ornamental lights if HOA pays the cost above and beyond standards lights
 - Similar ordinance is recommended
 - Councilor McConathy stated she researched this and cities like Seguin, Carrollton, Fresno, Corpus Christi, and Columbia in addition to others that have adopted ordinances such as this. Most of them put the expense on the HOA or the developer rather than the city carrying that expense. She gave an example of verbiage used.
 - Travis Tanner stated Missouri City is the only one staff could identify that has a hybrid where the city picks up the typical cost and the HOA pays for above and beyond. We focused on cities in our area. This is for new subdivisions.
 - Councilor McConathy stated we need to consider addressing where it is an existing one that

- wants to upgrade to decorative.
- Travis Tanner stated this would serve that purpose as well and is something staff can look at when we draft an ordinance.
- Councilor Benton stated he leans toward the HOA absorbing the entire cost because of accounting issues.
- Travis Tanner explained when someone develops a new subdivision in particular they can install the standard street lights and the city accepts that system and pays for the maintenance cost. That is the current policy. If someone installs decorative street lights it will require more lights. If the City wants to take on the entire maintenance cost we would incur more cost. We are talking about here is if someone wants to do decorative street lights the City would accept the typical cost, the cost of thirty lights, but the HOA would be responsible for the additional cost. We don't want to incur more cost but we also don't want to discourage someone from developing an upgraded product. We would require the HOA to pick up any additional cost. It would be done through separate accounts with CenterPoint.
- Councilor Benton asked if each light is metered. Travis Tanner said no but a separate account can be setup with CenterPoint that the HOA can pay for part and the City can pay for part.
- Councilor Benton stated when a new development comes in does the City or the developer pay for the light fixtures. Travis Tanner stated that CenterPoint designs a lighting system and the City nor the developer pays for the cost of the standard street lights. It is the on-going cost that the City accepts. If it is a decorative light the developer has to pay for that.
- Councilor Benton asked who pays the light bill. Travis Tanner stated the City pays for that for the standard lights.
- Joyce Vasut stated under the current ordinance the developer pays the first three years of the light bill upfront. The first three years they cover 100% of the cost. We collect that in advance and they pay us. CenterPoint will not install the fixtures until they have our approval that we have been paid for the first three years of operation of those lights. When the lights are installed they are setup in an account in the City of Rosenberg's name and we pay the bills but we have already been paid in advance for the first three years. After that, the City continues to pay that bill. Light bills are difficult to read but it is based on the number of certain types of lights with certain lumens. We pay for lights all around the City.
- Mayor Morales stated Center Point had a program for security lighting at one time with a fixed cost but they eliminated that program.
- Councilor Bolf stated she does not oppose to it as long as the HOA pays the difference in cost.
- Councilor Euton stated she has no objection to it if they pay the difference in cost.
- Mayor Morales stated based on what has been explained, it is to our advantage for them to upgrade and enhance their development. It helps the future of the City. At this point he would encourage staff to put the ordinance together based on those criteria.
- No action was taken on the item.

5. REVIEW AND DISCUSS PROPOSED AMENDMENTS TO THE “SOLICITATION” ORDINANCE, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: A request was made to review the City's current ordinances to address the practice of panhandling. Staff has reviewed the “Solicitation” Ordinance and applicable law and has developed several proposed changes to the existing Ordinance.

This Agenda item will provide an opportunity for City Council to discuss the Ordinance regulating itinerant vendors, solicitors and peddlers and make recommendations to staff.

Key discussion points:

- Dallis Warren, Interim Police Chief gave an overview of the proposed changes to the current City ordinance, Chapter 16, Article IV – Itinerant Vendors, Solicitors and Peddlers.
- We currently have no ordinance provisions for panhandling. Panhandling is a practice of approaching anyone in a public area and asking for money. This is a federally protected right. It is considered a freedom of speech issue whenever you regulate approaching people in a public area. The courts have ruled in can be regulated in three (3) different ways: 1) by

behavior-regulate aggressive panhandling; 2) prohibited in specific locations, such as banks; 3) regulation by geographic area. The courts have a significant hurdle to regulate by geographic area. They define it as a narrowly defined area, with a strong record of major passive panhandling and there has to be a strong record that the passive panhandling is to be prohibited in an area that has special significance. Given this guidance from the courts, we are addressing the first two areas of regulation.

- Dallis Warren reviewed the expanded definition of solicitation; aggressive solicitation; automated teller facility, bank; bus; and check cashing business.
- A “red-lined” copy of the proposed revisions to the ordinance was provided to Council for their review.
- The proposed amended ordinance also makes it an offense up to \$500 to panhandle under these terms.
- Councilor Euton asked if there have been any complaints or major impact concerning panhandlers. Dallis Warren answered they get some complaints and had one this past weekend from one of the restaurants in Brazos Town Center. Since we don’t have an ordinance to regulate them, it is very difficult to tract the exact number, but they get about 8-10 complaints per month on solicitation. He is not sure how many of those are dealing with panhandling and how many are dealing with the existing ordinance. He would have to go through every single call to determine if it pertains to panhandling. He knows there are some panhandling calls from time to time.
- Councilor Euton said she liked the revised ordinance and that we are not invading anyone’s personal rights and yet protecting the public from the aggressive panhandlers.
- Councilor Benton said his main concern was the right of way and at the shopping centers and this revised ordinance will help. He has had some complaints about panhandling in Rosenberg.
- Dallis Warren reiterated that this is only from “aggressive” panhandling—not against someone asking for money.
- Councilor McConathy asked if this will add more boundaries to the permitted solicitors, even when they get aggressive. Dallis Warren answered it will, once you have told someone “no”, block their passage, or touch them, it becomes a violation of our ordinance.
- Councilor McConathy congratulated Dallis Warren on this revised ordinance and hoped the permitting department would ensure anyone coming in for a solicitor’s permit would have the new rules so they can abide by them.
- Councilor Benton said his concern was those who didn’t seek permits and he hopes this helps everyone.
- Dallis Warren said it gives the officers the tool they need to address those issues they don’t have at this time.
- Councilor McConathy asked for a review of this ordinance to see if it’s effective, in about six (6) months to a year from now. Dallis Warren stated they will be able to track how many complaints and calls they have because once the ordinance is passed it will be listed as a violation in their system and can be tracked.
- Councilor Bolf asked if this could be given to all the restaurant owners so they would have the guidelines. Dallis Warren said they would distribute through various business organizations.
- Dallis Warren said this ordinance will be brought back to a regular meeting for final approval.

6. REVIEW AND DISCUSS POTENTIAL APPOINTMENT OF A CHARTER REVIEW COMMITTEE, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: This Agenda item has been included to allow City Council the opportunity to discuss the potential appointment of a Charter Review Committee.

Key discussion points:

- Councilor Benton stated he wanted to see what Council’s views are on a Charter Review Committee.
- Mayor Morales asked if there are some particular items we would be addressing.
- Councilor Benton stated term limits is one and other things. This is a foundation for the future.
- Mayor Morales stated that Council can have a charter amendment election every two years, per

state law.

- Lora Lenzsch, City Attorney stated you can review it any time. The City Council can be the committee.
- Mayor Morales stated a Charter Review Committee was formed when the citizen's voted on staggered terms.
- Lora Lenzsch stated we have had prior charter amendments.
- Councilor McConathy stated it has been a long time since we have had a citizen based committee review the whole charter. This could be two fold since some of us want to see term limits come up in the short term, since we have a 2015 deadline. Perhaps term limits could be on that. A long range plan is to formulate a committee to review the entire charter over the next two years in preparation for the next charter amendment change in 2017.
- Councilor Bolf stated she would suggest a committee with a mixture of citizens and Council or City employees.
- Councilor Euton would favor a mixed committee. We need to put the term limits on the 2015 ballot and anything else if it is ready.
- Councilor McConathy stated we would have to budget for staff and other expenses that would be incurred for this committee to meet.
- Mayor Morales stated staff could help Council budget for that the future.
- Robert Gracia stated we are preparing for the next budget workshop and we start in March. He recommended during those discussions we would bring back a plan of action to be able to move forward.
- No action was taken on the item.

7. REVIEW AND DISCUSS POTENTIAL APPOINTMENT OF A BOND ELECTION COMMITTEE, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: This Agenda item has been included to allow City Council an opportunity to discuss the potential appointment of a Bond Election Committee.

Key discussion points:

- Councilor Benton stated the Bond Election Committee is the same thing. He knew Robert Gracia had some evaluation to identify our needs. It was the same concern to lay a foundation for the possible activation of a committee regardless of the makeup of it.
- Robert Gracia referenced his August 30th memorandum to Council regarding the Bond Election we suggested and Council agreed to delay the Bond Referendum proposed for the November 2013 to give us an opportunity to reevaluate and refine the procedure for developing future bond proposals. You have to understand the management team went through a training session and in order for us to be successful in preparing and identifying what those needs are; we need about a year to do an adequate job and complete the process. The different phases were outlined in the memorandum but it takes a year if we are going to be successful in passing whatever bonds we recommend. Once the committee is established and we identify what those needs are then we start the process. It is a year process. We will not be able to put it together in three or six months.
- Councilor Benton asked when would the committee start meeting.
- Robert Gracia stated staff will provide Council our findings during the budget workshop. We will identify and layout the good, bad and the ugly. The team has been working diligently in identifying all the deficiencies we have within the City. We are looking at infrastructure, technology equipment, and facilities. Those findings will be presented during that process and you will have the opportunity to have discussions and then prioritize accordingly. Then you would direct staff to move forward. We start the process in March.
- Joyce Vasut stated the last meeting in July is when Council gets the proposed budget. Staff will present Council some strategic planning and needs in March. We will start putting together the numbers on those capital items. The process will be different than it has been. You will start seeing the needs and projects in March. Our plan is to give Council a general overview of the departments and their needs in March. Dollars amounts will probably be available around June or sooner.

- Robert Gracia stated staff is coming up with a master plan. Each department will provide and present their five year plan.
- Councilor McConathy stated for clarification that Council will get an opportunity to look at a list of needs and then Council will have the opportunity to determine if we will borrow money for those needs or put on a bond election list. Perhaps once we settle that list we can select a committee and a year from that point meetings and public information would occur in that year. Joyce Vasut stated that is correct.
- In this analysis there was more staff input this time as opposed to when the previous City Manager presented and it is not as restricted this time which is better.
- Mayor Morales stated he hears a process totally different than what he has been used the last three years. This Council will have some interaction with the budget early on.
- Councilor Bolf this is a new slate and we can get a full picture of what our needs are. That is what needs to be put on a bond election if we do have one.
- Councilor Pena stated he thinks from what he has seen this group a good job. They have identified a lot of problems we need to take care of. Since we are dealing with growth and we want to receive the growth accordingly and we can't do it with antiquated systems. Robert Gracia and City staff is doing a good job. We will grow and we have to be ready for that and be successful on how we spend the monies to be ready for that growth.
- Mayor Morales stated based on the information received we will be looking at the needs and budget items that will be important for a possible bond election.
- No action was taken on the item.

8. REVIEW AND DISCUSS PROPOSED SETBACKS FOR TRASH AND RECYCLE CARTS, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: This Agenda item has been included to allow City Council the opportunity to discuss potential setback requirements for trash and recycle carts.

Key discussion points:

- Councilor Benton stated he has had a lot of complaints about people not putting their trash cans up. He would like people to get them out of the street
- Councilor Bolf stated in her subdivision, Town Center, they have a policy that the trash cannot be put out before 6 pm on Tuesday and has to be picked up by 6 pm on Wednesday. The Oaks of Rosenberg had some comments on Face book. A citizen walked on Sunday and their trash cans were still out in front of their house.
- Councilor Benton asked Council if they have any interest in looking at something similar.
- Councilor Pena stated his neighborhood is mostly elderly people and the problem with in his neighborhood with Republic Waste is that they tend to break the wheels off the carts. These people can't drag the cans down the driveway. He gets lots of calls from elderly citizens to help them move trash cans. Councilor Bolf's situation is different. Her subdivision has a Homeowner's Association (HOA). How could we enforce something like that? We want to give the image of being a clean city. It might be something to look at as well as people parking cars in their yards.
- Mayor Morales stated when we started the cart program it was an issue but we decided we needed to give people time. We looked at Missouri City and they have something similar to what Councilor Bolf's HOA has. We need to get the information regarding the cart assistance program to the public.
- Jeff Trinker, Assistant to the City Manager stated there is a cart assistance program. They need to contact Karen Zwahr, Citizen Relations. He has personally found that not enough people who are qualified for the program sign up and take advantage of this program.
- Mayor Morales stated he has personally helped two seniors get on the program. We need to make sure people are aware of that. Republic Waste is responsible to get the trash can and put it back when emptied.
- Jeff Trinker stated Republic Waste is responsible for the cart repair and replacements. Karen Zwahr has a running list each week of new carts and carts that need to be replaced. We track those with Republic to make sure this is being done.

- One issue is what time can the cart be out at the street or curb. Sugar Land has an ordinance when it can only go out 6 p.m. the night before and has to be picked up by 7 to 8 p.m. the day of service. The other issue is the requirements for the cart when it is not service day. That is usually handled by the homeowner's association (HOA). The reason for that is that generally the houses in the HOA are similar enough where they can make certain screening requirements. One issue he sees with Rosenberg is that there is such a diversity of residences it might be difficult to put their cart out of sight in parts of the city.
- Councilor Benton clarified the item states setbacks for trash carts. He is just suggesting that we get them out of the street and put them closer to the house.
- Mayor Morales suggested starting with a program and criteria for the day before pickup and a time the cans have to be picked up on the day of service. Let the HOA's address the screening for their area.
- Jeff Trinker stated his recommendation would be to address the time they can be at the street or curb and a time for pickup.
- Mayor Morales asked Jeff Trinker to prepare something and bring it back to Council for review.
- Councilor Bolf suggested putting a reminder in the monthly newsletter.
- No action was taken on the item.

9. REVIEW AND DISCUSS VEHICLE WEIGHT LIMITS FOR SPECIFIC STREETS, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: This Agenda item has been included to allow City Council the opportunity to discuss vehicle weight limits on specific streets.

Key discussion points:

- Councilor Benton stated the purpose of the item was to find out what Council thought and if this is an issue moving forward. He sees some concern and we could possibly give relief to some areas.
- Councilor McConathy asked if his purpose and intent is out of concern for our streets and maintenance of our streets.
- Councilor Benton stated yes that is the biggest money concern as well as safety concerns. We have some very large trucks on some streets and maybe we should put some weight limitations on some streets.
- Mayor Morales asked how you would determine, for example a Republic Waste truck.
- Lora Lenzsch stated currently you have in your ordinances a gross weight limit weight sign authorized. It says "the city engineer on the basis of an engineer or traffic investigation shall recommend to the City Council appropriate traffic control devices to impose vehicle weight limits on any street or part of any street." There is also a provision that "a person moving or causing to move a truck or vehicle which exceeds that limit shall be liable to the City for any damage". It would be difficult evaluate whether that particular vehicle caused damage but sometimes it could happen. You have that provision. You also have a provision in this ordinance that says "prohibiting trucks on designated roadways". Then there is a specific definition and they are using the definition from the Transportation Code what characterizes a truck. There was question several months ago regarding buses and they did not fit the definition for the trucks. You have this ordinance that you could expand to address a specific concern.
- Mayor Morales asked Councilor Benton if he would like to look at the existing ordinance and see if there is something he would Council to review.
- Councilor Pena stated he thinks TxDOT and most agencies look at a tandem axle that is carrying a heavy load. We are getting ready to redo Old Richmond Road in asphalt. That road is notorious for being broken up and destroyed because of vehicle weight. How do we set perimeters on that? There is a huge grain truck that parks in a lot off of Old Richmond Road. People live in neighborhoods that do this for a living and park their trucks. Will weight perimeters that might or might not be set affect Republic Waste?
- Councilor McConathy stated some cities put in their ordinance those that have the weight limits. They exclude waste management trucks and certain class of vehicles. If we entertain this she would caution Council because there are homeowners who are in the business of driving these

trucks and it is quite an expense for them to store that truck off premises not to mention the security issue of theft. She advised Council to proceed with caution in that respect.

- Councilor Bolf stated when TxDOT was here we suggested putting a sign on US 59 to use Spur 10. That would help a lot of cut through traffic. We asked TxDOT to look into that and she has not heard back from them. That needs to be done.
- Councilor Benton agreed that would help but in the inner neighborhoods they are everywhere.
- Councilor Euton stated that if we want to address there might be specific neighborhoods where we are having a lot of breakdowns. We need to use a lot of caution because of the people who have trucks they are parking at their home because of the cost and safety issue of parking it elsewhere.
- Mayor Morales asked legal counsel if we could identify areas and have sign postings that show weight limits in particular areas. That also gives our officers something to identify and enforce. If there are certain areas, such as Old Richmond Road identified as a problem then sign postings could be done and then you are not changing the ordinance we have but you let people know areas that are off limits.
- Robert Gracia asked how we identify the areas of town. We have an existing ordinance where we have identified weight limits. Who determines and do we look at all streets?
- Lora Lenzsch stated the city engineer would know the weight restrictions for a particular road.
- Councilor Benton stated Old Richmond Road is one and Jones Street and Sally Anne street.
- Councilor Euton suggested maybe roads that have been redone the last two years and the ones on the list to be done.
- Councilor McConathy stated then it becomes a problem with the class of permitted truck usage as in a moving truck. That is a weight class that would exceed anything we come up with.
- Mayor Morales suggested professional guidance is needed for this.
- Robert Gracia asked Council to allow staff time to research and review and come back to Council with a recommendation.
- No action was taken on the item.

10. CONSIDER MOTION TO ADJOURN FOR EXECUTIVE SESSION.

Action: Councilor Euton made a motion, seconded by Councilor Benton to adjourn for Executive Session. The motion carried by a unanimous vote of those present.

11. HOLD EXECUTIVE SESSION TO RECEIVE LEGAL ADVICE ON LEGAL MATTERS PURSUANT TO SECTION 551.071 OF THE TEXAS GOVERNMENT CODE; AND, TO DELIBERATE THE POTENTIAL PURCHASE, EXCHANGE, LEASE, OR VALUE OF REAL PROPERTY PURSUANT TO SECTION 551.072 OF THE TEXAS GOVERNMENT CODE; AND, FOR DELIBERATIONS REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS AS AUTHORIZED BY SECTION 551.087 OF THE TEXAS GOVERNMENT CODE.

An Executive Session was held to receive legal advice on legal matters pursuant to Section 551.071 of the Texas Government Code; and, to deliberate the potential purchase, exchange, lease, or value of real property pursuant to Section 551.072 of the Texas Government Code; and, for deliberations regarding economic development negotiations as authorized by Section 551.087 of the Texas Government Code.

12. ADJOURN EXECUTIVE SESSION, RECONVENE INTO WORKSHOP SESSION, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF AS A RESULT OF EXECUTIVE SESSION.

Mayor Morales adjourned the Executive Session and reconvened into Regular Session at 8:45 p.m. No action was taken as a result of Executive Session.

13. ADJOURNMENT.

There being no further business Mayor Morales adjourned the meeting at 8:45 p.m.

Linda Cernosek, TRMC, City Secretary



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
B	Resolution No. R-1750 - Agreement for Professional On-Line Auction Services

ITEM/MOTION

Consideration of and action on Resolution No. R-1750, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a Property Disposition Service Agreement for professional auction services, by and between the City and PropertyRoom.com.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds:

N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

MUD #: N/A

1. Resolution No. R-1750
2. Resolution No. R-1460 – 03-06-12
3. City Council Meeting Minute Excerpt – 03-06-12

APPROVALS

Submitted by:

Linda Cernosek
City Secretary

Tracie Dunn

Tracie Dunn
Police Lieutenant

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney **LL/lc**
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

The City Secretary and the Police Department are requesting approval to enter into an Agreement with PropertyRoom.com to hold a City-wide auction to retire surplus equipment, confiscated items, and other salvaged property. The auction will be on-line and the PropertyRoom.com will be the on-line auction service.

The City has utilized PropertyRoom.com for auction services for the past year and, overall, has been satisfied with the service provided.

The City Secretary recommends approval of Resolution No. R-1750, authorizing the City Manager to execute an Agreement for on-line auction services with PropertyRoom.com for a one-year term.

RESOLUTION NO. R-1750

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A PROPERTY DISPOSITION SERVICE AGREEMENT FOR PROFESSIONAL AUCTION SERVICES, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND PROPERTYROOM.COM.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The City Manager is hereby authorized to execute a Property Disposition Service Agreement (Agreement) with PropertyRoom.Com to auction City surplus property. A copy of such Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this _____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**



5257 Buckeystown Pike, Suite 475
 Frederick, MD 21704
 Tel: 240.751.9123
 Fax: 240.230.0229
 Federal Tax ID: 86-0962102

Property Disposition Service Agreement

Version date: 2012-May

Owner Name: CITY OF ROSENBERG	NJPA Agreement: Yes <input type="checkbox"/> No <input type="checkbox"/>
Mailing Address: 2110 4th Street	NJPA Member #:
City, State, Zip Rosenberg, Texas 77471	Signature Date:
Telephone: 832.595.3348	Automatic Renewal: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Fax: 832.595.3333	Expiration Date: (if not automatic renewal) 3-1-2015
Primary Contact Name: Linda Cernosek, City Secretary Primary Contact Phone: 832.595.3348	Primary Contact Email: lindac@ci.rosenberg.tx.us

This agreement ("Agreement") documents the terms and conditions under which PropertyRoom.com, Inc., a Delaware corporation ("Contractor"), will provide storage, auction and disposition services ("Services") on behalf of owner named above ("Owner").

At request of Owner, Contractor agrees to establish separate accounts under the terms of this Agreement for any other departments or agencies related to Owner for purposes of complying with Owner's financial accounting requirements. Contractor also recognizes the common practice in many jurisdictions to permit related agencies the opportunity to use the services in this Agreement (to "Piggyback") according to the terms and pricing contained herein.

Contractor further stipulates that any municipal, county, or state governmental agency located in the same state as Owner may also Piggyback this Agreement. Owner acknowledges Contractor has advised Owner about Contractor's nationally awarded contract vendor status from the National Joint Powers Alliance ("NJPA") for Services described in this Agreement, and Owner can obtain complete details of the related RFP process at www.NJPACoop.org.

This Agreement comprises the entire agreement between Contractor and Owner relating to the storage, auction and disposition of property and supersedes any prior understandings, agreements, or representations by or between the parties, be they written or oral.



5257 Buckeystown Pike, Suite 476
 Frederick, MD 21704
 Tel: 240.751.9123
 Fax: 240.230.0229
 Federal Tax ID: 86-0962102

Property Disposition Service Agreement

Version date: 2012-May

Owner Name: City of Rosenberg Police Department	NJPA Agreement: Yes <input type="checkbox"/> No <input type="checkbox"/>
Mailing Address: 2120 4th Street	NJPA Member #:
City, State, Zip Rosenberg, Texas 77471	Signature Date: 3-1-2014
Telephone: 832.595.3728	Automatic Renewal: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Fax: 832.595.3721	Expiration Date: (if not automatic renewal) 3-1-2015
Primary Contact Name: Lt. Tracie Dunn Primary Contact Phone: 832.595.3728	Primary Contact Email: traciew@ci.rosenberg.tx.us

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Contractor further stipulates that any municipal, county, or state governmental agency located in the same state as Owner may also Piggyback this Agreement. Owner acknowledges Contractor has advised Owner about Contractor's nationally awarded contract vendor status from the National Joint Powers Alliance ("NJPA") for Services described in this Agreement, and Owner can obtain complete details of the related RFP process at www.NJPAcoop.org.

This Agreement comprises the entire agreement between Contractor and Owner relating to the storage, auction and disposition of property and supersedes any prior understandings, agreements, or representations by or between the parties, be they written or oral.

1. **Items Requiring Services.** Owner will designate items of property ("Property") it desires to provide to Contractor for Services. For the sake of clarity, in this Agreement, Property means smaller items, such as jewelry, electronics, bicycles and surplus spare parts, as well as larger items, such as cars, trucks, planes or industrial compressors. Contractor retains the right to accept or reject certain Property in its sole discretion.
2. **Title to Property.** Owner shall retain legal title to Property until it is purchased by auction or otherwise disposed of in accordance with the Agreement, at which time Owner will be deemed to have transferred title to the purchaser or other acquirer of the Property (the "Buyer"). Owner appoints Contractor as its representative and instrumentality to hold and offer for sale on Owner's behalf the Property, in accordance with this Agreement. Owner appoints Contractor as its attorney-in-fact to sign any and all documents necessary to assign to Buyers all of Owner's right, title and interest in and to Property sold or disposed. Owner's Property shall, at all times before sale or disposition, be subject to the direction and control of Owner. Cash receipts, accounts receivable, contract rights, notes, general intangibles, and other rights to payment of every kind, arising out of the sales and dispositions of Property (collectively the "Proceeds") belong to Owner, subject to payment of amounts owed by Owner to Contractor and to third parties pursuant to this Agreement, which amounts shall be disbursed by Contractor on behalf of Owner as provided herein.
3. **Services Offered.** Contractor offers four Services for storage, auction and disposition of Property. Owner may use all or any combination of Services depending on Owner's needs as well as the type and nature of Property. Descriptions below summarize the four Services. Attached data sheets, incorporated by reference, provide more details for each Service.

As and when applicable, for all four Services, Contractor agrees to use commercially reasonable efforts to store and auction Property as well as to dispose of Property not purchased at auction, subject to the ultimate control of Owner. Contractor shall sell and dispose of Property "as is" without any liability to Owner. Contractor is solely responsible for identifying and resolving sales and use tax issues arising from Property sales, including charging, collecting and remitting such taxes.

- a. **Portable Service.** The Portable Service applies to Property items small enough to be picked-up and loaded onto box trucks. Contractor will, on Owner's behalf as its representative, pick-up, test (if applicable and practicable), erase or destroy (in the case of electronic goods) hard disks and SIM cards, photograph, research, store, and list Property for sale by internet auction to the public on one or more domains selected by Contractor. Typical Property processed under the Portable Service include law enforcement property and evidence items approved for disposition, seized items, municipal surplus, and abandoned property as well as lost and found items.
- b. **Gold Service.** The Gold Service applies to Property items too large for pick-up in a box truck and for which Owner agrees to auction-in-place. At Owner's request, Contractor will list such Property for sale by internet auction to the public on one or more domains selected by Contractor. Contractor will use descriptions and digital photographs supplied by Owner. For the sake of clarity, with Gold Service, Contractor will not pick-up and store Property but rather Owner will maintain physical control until transfer of title to Buyers. Contractor will complete auctions and collect funds from Buyers and then provide Owner and Buyers mutual contact information to facilitate Property pick-up by Buyers. Typical Property processed under the Gold Service includes cars and trucks located too far from storage yards to make it economically feasible to tow; additional items include large compressors, generators, etc.
- c. **Titanium Service.** The Titanium Service applies to Property vehicles seized and or impounded by law enforcement agencies. At Owner's request, Contractor will receive tows of seized and impounded vehicles at local yard facilities ("Yards"), storing vehicles while awaiting Owner decision on whether to release a vehicle to a citizen or send to auction. For release-to-citizen vehicles ("Released Vehicles"), Contractor will process paperwork and collect storage fees from citizens. Alternatively, Contractor will, on Owner's behalf as its representative, clean, photograph, store and list the Property for sale by internet auction to the public. Contractor offers Titanium Services in conjunction with subcontractor, Copart, Inc., a publicly traded company ("Subcontractor") with approximately 150 Yards around the U.S.

- d. **Platinum Service.** The Platinum Service applies to the auctioning of municipal fleet vehicles and surplus equipment, i.e., Property. At Owner's request, Contractor will tow the Property to, or take delivery at Yards. Contractor will, on Owner's behalf as its representative, tow, verify drivability, clean, photograph, store and list Property for sale by internet auction to the public. Contractor offers Platinum Services in conjunction with Subcontractor. Typical Property sold under this service include municipal fleet vehicles such as automobiles and light trucks as well as specialty equipment such as fire trucks, ambulances, trash collection trucks, and other large public works equipment.

4. Term and Termination.

- a. The Agreement will become effective upon signature by the parties (the "Signature Date") and, as indicated in the top section of this Agreement, will continue for either:
- (1) An initial term of 1-year from the Signature Date and thereafter will automatically renew for consecutive 1-year terms unless written notice of non-renewal is provided by either party to the other at least 60 days prior to the expiration of the then current term; or
 - (2) An initial term specified by the Owner of at least 1-year, after which a renewal agreement will be required by the Owner. If Owner selects this option, Contractor will send Owner a Notice of Renewal 60 days prior to Agreement expiration.
- b. The Agreement may be terminated by either party upon 30 days prior written notice to the other party.
- c. The rights of the parties to terminate the Agreement are not exclusive of any other rights and remedies available at law or in equity, and such rights will be cumulative. The exercise of any such right or remedy will not preclude the exercise of any other rights and remedies.
- d. Notwithstanding any termination by either party of the Agreement, Contractor will continue to remit Proceeds arising under the Agreement (net of amounts owed by Owner to Contractor and to third parties pursuant to the Agreement) in connection with any sales made before the effective date of the termination. At the time of termination, any unsold inventory shall continue to be auctioned by Contractor or disposed on behalf of Owner or returned to Owner, at Owner's election and cost.

5. Allocation of Sales Proceeds.

For all Services, "Winning Bid" means the highest amount committed and paid by any auction participant ("Buyer") for a Property item sold. For the sake of clarity, Winning Bid does not include shipping, buyer or other fees, nor does Winning Bid mean or include an amount that a Buyer commits to pay but later fails to pay.

a. Portable Service

- (1) **Sales Price.** Total Proceeds paid by Buyer shall be called "Sales Price." Sales Price shall include the Winning Bid plus fees (the "Fees"), such as shipping and handling, taxes, and insurance costs associated with the transaction and paid by Buyer.
- (2) **Transaction Costs.** Contractor shall utilize Fees, and not the Winning Bid, to pay or remit costs for shipping and handling, taxes, and insurance.
- (3) **Contractor Commission.** For each item of Property, Owner will pay to Contractor a fee (the "Contractor Commission") equal to 50% of the first \$1,000 of the Winning Bid and 25% of the Winning Bid portion, if any, that exceeds \$1,000. The amount of the Winning Bid remaining after deduction and payment of the Contractor Commission will be called "Owner's Gross Proceeds".
- (4) **Processing Costs.** Credit card processing costs ("Credit Card Cost") and affiliate processing fees (the "Affiliate Fees," which include commissions and processing costs paid to third parties if such a third party sent the winning bidder to the website), will be borne by Owner and Contractor in proportion to the ratio of Owner's Gross Proceeds to Contractor Commission. Owner's portion of Credit Card Cost and Affiliate Fees (collectively, the "Processing Costs") will be paid by Contractor to applicable third parties on Owner's behalf.
- (5) **Net Proceeds.** "Owner's Net Proceeds" shall mean the amount of the Winning Bid paid to Owner after deduction and payment of Contractor Commission and Processing Costs.

- (6) **Fuel Surcharge.** For Portable Services, Contractor does not charge pick-up fees, hourly labor rates or mileage charges. However, if and when fuel prices rise above a level as shown in the schedule below, a fuel surcharge ("Fuel Surcharge") will be paid to Contractor out of Owner's Net Proceeds for each manifest of Portable items. Contractor tracks benchmark average retail diesel prices as published online by the Energy Information Administration of the U.S. Department of Energy and resets the Fuel Surcharge quarterly based on average weekly pricing from the prior quarter. Fuel Surcharges, if any, are deducted from monthly Owner's Net Proceeds.

Fuel Surcharge Schedule

Retail Diesel (per gal)	Fuel Surcharge*
< \$ 2.50	\$ 0.00
\$ 2.50 to \$ 2.99	\$ 12.40
\$ 3.00 to \$ 3.49	\$ 24.80
\$ 3.50 to \$ 3.99	\$ 37.20
\$ 4.00 to \$ 4.49	\$ 49.60**

* Divides across locations and/or sub-accounts picked-up same day

** Table continues at same rate of \$12.40 increments per \$0.50 per gal change in Retail Diesel.

- (7) **Disposal.** To the extent that Property is not sold by auction, Contractor will dispose of Property in a commercially reasonable manner, including, but not limited to, sending to recycling, landfill, or scrap processor. Owner understands and agrees:
- (a) For Property not sold by Auction, disposition activities create additional Contractor processing costs (the "Disposal Costs") and potentially a disposition Sales Price (the "Disposition Proceeds").
 - (b) Disposal Costs include, but are not limited to, labor cost of reloading Property onto a truck, labor and vehicle costs associated with transporting Property for disposition, and third-party fees, such as landfill, recycling, and hazardous material disposal fees.
 - (c) Disposition Proceeds include, but are not limited to, a Sales Price obtained for scrap metal.
 - (d) Contractor will bear the burden of Disposal Costs.
 - (e) Contractor will retain Disposition Proceeds, if any, as an offset to Disposal Costs, except if Disposition Proceeds for an item of Owner Property exceed \$250, in which case Owner shall be entitled to retain a portion of Disposition Proceeds calculated in accordance with Section 5a above, provided that Disposition Proceeds will be deemed be equivalent to "Winning Bid" and the Disposal Costs will be deducted as a processing cost under Section 5a(4) above.
- b. **Gold Service**
- (1) **Sales Price, Transaction Costs, Processing Costs & Net Proceeds.** Same as in 5a(1), 5a(2), 5a(4) and 5a(5).
 - (2) **Contractor Commission.** For each item of Property sold at auction, Owner will pay to Contractor a fee equal to 5% of the Winning Bid. In addition, Contractor will separately charge Buyer a 15% buyer's premium paid directly to Contractor by Buyer (the "Buyer's Premium").
- c. **Titanium Service.** Owner will pay Contractor a "Contractor Commission", "Tow Fees", and "Storage Fees" as described below
- (1) **Contractor Commission.** For each item of Property sold at auction, Owner will pay to Contractor a fee equal to 12.5% of the Winning Bid.
 - (2) **Tow Fees.** For vehicles that can be hauled on a standard vehicle transporter, such as automobiles and light trucks, tow services are provided for free within thirty nautical miles of any Yard. A \$10 tow fee applies for every additional 10 nautical miles, or portion thereof, over

the first 30 free nautical miles. For over-sized vehicle tows (e.g., cranes, buses, backhoes, etc.) Contractor will seek competitive bids from several haulers and Owner may choose which company to use. In addition, fees for acquiring titles on behalf of Owner, if any, will be borne entirely by Owner.

- (3) **Buyer Fees.** Subcontractor will charge fees to Buyers for additional services, such as lot access, vehicle loading assistance, shipping and transportation, and other services.
 - (4) **Storage Fees.** For Owner vehicles sold at auction, daily storage fees ("Owner Storage Fees") equal \$5.00 per vehicle per day. For Release Vehicles, daily storage fees ("Citizen Storage Fees") equal \$10.00 per vehicle per day. Owner has the right to charge citizens higher storage fees for Release Vehicles and Contractor will collect such fees along with other citizen fees set by Owner, such as tow charges, administrative charges, court processing fees, etc. ("Citizen Payments").
 - (5) **Net Proceeds.** "Owner's Net Proceeds" shall mean the amount of the Winning Bid plus Citizen Payments (if any) paid to Owner after deduction and payment of Contractor Commission, Tow Fees (if any), Owner Storage Fees, Citizen Storage Fees, and any other fees for ancillary services requested by Owner, such as title fees, decal removal, etc.
- d. **Platinum Service.** Owner will pay Contractor a "Contractor Commission" and "Tow Fees" as described below. Note: There are no storage fees for Platinum accounts.
- (1) **Contractor Commission.** Same as 5c(1).
 - (2) **Tow Fees.** Same as 5c(2).
 - (3) **Buyer Fees.** Same as 5c(3).
 - (4) **Net Proceeds.** Same as 5c(5)
6. **Payment Terms.** Once a month, Contractor will remit to Owner the Owner's Net Proceeds arising from completed sales and Services rendered during the prior month. Sales are deemed completed when all items comprising a line item on the original manifest or other list of Property are sold. With each payment of Owner's Net Proceeds, Contractor will make available to Owner, online, a report setting forth the following information for the immediately preceding month:
- a. Completed sales during the prior month, including the total amount of related Proceeds collected, Citizen Remittances (if any), Contractor Commissions, the Owner and Contractor share of Processing Costs, Tow Fees (if any), Owner and Citizen Storage fees (if any), any applicable Title Fees and/or Fuel Surcharges, and Owner's Net Proceeds;
 - b. Other dispositions of Property during the month; and
 - c. The Property, if any, inventoried by Contractor at end of month.
7. **Contractor Obligations.** With respect to Contractor's delivery of Services:
- a. Contractor will exercise due care in the handling and storage of Property;
 - b. Contractor shall keep Property free of liens, security interests, and encumbrances, and shall pay when due all fees and charges with respect to the Property;
 - c. Contractor shall sign and deliver to Owner any UCC-1 financing statements or other documents reasonably requested by Owner;
 - d. Contractor shall obtain and maintain insurance in an amount (determined by Contractor) not less than the replacement value of Property in its possession. The insurance will cover the Property against fire, theft, and extended coverage risks ordinarily included in similar policies. Contractor shall give Owner a certificate or a copy of each of the above upon Owner's request.
 - e. Contractor agrees, in order to help Owner comply with local public notification statutes, if any, as well as to help Owner achieve higher Winning Bids, to allow Owner to place one or more clickable links (the "Links") from one or more Owner websites to www.PropertyRoom.com or other websites Contractor uses for sale of Owner items. Contractor agrees to supply technical requirements for Links to Owner.
8. **Owner Obligations.** While this Agreement is not exclusive and has no minimum requirements, Owner will use reasonable efforts to provide Contractor such Property as becomes available for sale. Owner will complete paperwork reasonably necessary to convey custodial possession of Property

items to Contractor, including a written manifest or list that describes the items of Property in sufficient detail for identification.

Owner agrees it will not knowingly provide Property that is illegal or hazardous or infringes the intellectual property rights of any third party ("Prohibited Property"), including but not limited to explosives, firearms, counterfeit or unauthorized copyrighted material ("knock-offs"), poisons or pharmaceuticals. In the event Contractor determines in good faith that any Property consists of Prohibited Property, Contractor shall have the right to immediately suspend or cancel (even if completed) any auction or disposal of such Property and may refuse to sell, offer to sell or otherwise dispose of such Property. To the extent requested by Contractor, Owner will provide reasonable assistance in determining whether such Property in fact consists of Prohibited Property.

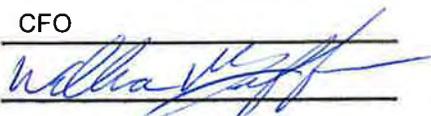
In the event any Buyer asserts a claim that any Property consists of Prohibited Property and Contractor determines in good faith that such claim is reasonably likely to be determined to be correct, Contractor may, in its discretion, accept the return of such Property and refund the Sales Price for such Property to Buyer, in which event Contractor may then destroy such Property or return such Property to Owner and such refunded Sales Price shall be deducted from future remittances of Owner's Net Proceeds made by Contractor.

9. **Restrictions on Bidding.** Contractor and its employees and agents may not directly or indirectly bid for or purchase auctioned Property on Contractor websites.
10. **Representations and Warranties of Owner.** Owner hereby represents warrants and covenants as follows (the "Conditions Precedent"):
 - a. Property delivered to Contractor is available for sale to the general public without any restrictions or conditions whatever and does not consist of Prohibited Property; and
 - b. Owner has taken necessary actions for Owner to auction the Property or to transfer title to the Property to Buyers.
11. **Books and Records.** Contractor will keep complete and accurate books of account, records, and other documents with respect to the Agreement ("Books and Records") for at least 3 years following Agreement expiration or termination. Upon reasonable notice, Books and Records will be available for inspection by Owner, at Owner's expense, at the location where Books and Records are regularly maintained, during normal business hours.
12. **Assignment.** The Agreement may not be assigned, in whole or in part, by either of the parties without the prior written consent of the other party (which consent may not be unreasonably withheld or delayed). Notwithstanding the foregoing, an assignment of the Agreement by either party to any subsidiary or affiliate or a third party acquisition of all or substantially all of the assets of such party will not require the consent of the other party, so long as such subsidiary, affiliate or acquiring entity assumes all of such party's obligations under the Agreement. No delegation by Contractor of any of its duties hereunder will be deemed an assignment of the Agreement, nor will any changes in control or any assignment by operation of law by either party. Subject to the restrictions contained in this section, the terms and conditions of the Agreement will bind and inure to the benefit of each of the respective successors and assigns of the parties hereto.
13. **Notices.** Any notice or other communication given under the Agreement will be in writing and delivered by hand, sent by facsimile (provided acknowledgment of receipt thereof is delivered to the sender), sent by certified, registered mail or sent by any nationally recognized overnight courier service to the addresses provided on the front page of the Agreement. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.
14. **Interpretation.** Whenever possible, each provision of the Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent

of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Agreement. The Agreement headings are inserted for convenience of reference only and shall not constitute a part hereof.

- 15. **Governing Law.** The internal law, and not the law of conflicts, of the state in which Owner is located will govern all questions concerning construction, validity and interpretation of the Agreement and the performance of the obligations imposed by the Agreement. The proper venue for any proceeding at law or in equity will be the state and county in which the Owner is located, and the parties waive any right to object to the venue.
- 16. **Further Assurances.** Contractor and Owner will each sign such other documents and take such actions as the other may reasonably request in order to effect the relationships, Services and activities contemplated by the Agreement and to account for and document those activities.
- 17. **Relationship of the Parties.** No representations or assertions will be made or actions taken by either party that could imply or establish any joint venture, partnership, employment or trust relationship between the parties with respect to the subject matter of the Agreement. Except as expressly provided in the Agreement, neither party will have any authority or power whatsoever to enter into any agreement, contract or commitment on behalf of the other, or to create any liability or obligation whatsoever on behalf of the other, to any person or entity. Whenever Contractor is given discretion in the Agreement, Contractor may exercise that discretion solely in any manner Contractor deems appropriate. Contractor shall not be liable to Owner for any Losses incurred by reason of any act or omission performed or omitted by Contractor in good faith on behalf of the Owner and in a manner reasonably believed to be within the scope of authority conferred on Contractor by the Agreement, except that Contractor shall be liable for any such Losses incurred by reason of Contractor's fraud, gross negligence or willful misconduct.
- 18. **Force Majeure.** Neither party will be liable for any failure of or delay in performance of the Agreement for the period that such failure or delay is due to acts of God, public enemy, war, strikes or labor disputes, or any other cause beyond the parties' reasonable control (each a "Force Majeure"), it being understood that lack of financial resources will not to be deemed a cause beyond a party's control. Each party will notify the other party promptly of any Force Majeure occurrence and carry out the Agreement as promptly as practicable after such Force Majeure is terminated. The existence of any Force Majeure will not extend the term of the Agreement.

This Agreement, including all of the terms and conditions set forth above as well as the data sheet attachments for the four Contractor service offerings and any addendum prepared by the Owner (indicate inclusion of Owner Addendum by checking here:) comprises the entire Agreement between the Parties. This Agreement cannot be modified except in writing by the duly authorized representatives of both parties.

	OWNER	CONTRACTOR
Signor Name:	<u>Robert Gracia</u>	<u>William V. Griffith</u>
Signor Title:	<u>City Manager</u>	<u>CFO</u>
Signature:	<u></u>	
Date:	<u></u>	<u>2-3-2014</u>

Addendum to Property Disposition Services Agreement

This addendum is attached to and made part of **The City of Rosenberg, Texas** Property Disposition Services Agreement dated _____ (the "Agreement"). In the event of a conflict between the provisions of the Agreement and this Addendum, the terms of this Addendum shall govern.

The Agreement is hereby modified as follows:

1. PropertyRoom.com will allow the City of Rosenberg, Texas to take pictures of furniture and send these photos along with a description of the furniture to PropertyRoom.com to post on their auction site for disposal. (Gold)
2. PropertyRoom.com agrees to waive the fuel surcharges covered by Section 5 paragraph 6 of the attached agreement.
3. Section 4.a.(1) is amended to delete the automatic renewal clause.
4. PropertyRom.com agrees to a one year term with the City of Rosenberg, Texas.

City of Rosenberg

By: _____ Date _____

Robert Gracia, City Manager

PropertyRoom.com, Inc.

By:  _____ Date 2-3-2014

Name: William V. Griffith, CFO

RESOLUTION NO. R-1460

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, AN AGREEMENT FOR AUCTION SERVICES, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND PROPERTYROOM.COM.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The City Manager is hereby authorized to execute an Agreement for Auction Services ("Agreement") with PropertyRoom.com to auction City surplus property. A copy of such Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this 6th day of March 2012.

ATTEST:


Linda Cernosek, City Secretary

APPROVED:


Vincent M. Morales, Jr., Mayor



AUCTION SERVICES AGREEMENT: TERMS AND CONDITIONS

These Terms and Conditions (the "Ts & Cs") set forth the terms upon which PropertyRoom.com, Inc., a Delaware corporation ("Contractor"), will provide auction and disposition services (the "Services") for physical goods (the "Property") provided from time to time by the Contracting Organization or any Sister Agency of the Contracting Organization (jointly and severally, the "Owner") to Contractor on behalf of, and as agent for, the Owner.

Methods for Accepting Ts & Cs. These Ts & Cs may be accepted by Contractor and the organization to which the Services are provided (the "Contracting Organization") by:

- (i) Execution of a written agreement expressly incorporating these Ts & Cs, together with any attachments or addenda expressly incorporated therein (the "Executed Docs"),
- (ii) Presentment of these Ts & Cs as part of a proposal letter, proposal documentation or other written submission signed by Contractor and acceptance in writing (whether by letter, facsimile or e-mail) of such materials by the Contracting Organization without modification (the "Transaction Docs"),
- (iii) Presentment of these Ts & Cs as part of a proposal letter, proposal documentation or other written correspondence signed by Contractor and subsequent submission by the Contracting Organization of Property to Contractor for performance of Services.

Allowance of "Piggy-backing" by Sister Agencies. These Ts & Cs may also be accepted by any municipal, county or state governmental agency located in the state in which the Contracting Organization is located (each a "Sister Agency") by Sister Agency submission of Property to Contractor for performance of Services.

The agreement between Contractor and Owner (the "Agreement") consists of these Ts & Cs and (i) if any Executed Docs exist, such Executed Docs, (ii) if no Executed Docs exist but Transaction Docs exist, such Transaction Docs. If neither Executed Docs nor Transaction Docs exist, then the Agreement shall consist solely of these Ts & Cs. The Agreement, as so defined, collectively comprises the entire agreement between Contractor and Owner relating to the subject of the Agreement and supersedes any prior understandings, agreements or representations by or between the parties, written or oral, which may be related to the subject matter hereof in any way.

1. **Items to be Sold.** From time to time, Owner will designate items of Property it desires to provide to Contractor for Services. Contractor retains the right to accept or reject certain items as Property in its sole discretion.
2. **Title to Property.** Owner shall retain legal title to the Property until it is purchased by auction or otherwise disposed of in accordance with the Agreement at which time Owner will be deemed to have transferred title to the purchaser or other acquirer of the Property (the "Buyer"). Owner appoints Contractor as its representative and instrumentality to hold and offer for sale on Owner's behalf the Property, in accordance with the Agreement. In connection therewith, Owner appoints Contractor as its attorney-in-fact to sign any and all documents necessary to assign to Buyers all of Owner's right, title and interest in and to Property sold or disposed. Owner's Property shall, at all times before sale or disposition, be subject to the direction and control of Owner. Cash receipts, accounts receivable, contract rights, notes, general intangibles, and other rights to payment of every kind, arising out of the sales and dispositions of Property (collectively the "Proceeds") belong to Owner, subject to payment of amounts owed by Owner to Contractor and to third parties pursuant to the Agreement, which amounts shall be disbursed by Contractor on behalf of Owner as provided in the Agreement.
3. **Method of Selling Property.**
 - a. **Portable Property Items.** Contractor will, on Owner's behalf as its representative, pick-up, store and list Property for sale by internet auction to the public on one or more domain names selected by Contractor. To the extent that any Property is not sold by auction, Contractor may, in any commercially reasonable manner selected by Contractor, dispose of Property. Contractor will determine all aspects, terms and conditions of auctions of Property and dispositions of Property not purchased at auction, subject to the ultimate control of Owner. Contractor will handle all phases of submitting Property for auction, including, but not limited to, determining when Property will be auctioned, setting the opening and reserve prices of Property, if any; setting auction length; creating text and graphics to describe and depict Property; collecting Buyer information; approving Buyer purchase transactions; and collecting Proceeds for completed sales from Buyers. Contractor shall use reasonable commercial efforts in auctioning and selling Property and disposing of Property that does not sell. Contractor shall sell and dispose of all Property "as is" without any liability to Owner. Contractor is solely responsible for identifying and resolving sales and use tax collection issues arising from Property sales, including the necessity of charging and collecting such taxes.

- b. **Large Property Items.** Contractor will, at Owner’s request and on Owner’s behalf as its representative, list physically large Property (“Large-Items”) for sale by auction, including but not limited to cars, trucks, boats, planes and bulk lots of bicycles. For Large-Items, Contractor offers Owner different selling options (“Gold” and “Platinum”), each with different service components and associated pricing.
 - (1) **In-Place Option.** For Gold, Contractor will auction Large-Items in-place, and in this context, “in-place” means that Contractor will not pick-up and store these Large-Items but rather Owner will maintain physical control until transfer of title to Buyers.
 - (2) **Haul-away Option.** For Platinum, Contractor will, in conjunction with an agent or subcontractor of Contractor and to the extent practical, pick-up and haul-away Large-Items, selling via online auction and transferring title and physical possession to Buyers as described in Portable Property Items.
 - (3) **Large-Item Service Summary.** The Large-Item Auction Services Option Table below depicts service components associated with each option.

Services Summary Table for Large-Items

Service Component	Service Option	
	Gold	Platinum*
1. List Large-Item for online auction	Contractor	Contractor
2. Checklist review and coordination	Contractor	Contractor
3. Listing write-up and marketing	Contractor	Contractor
4. Auction and auction technology management	Contractor	Contractor
5. Customer Support to Bidders	Contractor	Contractor
6. Coordinate Buyer payment and Large-Item pick-up	Contractor	Contractor
7. Transaction (payment) processing	Contractor	Contractor
8. Photographing, vehicle review, equipment description	Owner	Contractor
9. Provide or procure asset title documentation, as applicable	Owner	Owner**
10. Pick-up and haul-away for off-premises online auction		Contractor

* Contractor provides its Platinum service in cooperation with Copart, Inc., (“CPRT”) a publicly traded company.

** For a mutually agreeable fee, Contractor will optionally obtain title documents on behalf of Owner.

4. Term and Termination.

- a. The Agreement will become effective upon formation (the “Effective Date”) and will continue for an initial term of one (1) year from the Effective Date and thereafter will automatically renew for consecutive one (1) year terms unless written notice of non-renewal is provided by either party to the other at least sixty (60) days prior to the expiration of the then current term.
- b. The Agreement may be terminated if there is a breach by either party of any obligation, representation or warranty contained in the Agreement, upon thirty (30) days prior written notice to the other party unless the breach is cured within the thirty (30) day period, provided, however, if the breach is not capable of being cured within thirty (30) days, the breaching party will have a reasonable amount of time to cure the breach if it begins to cure during the thirty (30) day period and proceeds diligently thereafter. The written notice will specify the precise nature of the breach.
- c. The rights of the parties to terminate the Agreement are not exclusive of any other rights and remedies available at law or in equity, and such rights will be cumulative. The exercise of any such right or remedy will not preclude the exercise of any other rights and remedies.
- d. Notwithstanding any termination by either party of the Agreement, Contractor will continue to remit the Proceeds arising under the Agreement (net of amounts owed by Owner to Contractor and to third parties pursuant to the Agreement) in connection with any sales made before the effective date of the termination. At the time of termination, any unsold inventory shall continue to be auctioned by Contractor or disposed on behalf of Owner or returned to Owner, at Owner’s election and cost.

5. Allocation of Sales Proceeds.

a. Portable Property Items

- (1) **Sales Price.** Total Proceeds paid by Buyer shall be called “Sales Price.” Sales Price shall include the winning bid amount (the “Winning Bid”) plus fees (the “Fees”), such as shipping and handling, taxes, and insurance costs associated with the transaction and paid by Buyer.

- (2) **Transaction Costs.** Contractor shall utilize Fees, and not the Winning Bid, to pay or remit costs for shipping and handling, taxes, and insurance on behalf of Owner and Buyer, as applicable.
- (3) **Contractor Commission.** For each item of Property, Owner will pay to Contractor (by deduction pursuant to the section titled "Payment Terms" below) a fee (the "Contractor Commission") equal to fifty percent (50%) of the first \$1,000 of the Winning Bid and twenty five percent (25%) of the Winning Bid portion, if any, that exceeds \$1,000. The amount of the Winning Bid remaining after deduction and payment of the Contractor Commission will be called "Owner's Gross Proceeds".
- (4) **Processing Costs.** Credit card processing costs ("Credit Card Cost") and affiliate processing fees (the "Affiliate Fees," which include commissions and processing costs paid to third parties if such a third party sent the winning bidder to the website), will be borne by Owner and Contractor in proportion to the ratio of Owner's Gross Proceeds to Contractor Commission. Owner's portion of Credit Card Cost and Affiliate Fees (collectively, the "Processing Costs") will be paid by Contractor to applicable third parties on Owner's behalf.
- (5) **Net Proceeds.** The amount of the Winning Bid paid to Owner after deduction and payment of the Contractor Commission and Processing Costs will be called "Owner's Net Proceeds".
- (6) **Fuel Surcharge.** Contractor does not charge pick-up fees. If and when fuel prices rise above a level as shown in the Fuel Surcharge Schedule below, a fuel surcharge ("Fuel Surcharge") will be paid to Contractor out of Owner's Net Proceeds for each Portable Item manifest. Contractor tracks benchmark average diesel retail prices as published online by the Energy Information Administration of the US Department of Energy and resets the Fuel Surcharge quarterly based on average weekly pricing from the prior quarter. Fuel Surcharges, if any, are deducted from monthly Owner's Net Proceeds.

Fuel Surcharge Schedule

Retail Diesel (per gal)	Fuel Surcharge*
Less than \$2.50	\$ 0.00
\$ 2.50 to \$ 2.99	\$ 12.40
\$ 3.00 to \$ 3.49	\$ 24.80
\$ 3.50 to \$ 3.99	\$ 37.20
\$ 4.00 to \$ 4.49	\$ 49.60
\$ 4.50 to \$ 4.99	\$ 62.00
\$ 5.00 to \$ 5.49**	\$ 74.40
* Divides across locations and/or sub-accounts picked-up same day	
** Table continues upward at same rate	

- (7) To the extent that Property is not sold by auction and Contractor disposes of Property in a commercially reasonable manner (see "Method of Selling Property" section), including, but not limited to, sending to charity, recycling, landfill, or scrap processor, Owner understands and agrees:
 - (a) For Property not sold by Auction, disposition activities create additional Contractor processing costs (the "Disposal Costs") and potentially a disposition Sales Price (the "Disposition Proceeds").
 - (b) Disposal Costs include, but are not limited to, labor cost of reloading Property onto a truck, labor and vehicle costs associated with transporting Property for disposition, and third-party fees, such as landfill, recycling, and hazardous material disposal fees.
 - (c) Disposition Proceeds include, but are not limited to, a Sales Price obtained for scrap metal.
 - (d) Contractor will bear the burden of Disposal Costs.
 - (e) Owner will pay to Contractor the Disposition Proceeds, if any, as an offset to Disposal Costs, except if Disposition Proceeds for an item of Owner Property exceed \$250, in which case Owner shall be entitled to retain a portion of Disposition Proceeds calculated in accordance with Section 5a above, provided that the Disposition Proceeds will be deemed to be the "Sales Price" and the Disposal Costs will be deducted as a transaction cost under Section 5a(2) above.

b. Large- Items.

- (1) **Sales Price, Contractor Commission, Processing Costs and Net Proceeds.** Calculated in a manner directly analogous to Portable Property Items.
- (2) **Contractor Commission.** For each Large-Item of Property, Contractor will be entitled to a Contractor Commission equal to a percent of the Winning Bid which varies according to the Large-Item service option employed. In addition, Contractor will be entitled to charge to the Buyer a premium paid directly to Contractor (the "Buyer's Premium") which will not be included in the Winning Bid.

- (a) **Gold.** Contractor Commission will be 5% of the Winning Bid and Contractor will charge Buyer a 15% Buyer's Premium.
 - (b) **Platinum.** Contractor Commission will be 12.5% of the Winning Bid. In addition, for Large-Items that can be hauled on a standard vehicle transporter, tow services are provided for free when within 30 miles of one of CPRT's 140 facilities. A \$25 tow fee applies for every 25 miles over the first 30 free miles. In addition, fees for acquiring titles on behalf of Owner, if any, or for oversized vehicle (e.g., crane, bus, backhoe, etc.) haul-away fees, will be borne entirely by Owner.
6. **Payment Terms.** Once a month, Contractor will remit to Owner the Owner's Net Proceeds (less any Title Fees and/or Fuel Surcharges, if applicable) arising from completed sales during the prior month (after payment of all transaction costs, Contractor Commissions, Processing Fees, Title Fee and Fuel Surcharges, as applicable). Sales are deemed completed when all items comprising a line item on the original manifest or other list of Property are sold. With each payment of Owner's Net Proceeds, Contractor will make available to Owner, online, a report setting forth the following information for the immediately preceding month:
- a. The completed sales during the prior month, including the total amount of related Proceeds collected, the Contractor Commissions, the Owner and Contractor share of Processing Costs, any applicable Title Fees and/or Fuel Surcharges, and the Owner's Net Proceeds;
 - b. Other dispositions of Property during the month; and
 - c. The Property, if any, inventoried by Contractor at the end of the month.
7. **Contractor Obligations.** With respect to Contractor's delivery of Services:
- a. Contractor will exercise due care in the handling and storage of Property;
 - b. Contractor shall keep Property free of liens, security interests, and encumbrances, and shall pay when due all fees and charges with respect to the Property;
 - c. Contractor shall sign and deliver to Owner any UCC-1 financing statements or other documents reasonably requested by Owner; and
 - d. Contractor shall obtain and maintain insurance in an amount (determined by Contractor) not less than the replacement value of Property in its possession. The insurance will cover the Property against fire, theft, and extended coverage risks ordinarily included in similar policies. Contractor shall give Owner a certificate or a copy of each of the above upon Owner's request.
 - e. To help Owner comply with public notification statutes, if any, as well as to help Owner achieve higher Winning Bids, Contractor agrees to allow Owner to place one or more clickable links (the "Links") from one or more Owner websites to www.PropertyRoom.com or other websites Contractor uses for sale of Owner items. Contractor will supply technical requirements for Links to Owner.
8. **Owner Obligations.** Owner will use reasonable commercial efforts to provide Contractor such Property as becomes available for sale. Owner will complete paperwork reasonably necessary to convey custodial possession of Property items to Contractor, including a written manifest or list that describes the items of Property in sufficient detail for identification.

Owner agrees that it will not provide Property that is illegal or hazardous or infringes the intellectual property rights of any third party ("Prohibited Property"), including but not limited to explosives, firearms, counterfeit or unauthorized copyrighted material ("knock-offs"), poisons or pharmaceuticals. In the event that any third party asserts a claim that any Property consists of Prohibited Property, Owner shall indemnify and hold Contractor harmless from any such claim and all damages, liabilities (whether joint or several), costs and expenses (including reasonable legal fees and expenses), judgments, fines and other amounts paid in connection with such claim, whether or not litigated. In the event of any such claim or if Contractor otherwise determined in good faith that any Property consists of Prohibited Property, Contractor shall have the right to immediately suspend or cancel (even if completed) any auction or disposal of such Property and may refuse to sell, offer to sell or otherwise dispose of such Property. To the extent requested by Contractor, Owner will provide reasonable assistance in determining whether such Property in fact consists of Prohibited Property.

In the event that any Buyer asserts a claim that any Property consists of Prohibited Property and Contractor determines in good faith that such claim is reasonably likely to be determined to be correct, Contractor may, in its discretion, accept the return of such Property and refund the Sales Price for such Property to the Buyer, in

which event Contractor may then destroy such Property or return such Property to Owner and such refunded Sales Price shall be deducted from future remittances of Owner's Net Proceeds made by Contractor.

9. **Restrictions on Bidding.** Contractor and its employees and agents may not directly or indirectly bid for or purchase auctioned Property on Contractor websites.
10. **Representations and Warranties of Owner.** Owner hereby represents, warrants and covenants as follows (the "Conditions Precedent"):
 - a. Property delivered to Contractor is available for sale to the general public without any restrictions or conditions whatever and does not consist of Prohibited Property; and
 - b. Owner has taken all actions under applicable law that are required for Owner to auction the Property or to transfer title to the Property to Buyers (including, without limitation, all notice requirements and the like required prior to the sale of Property at auction under local statute or municipal code).
11. **Books and Records.** Contractor will keep complete and accurate books of account, records, and other documents with respect to the Agreement (the "Books and Records") for at least three (3) years following expiration or termination of the Agreement. Upon reasonable notice, the Books and Records will be available for inspection by Owner, at Owner's expense, at the location where the Books and Records are regularly maintained, during normal business hours.
12. **Assignment.** The Agreement may not be assigned, in whole or in part, by either of the parties without the prior written consent of the other party (which consent may not be unreasonably withheld or delayed). Notwithstanding the foregoing, an assignment of the Agreement by either party to any subsidiary or affiliate or a third party acquisition of all or substantially all of the assets of such party will not require the consent of the other party, so long as such subsidiary, affiliate or acquiring entity assumes all of such party's obligations under the Agreement. No delegation by Contractor of any of its duties hereunder will be deemed an assignment of the Agreement, nor will any change in control nor any assignment by operation of law by either party. Subject to the restrictions contained in this section, the terms and conditions of the Agreement will bind and inure to the benefit of each of the respective successors and assigns of the parties hereto.
13. **Notices.** Any notice or other communication given under the Agreement will be in writing and delivered by hand, sent by facsimile (provided acknowledgment of receipt thereof is delivered to the sender), sent by certified, registered mail or sent by any nationally recognized overnight courier service to the addresses provided on the signature page of the Agreement. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least ten (10) days written notice to the other party.
14. **Interpretation.** Whenever possible, each provision of the Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Agreement. The Agreement headings are inserted for convenience of reference only and shall not constitute a part hereof.
15. **Governing Law.** The internal law, and not the law of conflicts, of the state in which Owner is located will govern all questions concerning construction, validity and interpretation of the Agreement and the performance of the obligations imposed by the Agreement. The proper venue for any proceeding at law or in equity will be the state and county in which the Owner is located, and the parties waive any right to object to the venue.
16. **Further Assurances.** Contractor and Owner will each sign such other documents and take such actions as the other may reasonably request in order to effect the relationships, services and activities contemplated by the Agreement and to account for and document those activities.
17. **Relationship of the Parties.** No representations or assertions will be made or actions taken by either party that could imply or establish any joint venture, partnership, employment or trust relationship between the parties with respect to the subject matter of the Agreement. Except as expressly provided in the Agreement, neither party will have any authority or power whatsoever to enter into any agreement, contract or commitment on

AUCTION SERVICES AGREEMENT: TERMS AND CONDITIONS

behalf of the other, or to create any liability or obligation whatsoever on behalf of the other, to any person or entity. Whenever Contractor is given discretion in the Agreement, Contractor may exercise that discretion solely in any manner Contractor deems appropriate. Contractor shall be not liable to Owner for any Losses incurred by reason of any act or omission performed or omitted by Contractor in good faith on behalf of the Owner and in a manner reasonably believed to be within the scope of authority conferred on Contractor by the Agreement, except that Contractor shall be liable for any such Losses incurred by reason of Contractor's fraud, gross negligence or willful misconduct.

18. **Force Majeure.** Neither party will be liable for any failure of or delay in performance of the Agreement for the period that such failure or delay is due to acts of God, public enemy, war, strikes or labor disputes, or any other cause beyond the parties' reasonable control (each a "Force Majeure"), it being understood that lack of financial resources will not to be deemed a cause beyond a party's control. Each party will notify the other party promptly of any Force Majeure occurrence and carry out the Agreement as promptly as practicable after such Force Majeure is terminated. The existence of any Force Majeure will not extend the term of the Agreement.

Owner Information	Schedules, Supplements & Other Attachments
<u>City of Rosenberg</u> Owner Name	Mark Included Items: Ts & Cs <u>Yes</u>
<u>2110 Fourth Street</u> Street Address	Addendums <u>Yes</u>
<u>Rosenberg, Texas 77471</u> City, State, Postal Code	<u>(see attached addendum)</u>

This Agreement, including all of the terms and conditions set forth in the Ts & Cs as well as any attachments indicated in the box above, comprises the entire Agreement between the Parties. This Agreement cannot be modified except in writing by the duly authorized representatives of both parties.

Owner

 Signor Name Jack S. Hamlett

 Signor Title City Manager

 Signature

 Signature Date

PropertyRoom.com

PJ Bellomo
 Signor Name

President, COO & CEO
 Signor Title

PJ Bellomo
 Signature

3/1/12
 Signature Date

PropertyRoom.com, Inc.
 26421 Crown Valley Parkway, Ste 200
 Mission Viejo, California 92691
 949-282-0121
 Federal Tax ID 86-0962102

Addendum to Property Disposition Services Agreement

This addendum is attached to and made part of **City of Rosenberg, Texas** Property Disposition Services Agreement dated _____, 2012 (the "Agreement"). In the event of a conflict between the provisions of the main body of the Agreement and this Addendum, this Addendum will govern.

The Agreement is modified as follows:

1. PropertyRoom.com will allow the City of Rosenberg, Texas to take pictures of furniture and send these photos along with a description of the furniture to PropertyRoom.com to post on their auction site for disposal. (Gold)
2. PropertyRoom.com agrees to waive the fuel surcharges covered by Section 5 paragraph 6 of the attached agreement.
3. Section 4.a. is amended to delete the automatic renewal clause.
4. PropertyRoom.com agrees to a one-year term with the City of Rosenberg.

CITY OF ROSENBERG:

PROPERTY ROOM.COM INC.

for "Owner"
Jack S. Hamlett, City Manager



for PropertyRoom.com Inc.

Date: _____

Date: 3/2/12

Attest:

Linda Cernosek, City Secretary

Agenda will be received at this time. Each speaker is limited to three (3) minutes. Comments or discussion by the City Council Members will only be made at the time the agenda item is scheduled for consideration. It is our policy to have all speakers identify themselves by providing their name and residential address when making comments.

George Zepeda, 1319 Carlisle, Rosenberg, addressed Council regarding Item No. 8, as follows:

- We have no control over the weather, but there are some insurance companies that cover the liability of the full event in case of rain. The insurance will pay the cost of the actual event. Thank you. (Speaker was referring to Special Events insurance requirements).

CONSENT AGENDA

1. REVIEW OF CONSENT AGENDA.

All Consent Agenda items listed are considered to be routine by the City Council and may be enacted by one (1) motion. There will be no separate discussion of Consent Agenda items unless a City Council Member has requested that the item be discussed, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Regular Agenda.

A. CONSIDERATION OF AND ACTION ON SPECIAL JOINT MEETING MINUTES FOR JANUARY 31, 2012, SPECIAL MEETING MINUTES FOR FEBRUARY 02, 2012, AND REGULAR MEETING MINUTES FOR FEBRUARY 07, 2012.

B. CONSIDERATION OF AND ACTION ON AUTHORIZATION TO SELL THE PROPOSED LIST OF SURPLUS PROPERTY ITEMS TO BE INCLUDED IN AN ON-LINE CITY-WIDE AUCTION.

Executive Summary: For City Council's consideration, staff has provided a list of items to be included in the City auction to retire surplus equipment, confiscated items, and other salvaged property. The City Secretary is proposing to hold the auction on-line and the auction is scheduled to be on-going.

Staff recommends approval of the surplus list as presented.

C. CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1460, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, AN AGREEMENT FOR AUCTION SERVICES, BY AND BETWEEN THE CITY AND PROPERTYROOM.COM.

Executive Summary: The City Secretary and the Police Department are requesting approval to enter into an Agreement with PropertyRoom.com to hold a City-wide auction to retire surplus equipment, confiscated items, and other salvaged property. The auction will be on-line and the PropertyRoom.com will be the on-line auction service for all items.

Mr. Brian McCullar with PropertyRoom.com will be available at the City Council meeting to answer any questions.

The City Secretary recommends approval of Resolution No. R-1460, authorizing the City Manager to execute an Agreement for on-line auction services with PropertyRoom.com.

D. CONSIDERATION OF AND ACTION ON ORDINANCE NO. 2012-10, REPEALING ORDINANCE NO. 2012-03, AN ORDINANCE ORDERING A SPECIAL ELECTION TO BE HELD ON MAY 12, 2012, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS, FOR ADOPTION OR REJECTION, EIGHT (8) PROPOSED AMENDMENTS TO THE EXISTING HOME-RULE CHARTER OF THE CITY OF ROSENBERG, TEXAS, AS AMENDED; ESTABLISHING EARLY VOTING LOCATIONS AND POLLING PLACES FOR THE ELECTION; AND MAKING PROVISIONS FOR THE CONDUCT OF THE ELECTION; AND THEREFOR CANCELLING THE ORDER FOR A SPECIAL ELECTION ON MAY 12, 2012.

Executive Summary: Ordinance No. 2012-10 is an Ordinance to repeal Ordinance No. 2012-03 and cancel the ordering of a Special Election for May 12, 2012, for the purpose of submitting to the qualified voters, for adoption or rejection, eight (8) proposed amendments to the existing Home-Rule Charter of the City of Rosenberg, Texas, as amended; establishing early voting locations and polling places for the election; and making provisions for the conduct of the election and therefor cancelling the order for a Special Election on May 12, 2012. The City Secretary will notify the Fort Bend County Elections Administrator by copy of Ordinance No. 2012-10 that the City is giving official notification of cancellation of the election.

Staff recommends approval of Ordinance No. 2012-10.

\$74,000.00 and from Surface Water Projects (Fund 520) in the amount of \$514,000.00 are necessary to move the funds to the Spur 529 Project.

2. On February 21, 2012, City Council authorized the acceptance of a proposal from Lockwood, Andrews & Newnam, Inc., regarding reimbursement to the City for the replacement of three (3) non-potable water pumps and ancillary items necessary for the installation at Wastewater Treatment Plant No. 2, in the amount of \$44,814.00.
3. On February 07, 2012, City Council approved Resolution No. R-1452, providing for the adoption of a Personnel Schedule for Fire Station No. 3. In accordance with this schedule, included as supporting documentation, a budget adjustment for \$74,000.00 is needed to budget the part-time expenses, as well as a transfer from MUD Fire Services (Fund 226) in the amount of \$74,000.00

The Budget Amendment 12-09 was included as Exhibit "A" to Resolution No. R-1456. Staff recommends approval of Resolution No. R-1456 for Budget Amendment 12-09 as presented.

Motion: Councilor Segura made a motion, seconded by Councilor McConathy to approve items A through K on the Consent Agenda.

Comments:

- Councilor McConathy referenced Item C, page 2 of 6, Item No. 4, under sub-item A - initial term of one year with an automatic renewal for one consecutive year. What is the reason for automatic renewal are we getting a break on price? Jack Hamlett referenced the addendum and stated that has been changed to be for only a one year term.
- Councilor Suter referenced Item No. J "The City of Rosenberg attained the Keep Texas Beautiful Affiliate status in October 2011." He thanked Councilor Grigar who headed up that Committee and initiated the investigation of bringing that to Rosenberg.
- Councilor Grigar referenced Item H – in the exhibits showing the acreages he noticed that some have drainage ditches going through them and he asked about the extent of the hay production. Who will maintain those drainage ways and fence lines? John Maresh stated those channels and fence lines will remain in the City's right-of-way mowing contract to make sure they are mowed on a regular basis.

Upon voting the motion carried by a unanimous vote.

REGULAR AGENDA

2. **REVIEW AND DISCUSS AN INDEPENDENT ANALYSIS REPORT OF CONTACT DATA COLLECTED BY THE POLICE DEPARTMENT FOR CALENDAR YEAR 2011, AND TAKE ACTION AS NECESSARY.**

Executive Summary: In accordance with Senate Bill 1074, more commonly known as the "Texas Racial Profiling Data Collection Law", all state law enforcement agencies are required to submit a report to their governing body – whether a county or municipality. The report must contain totals on racial profiling data, as well as analysis of the prevalence of racial profiling. The report has been provided to City Council under separate cover and will be available for public review in the City Secretary's office.

Dr. Alex del Carmen was present at the meeting to discuss his independent assessment of the data collected.

Key discussion points:

- Robert Gracia, Police Chief read the Executive Summary regarding the analysis report of contact data collected by the Police Department for calendar year 2011.
- Dr. Alex del Carmen gave an overview of the analysis report.
- The Texas Legislature, in 2001, with the intent of addressing the issue of racial profiling in policing, enacted the Texas Racial Profiling Law. Since 2001, the Rosenberg Police Department, in accordance with the law, has collected and reported traffic and motor vehicle-related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 legislative session, the Racial Profiling Law was modified and newer requirements are now in place. These most recent requirements have been met by the Rosenberg Police Department and are being addressed in this report.
- In the report, you will find three sections that contain information on traffic and motor vehicle-related data. In addition, when appropriate, documentation is also a component of this report, aiming at demonstrating the manner in which the Rosenberg Police Department has complied with the Texas Racial Profiling Law. In section 1, you will find the table of contents in addition to the Texas Senate



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
C	Resolution No. R-1748 - Video Streaming Agreement

ITEM/MOTION

Consideration of and action on Resolution No. R-1748, a Resolution authorizing the City Manager to execute, for and on behalf of the City, an Agreement for Video Streaming Services, by and between the City and Swagit Productions, LLC, for video recording and streaming of City Council meetings, in the base amount of \$6,719 for capital equipment purchase of Streaming Video Hardware, \$24,453 for capital equipment purchase of Cosmos Broadcast System, and \$1,135 a month for an initial term of one year for Streaming Video Monthly Managed Services.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds:

- 228-1950-540-7040
- 101-1950-540-5710

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1748
2. Sole Source Provider Letter – Swagit Productions, LLC – 03-12-13
3. City Council Meeting Draft Minute Excerpt – 01-21-14

MUD #: N/A

APPROVALS

Submitted by:

Angela Fritz
Communications Director

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney **LJL/rl**
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

Resolution No. R-1748 is presented for City Council's consideration to authorize the City Manager to execute an Agreement for Video Streaming Services with Swagit Productions, LLC, to provide video recording and streaming of City Council Meetings as reviewed by City Council at the January 21, 2014 City Council Meeting.

The Agreement, as detailed in Exhibit "A" to Resolution No. R-1748, includes: \$6,719 for video recording and streaming equipment and \$24,453 for installation of the Cosmos Broadcast System which will be funded via the Public, Education, Government Capital Fund (PEG Fund), and \$1,135 a month (\$13,620 per year) for on-demand, live video streaming and remote-switching to be funded through the General Fund.

Staff recommends approval of Resolution No. R-1748 authorizing the City Manager to execute an Agreement for Video Streaming Services with Swagit Productions, LLC.

RESOLUTION NO. R-1748

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, AN AGREEMENT FOR VIDEO STREAMING SERVICES, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND SWAGIT PRODUCTIONS, LLC, FOR VIDEO RECORDING AND STREAMING OF CITY COUNCIL MEETINGS, IN THE BASE AMOUNT OF \$6,719 FOR CAPITAL EQUIPMENT PURCHASE OF STREAMING VIDEO HARDWARE, \$24,453 FOR CAPITAL EQUIPMENT PURCHASE OF COSMOS BROADCAST SYSTEM, AND \$1,135 A MONTH FOR AN INITIAL TERM OF ONE YEAR FOR STREAMING VIDEO MONTHLY MANAGED SERVICES.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The City Council of the City of Rosenberg hereby authorizes the City Manager to execute an Agreement for Video Streaming Services (Agreement), by and between the City of Rosenberg, Texas, and Swagit Productions, LLC, for video recording and streaming of City Council meetings, in the base amount of \$6,719 for capital equipment purchase of Streaming Video Hardware, \$24,453 for capital equipment purchase of Cosmos Broadcast System, and \$1,135 a month for an initial term of one year for Streaming Video Monthly Managed Services.

Section 2. A copy of said Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this ____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **CITY SECRETARY**

Vincent M. Morales, Jr., **MAYOR**

**AGREEMENT FOR
VIDEO STREAMING SERVICES**

**CITY OF ROSENBERG
and
SWAGIT PRODUCTIONS, LLC**

This Agreement for Video Streaming Services ("Agreement") is made by and between the City of Rosenberg, Texas ("City"), a municipal corporation with offices at 2110 4th Street, Rosenberg, Texas 77471, and Swagit Productions, LLC, ("Provider") a Texas Limited Liability Company, with offices at 850 Central Parkway E., Suite 100, Plano, Texas 75074 effective as of the date written below.

RECITALS

- A. The City desires to enter into this Agreement in order to obtain video streaming services for scheduled Council meetings as outlined in the Scope of Services attached as Exhibit "A"; and
- B. Provider has available and offers to provide the personnel necessary to provide said services in accordance with the Scope of Services included in this Agreement (see Exhibit A attached hereto and incorporated herein); and
- C. Provider is in the business of providing video streaming services for businesses and governmental entities, and represents and warrants that it has the skills, qualifications, expertise and experience necessary to perform the work and services to provide and implement video streaming services as described herein in an efficient, cost-effective manner with a high degree of quality and responsiveness and has performed and continues to perform the same and similar services for other buyers; and
- D. On the basis of and in reliance upon such representations by Provider and others made herein and in Provider's proposal, the City desires to engage Provider to provide the work and services described herein under the terms and conditions of this Agreement.

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Provider agree as follows:

1. SERVICES TO BE PERFORMED BY PROVIDER

Provider agrees to perform the following work and services for the City:

- 1.1 Provider agrees to provide the work and services as set forth in the Scope of Services.
- 1.2 Without limiting the foregoing provisions of Section 1.1, the services to be provided by Provider include the installation ("Installation") by Provider of all hardware,

software, cameras, wiring, and related equipment and materials identified and described in the Scope of Services (collectively, the "Equipment") within the City of Rosenberg City Council Chamber located at Rosenberg City Hall, 2110 4th Street, Rosenberg, Texas, 77471 (the "Site"). Before installing the same, Provider shall deliver to the City's Communications Director (the "Director"), for review and consideration of approval, drawings or plans and specifications for such Installation. The City's approval of any Installation or related plans does not and shall not constitute a representation or warranty by the City that the Installation or related plans comply with any specifications therefor or with any applicable governmental laws, rules, codes, standards, or regulations.

2. COMPENSATION OF PROVIDER

2.1 Provider agrees to provide all of the services and Equipment set forth in the Scope of Services and as described herein for the following amounts:

(a) A one-time charge not to exceed:

- i. **Six Thousand Seven Hundred Nineteen and No/100 Dollars** (\$6,719.00) for Swagit EASE hardware/software and other related (including, without limitation, Installation) costs (as identified and detailed on the attached Exhibit "A", page 3, "Streaming Video Hardware"); and
- ii. **Twenty-Four Thousand Four Hundred Fifty-Three and No/100 Dollars** (\$24,453.00) for broadcast system hardware/software and other related (including, without limitation, Installation) costs (as identified and detailed on the attached Exhibit "A", page 5, "Cosmos Broadcast System"); and

(b) Following the Installation at the Site of all Equipment by Provider and the acceptance thereof by the Director, the City shall pay to provider a monthly fee in the amount of **One Thousand One Hundred Thirty-Five and No/100 Dollars** (\$1,135.00) for on-demand, live video streaming and remote switching (as identified and described on the attached Exhibit "A", page 3, "Streaming Video Monthly Managed Services").

2.2 Payment

(a) Payment for the work, services, and Equipment described in Section 2.1(a)(i) and 2.1(a)(ii), above, shall be due and payable following the completion of the Installation of the Equipment by Provider, the acceptance thereof by the Director, and the receipt by the City of an invoice from Provider for such work, service and Equipment; provided, however that with respect to the work, service and Equipment described in Section 2.1(a)(ii), fifty percent (50%) of the not-to-exceed amount set forth therein (or \$12,226.50) shall be due and payable not later than ten (10) days following the date Agreement has been signed by both parties.

- (b) Payment balance for the work, services, and Equipment described in Section 2.1(a)(ii) shall be due and payable following the completion of the Installation of the Equipment by Provider and the acceptance thereof by the Director.
- (c) Except as set forth herein, payments will be processed on a monthly basis with payment available within 30 days after receipt of an invoice for the previous month's service. All payments pursuant to this Agreement shall be paid in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.
- (d) Should the City fail to pay any invoice that is outstanding more than 60 days, a 5% service fee will be applied to the total amount of that invoice, not including any shipping or sales tax.

3. RIGHTS, OBLIGATIONS AND REPRESENTATIONS OF PROVIDER

- 3.1 Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the City as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or representative of the City. Further, nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow the City to exercise discretion or control over the manner in which Provider performs the work and services, which are the subject matter of this Agreement. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement.
- 3.2 Provider's Control of Work. All services to be provided by Provider shall be performed in accordance with the Scope of Services. Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel. Provider warrants and represents that all Equipment and other goods and materials provided by Provider shall be safe, fully operational, and will not cause injury or damage to any person or property, and that all persons provided by Provider to perform the work and services under this Agreement shall be adequately trained and capable of performing the work and services.
- 3.3 Reports to the City. Although Provider is responsible for control and supervision of work and services performed under this Agreement, the work and services provided shall be acceptable to the City and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Provider to the City and the right of the City, as set forth in the Scope of Services.
- 3.4 Compliance with All Laws. Provider shall comply with all applicable laws, statutes,

ordinances, rules, regulations, standards, codes, and executive orders of the federal, state and local government, which may affect the performance of this Agreement.

- 3.5 Organization and Authorization. Provider warrants and represents that: (i) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, and which shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of Provider; (v) has the right and authority to sell the hardware and software to the City; (vi) all hardware and software shall be in good working order; and, (vii) all licenses and warranties regarding the software and hardware shall be conveyed to the City.
- 3.6 No Conflict. Provider warrants and represents that the execution and delivery of this Agreement and ancillary agreements hereto by Provider does and will not: (i) conflict with, or result in any violation or breach of, any provision of Provider's charter documents; (ii) result in any violation or breach of, or constitute a default under, or require a consent or waiver under, any of the terms, conditions or provisions of any license, contract or other agreement to which Provider is a party; or (iii) conflict with or violate any franchise, license, judgment, order, statute, law, rule or regulation applicable to Provider.
- 3.7 Camera and Broadcast Operations. Although Provider is responsible for control and supervision of work and services performed under this Agreement, the City understands that the operation of the camera and broadcast system can be done remotely. Such remote operation requires access via inbound TCP port 2001, outbound TCP ports 21, 80, 443, 1935, 5721, and outbound UDP ports 53, 123. The City will need to supply the Provider with access to such TCP and UDP ports with respect to the City's Internet connection. If, such access is not given or the City's Internet connection fails during operations, the Provider will not be held responsible for remote camera operations. Additionally, in the event the Provider decides to operate such system manually, the City shall provide access to the equipment (as identified and described in the Scope of Services, page 5, "*Cosmos Broadcast System*") at the Site described in Section 1.2, above.
- 3.8 Warranty. Provider warrants that: (i) any streaming server hardware provided by Swagit not in good working order and used under normal operating conditions, will be fully replaced for a period of three (3) years; (ii) thereafter, all costs of streaming server hardware replacement due to any failure or caused by normal wear and tear, shall be at the City's expense; (iii) all operating and proprietary software for any streaming server shall be fully replaced or upgraded, at no cost to the City, for the life of the contract; and, (iv) all hardware and software for the broadcasting equipment (as identified and described in the Scope of Services, page 5, "*Cosmos Broadcast System*"), shall be replaced or fixed with respect to each components manufacturer's warranties.

4. NOTICE PROVISIONS

Notice. Any notice concerning this Agreement shall be in writing and (i) sent by certified or registered mail, return receipt requested, postage prepaid, (ii) delivered personally, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight; and addresses for such notice are as follows:

To the City's Authorized Representative: To Provider:

Angela Fritz
Communications Director
City of Rosenberg
P.O. Box 32
Rosenberg, TX 77471
832/595-3524

David Owusu
Director of Streaming
Swagit Productions, LLC
850 Central Parkway E., Ste 100
Plano, Texas 75074
800/573-3160

Notice shall be deemed given upon receipt by the party to whom it is sent.

5. INDEMNIFICATION

PROVIDER'S INDEMNITY OBLIGATION. PROVIDER COVENANTS, AGREES TO, AND SHALL DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO THE CITY), INDEMNIFY, AND HOLD HARMLESS THE CITY OF ROSENBERG, TEXAS, AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY OF ROSENBERG, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE CITY OF ROSENBERG, TEXAS, AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE CITY OF ROSENBERG, TEXAS, EACH BEING A "ROSENBERG PERSON" AND COLLECTIVELY THE "ROSENBERG PERSONS"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, JUDGMENTS, LAWSUITS, DEMANDS, HARM, LOSSES, DAMAGES, PROCEEDINGS, SUITS, ACTIONS, CAUSES OF ACTION, LIENS, FEES, FINES, PENALTIES, EXPENSES, OR COSTS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY THE CITY OF ROSENBERG, TEXAS AND/OR ANY OTHER ROSENBERG PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (I) ANY OF THE WORK AND SERVICES OF THE PROVIDER AS DESCRIBED IN SECTION 1 OF THIS AGREEMENT, (II) ANY REPRESENTATIONS AND/OR WARRANTIES BY PROVIDER UNDER THIS AGREEMENT, AND/OR (III) ANY ACT OR OMISSION UNDER, IN PERFORMANCE OF, OR IN CONNECTION WITH THIS AGREEMENT BY PROVIDER, OR BY ANY OF PROVIDER'S OWNERS, DIRECTORS, OFFICERS, SHAREHOLDERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, ENGINEERS, ARCHITECTS, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, CUSTOMERS, TENANTS, SUBTENANTS, LICENSEE, SUBLICENSEE, CONCESSIONAIRES,

OR ANY OTHER PERSON OR ENTITY FOR WHOM PROVIDER IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, SHAREHOLDERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, ENGINEERS, ARCHITECTS, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, CUSTOMERS, PROVIDERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ROSENBERG PERSON, OR CONDUCT BY ANY ROSENBERG PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

PROVIDER SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ROSENBERG PERSON RELATED TO OR ARISING OUT OF PROVIDER'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT PROVIDER'S SOLE COST AND EXPENSE. THE ROSENBERG PERSONS SHALL HAVE THE RIGHT, AT THE ROSENBERG PERSONS' OPTION AND OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING PROVIDER OF ANY OF ITS OBLIGATIONS HEREUNDER. THE DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATIONS SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

6. INSURANCE

Provider and its subcontractors shall procure and maintain in a company or companies lawfully authorized to do business in Texas and until all of their obligations have been discharged and satisfied (and including during any warranty periods under this Agreement), insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the services and work hereunder by Provider, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Provider from liabilities that may arise out of the performance of the services and work under this Agreement by Provider, its agents, representatives, employees or subcontractors and Provider is free to purchase additional insurance as may be determined necessary.

(a) **Minimum Scope and Limits of Insurance.** Provider shall provide coverage at least as broad and with limits of liability not less than those stated below.

i. Commercial General Liability - Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)
General Aggregate \$2,000,000

Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 50,000
Medical Expense (Any one person)	Optional
(This coverage must be amended to provide for an each-project aggregate limit of insurance)	

- ii. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$ 500,000
Disease-Each Employee	\$ 500,000
Disease-Policy Limit	\$ 500,000

- iii. Professional Liability \$1,000,000
 (This coverage must be maintained for at least two (2) years after the project is completed; if coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term of this Agreement)

B. OTHER INSURANCE REQUIREMENTS: The foregoing insurance policies shall be endorsed to contain the following provisions:

- i. The City of Rosenberg, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to general liability, including liability arising out of activities performed by, or on behalf of, the Provider; products and completed operations of the Provider, and automobiles owned, leased, hired or borrowed by the Provider.
- ii. The Provider's insurance shall contain broad form contractual liability coverage.
- iii. The City of Rosenberg, its officers, officials, agents, employees and volunteers shall be additional named insureds to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement.
- iv. The Provider's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees (and must be endorsed to read as primary coverage regardless of the application of other insurance). Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, or volunteers shall be in excess to the coverage of the Provider's insurance and shall not contribute to it.

- v. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- vi. Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- vii. The policies shall contain a waiver of subrogation in favor of the City, its officers, officials, agents, and employees.
- viii. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the City of Rosenberg.
- ix. All insurance policies shall be endorsed to require the insurer to immediately notify the City of Rosenberg, Texas, of any material change in the insurance coverage.
- x. Provider may maintain reasonable and customary deductibles, subject to approval of the City.
- xi. Insurance must be purchased from insurers that are financially acceptable to the City and licensed to do business in the State of Texas.

6.1 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled, or not renewed, except after sixty (60) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then at least ten (10) days prior notice shall be given to the City. Such notice shall be sent directly to:

Angela Fritz, Communications Director
City of Rosenberg
P.O. Box 32
Rosenberg, TX 77471

6.2 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Texas and with an "A.M. Best" rating of not less than A- VII, or receiving prior approval by the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency. All insurance must be written on forms filed with and approved by the Texas Department of Insurance.

6.3 Verification of Coverage. Prior to commencing work or services, Provider shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement (and update the same as needed to

comply with this Agreement). The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

Certificates of Insurance shall:

- (a). List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
- (b). Specifically set forth the notice-of-cancellation or termination provisions to the City of Rosenberg.

All certificates and any required endorsements shall be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of contract.

All certificates required by this Agreement shall be sent directly to **Angela Fritz, Communications Director, City of Rosenberg, P.O. Box 32, Rosenberg, TX 77471**. The City reserves the right to request and receive within ten (10) days, complete copies of all insurance policies (certified to be true and correct by the insurance carrier) required by this Agreement at any time. The City shall not be obligated, however, to review same or to advise Provider of any deficiencies in such policies and endorsements, and such receipt shall not relieve Provider from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Provider's obligations under this Agreement.

6.4 Subcontractors. Providers' certificate(s) shall include all subcontractors as additional insureds under its policies or Provider shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements and all provisions identified above.

6.5 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the City's risk manager, whose decision shall be final. Such action shall not require a formal amendment to this Agreement, but may be made by administrative action.

7. **DEFAULT AND TERMINATION**

7.1 Events of Default Defined. The following shall be Events of Default under this Agreement:

- (a) Any material misrepresentation made by Provider to the City;

- (b) Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:
- i. Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider's reasonable control;
 - ii. Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Provider's reasonable control;
 - iii. Failure to perform the work in a manner reasonably satisfactory to the City;
 - iv. Failure to promptly correct or re-perform within a reasonable time work that was rejected by the City as unsatisfactory or erroneous;
 - v. Discontinuance of the work for reasons not beyond Provider's reasonable control;
 - vi. Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and
 - vii. Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies. The following shall be remedies under this agreement.

- (a) Upon the occurrence of any Event of Default, the City may declare Provider in default under this Agreement. The City shall provide written notification of the Event of Default and any intention of the City to terminate this Agreement. Upon the giving of notice, the City may invoke any or all of the following remedies:
- i. The right to cancel this Agreement as to any or all of the services yet to be performed;
 - ii. The right of specific performance, an injunction or any other appropriate equitable remedy;
 - iii. The right to monetary damages;
 - iv. The right to withhold all or any part of Provider's compensation under this Agreement;
 - v. The right to deem Provider non-responsive in future contracts to be awarded by the City; and

- vi. The right to seek recoupment of public funds spent for impermissible purposes.
 - (b) The City may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the City, and that if the City allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the City be deemed to waive or relinquish any of its rights under this Agreement.
- 7.3 Right to Offset. Any excess costs incurred by the City in the event of termination of this Agreement for default, or in the event the City exercises any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before termination of this Agreement for default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Provider shall be liable for and shall remit promptly to the City the balance upon written demand from the City.

8. GENERAL PROVISIONS

- 8.1 Headings. The section and subsection headings contained herein are for convenience only and shall not be used in interpretation of this Agreement and are not intended to define or limit the scope of any provision of this Agreement.
- 8.2 Governing Law and Venue. This Agreement shall be governed by and administered and interpreted under the laws of the State of Texas, without regard to any conflict of laws provisions. Venue for any action, cause or action or proceeding under this Agreement lies exclusively in the State District Court of Fort Bend County, Texas, and the parties agree to submit to the personal and subject matter jurisdiction of said court.
- 8.3 Severability. The sections, paragraphs, sentences, phrases, words, and all other provisions of this Agreement are severable, and if any part of this Agreement is determined by a court of competent jurisdiction to be illegal, unlawful, unconstitutional, or void for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.
- 8.4 Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.
- 8.5 Assignment. This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be sold, assigned, pledged, subcontracted, transferred or otherwise conveyed by any means whatsoever by

either the City or Provider without prior written consent of the other, and any sale, assignment, pledge, subcontract, transfer or other conveyance by either party without the other party's prior written consent shall be null and void.

- 8.6 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the work and services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest.
- 8.7 Authority to Contract. The undersigned officers and/or representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that it has taken all actions necessary to authorize entering into this Agreement.
- 8.8 Integration; Modification. This Agreement represents the entire understanding of City and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.
- 8.9 Non-appropriation. If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Agreement at the end of the then current fiscal year, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Provider at least sixty (60) days prior to any termination for non-appropriation of funds and will pay the Provider in accordance with this Agreement through the date of termination of this Agreement.
- 8.10 Subcontractors. This Agreement or any portion hereof shall not be subcontracted without the prior approval of the City. No subcontractor shall, under any circumstances, relieve Provider of its liability and obligation under this Agreement. The City shall deal through Provider and any subcontractor shall be dealt with as a worker and representative of Provider. Provider assumes responsibility to the City for the proper performance of the work and service of all subcontractors and any acts and omissions in connection with such performance. Nothing in this Agreement shall, or is intended or deemed to, create any legal, contractual or other relationship between the City and any subcontractor or subcontractor.
- 8.11 No Waiver. The failure by the City to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement for any reason whatsoever, including with respect to any such right, power or option or to such compliance or to any other or subsequent default or

breach hereof, nor a waiver by the City of its rights at any time to exercise any such right, power or option or to require exact and strict compliance with all the terms hereof. Any rights and remedies the City may have arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

- 8.12 No Third Party Beneficiaries. This Agreement and all of its provisions are solely for the benefit of Provider and the City and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.
- 8.13 "Includes". For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.
- 8.14 Incorporation of Recitals and Exhibits. The Exhibits and Recitals to this Agreement are incorporated herein and made a part hereof for all purposes.

9. DISCLOSURE OF AGREEMENT; INTERLOCAL ARRANGEMENTS.

- 9.1 Disclosure of Agreement Terms. The terms and conditions of this Agreement may be disclosed by either party to other public agencies for the purpose of such other agencies purchasing services under this Agreement pursuant to an interlocal or cooperative arrangement with the City. In addition, Provider may disclose the terms and conditions of this Agreement in an effort to show that the terms offered to another public agency are fair and reasonable or to determine the best value. It is understood that the Provider shall not be precluded from disclosing the terms and conditions of its form of Service Agreement to any other third party at Swagit's sole discretion and for any reason.
- 9.2 Included Parties; Interlocal Agreement. Pursuant to any interlocal, intergovernmental, or other such cooperative agreement with the City, Provider will accept orders from, and will furnish the Provider's Software, Hardware, Professional Services, and Managed Services as outlined in the Proposal to any governmental agency or other public entity authorized by the City to use the Proposal, based upon substantially the same terms and conditions of this Agreement, with the exception of price schedules.
- 9.3 Political Subdivision Participation. The Provider agrees to supply, sell, and contract separately with other similar or related political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the City, based upon substantially the same terms and conditions of this Agreement, with the exception of price schedules, in an effort to establish the terms and conditions as fair and reasonable.

10. DURATION

This Agreement shall become effective on the last day of execution by the parties, and shall continue in force for an initial term of twelve (12) months, unless sooner terminated as provided above. All pricing is to remain firm during the contract period. This Agreement will automatically renew for additional one-year terms unless this Agreement is terminated by either party providing written notice of its intent to terminate the Agreement to the other party not less than sixty (60) days prior to the end of the then current term.

11. SURVIVAL OF COVENANTS

Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

12. COUNTERPARTS

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

City of Rosenberg

Swagit Productions, LLC

Robert Gracia, City Manager



Bryan R. Halley, President

Attest:

City Secretary

Approved as to form:

City Attorney

Date of Execution:

EXHIBIT A
SCOPE OF SERVICES

Scope of Services – Exhibit A

EASE Solution

Built upon years of industry experience, Extensible Automated Streaming Engine (EASE) is a software framework comprised of foundation and extension modules that work together to automate many otherwise manually intensive tasks. This completely hands-off solution meets the current and future needs of your entity without creating any additional work for clerks or webmasters.

- **Video Capture and Encoding**

EASE Encoder records content according to your broadcast schedule and transfer the recorded audio/video to the Swagit Content Network via a secure Virtual Private Network (VPN) connection, making it available for live and/or on-demand streaming.

- **Indexing and Cross Linking**

Using your published meeting agendas as a guide, Swagit's Managed Service Division (SMSD) index's the meetings without any work from the city. SMSD will annotate your content by adding jump-to points with specific item headings, giving users the greatest flexibility to find the specific content they need. With these jump-to points, users can step through video by searching for or clicking specific items.

- **Agenda Management Integration**

If meeting packets or other related information is available online, SMSD will link them directly to the video player for easy access.

Swagit's EASE solution integrates with all Document/Agenda Management solutions.

- **Archiving**

Client audio/video can be stored securely on the Swagit Content Network indefinitely. Fault tolerance and high availability is assured through replication of audio/video content to multiple, geographically redundant, Storage Area Networks (SAN). Our standard packages include 80GB of storage, enough for approximately three full years of city council meetings.

- **Presentation**

By navigating through the video library, users can view a list of meetings chronologically and once in a selected meeting you can unleash the power of the jump-to markers to search for specific points within individual audio/video clips.

- **Delivery**

In order to deliver on-demand content to end users in a format that is native to their computer's operating system, Swagit can deliver content in all major streaming video formats: HTML5, Flash, Windows Media, QuickTime and Real. Swagit is proud to support HTML5 and Flash as its default formats, which has proven itself as the format of choice from such vendors as YouTube, Google Video, Facebook, ABC and NBC/Universal.

EASE Solution

•Monitoring

Swagit is monitoring all aspects of the Swagit Content Network to ensure its health and availability. This monitoring extends to cover remote Swagit EASE Encoders deployed on client premises. In the rare event of trouble our engineers are promptly notified so that they may dispatch a swift response in accordance with our support procedures.

•Statistics

Swagit collates log files from our streaming servers monthly and processes them with the industry recognized Google Analytics. Google Analytics generates reports ranging from high-level, executive overviews to in depth quality of service statistics. These reports help to highlight growth trends and identify popular content.

•Support

Beyond our proactive monitoring and response, Swagit offers ongoing, 24/7 technical support for any issues our clients may encounter. While our choice of quality hardware vendors and a thorough pre-installation testing phase go a long way toward ensuring trouble free operation of our EASE Encoders, we do recognize that occasionally unforeseen issues arise. In the event that our engineers detect a fault, they will work to diagnose the issue. If necessary, next business day replacement of parts will be completed. Swagit offers continual software updates and feature enhancements to our services and products for the life of your managed services contract.



Investment-Streaming Video

Streaming Video Hardware

Item Description	Type	Up-front Cost
Hardware/Software/Provisioning	1U	\$6,719.00
Swagit Standard Encoder, Viewcast Osprey 260e Video Capture Card with Simulstream Software, Microsoft Windows, OS Installation, Swagit EASE Tools, Encoder Software Installation, System Burn-in, Branded Video Library Design, Rackmount Kit, Branded Player Design, Remote Installation.		

Streaming Video Monthly Managed Services

Item Description	Monthly Cost
Package 1: Up To 40 Indexed Meetings per year (EASE) - Includes Media On-Demand, 24/7 LIVE Stream, and up to 10 hours of additional specialty content per month (No staff involvement—Hands Free). With Remote Switching Included (Up To 40 Meetings per year)	\$1,135.00

Optional Services/Overages/Individual Pricing

Item Description	Cost
Each Additional Edited and Indexed On-Demand Meeting	\$150.00
Each Year of Storage Beyond 36 Month Window	\$180.00/year
Programming, Development or Design Implementation	\$120.00/hour
Each Additional Remote Switched Meeting or Event	\$120.00/event

Broadcast System- Cosmos

Built upon years of industry experience, Cosmos is a complete package of cameras and pro video-switching equipment that enables any client to fully outsource the production and operation of a multiple camera broadcast system to Swagit.

During the meetings or events, Swagit personnel will operate the Cosmos system remotely from their facility in Plano, Texas. The Cosmos system enables Swagit to control and switch from camera to camera depending on events taking place. When bundled with Swagit EASE, Cosmos can offer a full end-to-end "hands-free" solution that requires no client staff involvement for the operation, broadcast and streaming of an event or meeting content.

Cosmos enables detailed direct camera positioning (pan, tilt, zoom, focus, and more), preset-positions, and video settings (white balance, backlight, brightness) for the robotic cameras. Additionally, Cosmos communicates with the switcher to allow direct operation of the 'wipe' function from the camera control GUI. With this powerful package you or Swagit can control all your cameras individually and switch video sources on a video switcher locally or remotely. Cosmos is an invaluable integration of camera-control with switcher operations for use with live production setups like city chambers, churches, meeting rooms, and more.

Cosmos includes 2-4+ robotic (computer-controllable pan/tilt/zoom) cameras and you can choose from two main types: either single-chip (Sony EVI-D80) or 3-chip (Sony BRC-300) depending on your needs and budget. These popular Sony robotic cameras have excellent

video quality and performance. The EVI-D80 and BRC-300 has the ability for panning through wide angles of motion, tilting through large ranges with superb optical zoom, and dual video output of Y/C and composite. They also support both RS232 and RS422 (long distance over 1000 meters) control signals. In addition the EVI-D80

cameras can be mounted either 'up' or 'hanging upside down' for your convenience (they have built-in reversal of the picture and left/right/up/down motion controls).



Investment – Cosmos Broadcast System

QTY	Item Description	Price
3	Sony- EVI-D90 - high quality CCD cameras	
3	Sony- WM-30B - Wall Mount for Sony EVI-D90	
4	Sony- EVI DS-Cable- to daisy chain cameras	
1	Dell Optiplex 7010 with Windows 7, Intel Core i3 CPU (3.30GHz 3MB Cache), 4GB Ram	
1	Video + Audio extender via CAT5 up to 600 feet Model	
1	Compact unit to convert visual output from a PC to TV	
1	Datavideo SE-500 KIT –NTSC Video Switcher with TLM-702 Dual 7" Monitor and monitor holder (HS-500 option)	
2	Osprey 260e Without Simulstream	
1	APC Battery Backup	
1	Cosmos 5.3 software	
1	APC UPS Remote Power Switch and Management	
1	19" Widescreen Black LCD	
1	All Cable, Connectors and Hardware necessary for installation	
1	Labor required to install, hook-up and provisioning	
Total Cost for Camera System & Installation*		\$24,453.00

*There may be additional installation costs incurred based on the building/fire code for the jurisdiction, any unknown cabling requirements or impediments to the installation such as fire walls, lack of a drop ceiling, conduit requirements, etc., along with other accessibility issues. For final installation costs we would need to engage in further discussions, receive a detailed site plan of rooms involved along with pictures or possibly conduct a physical site visit.

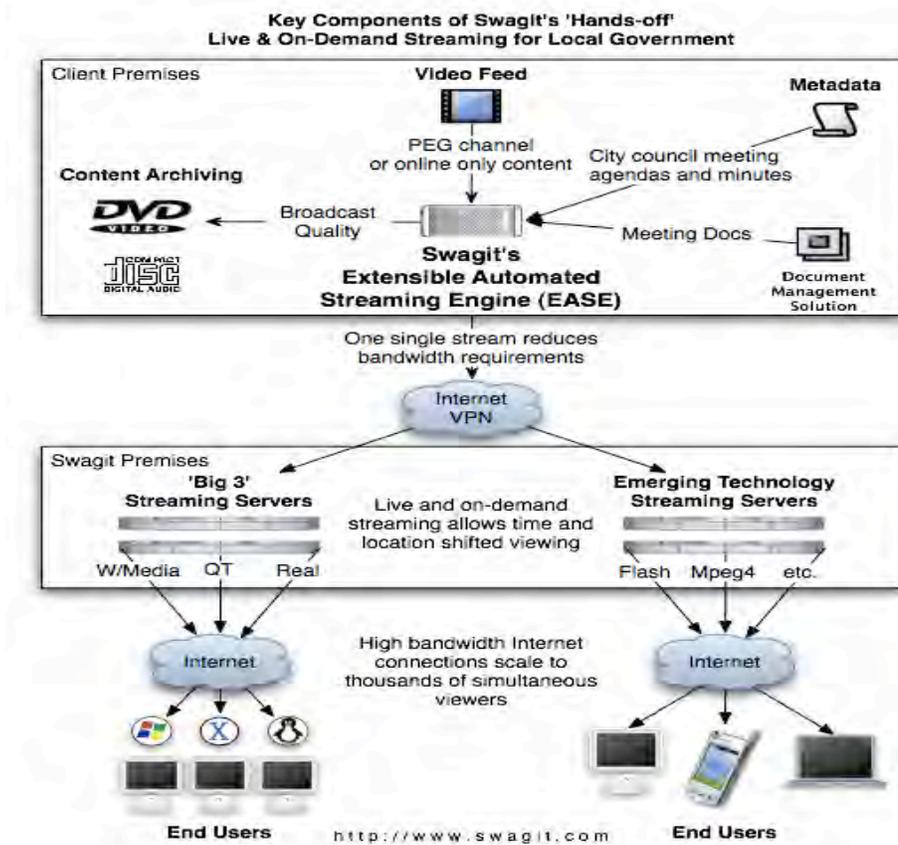
Cameras can be controlled locally by the client or remotely by Swagit's staff.

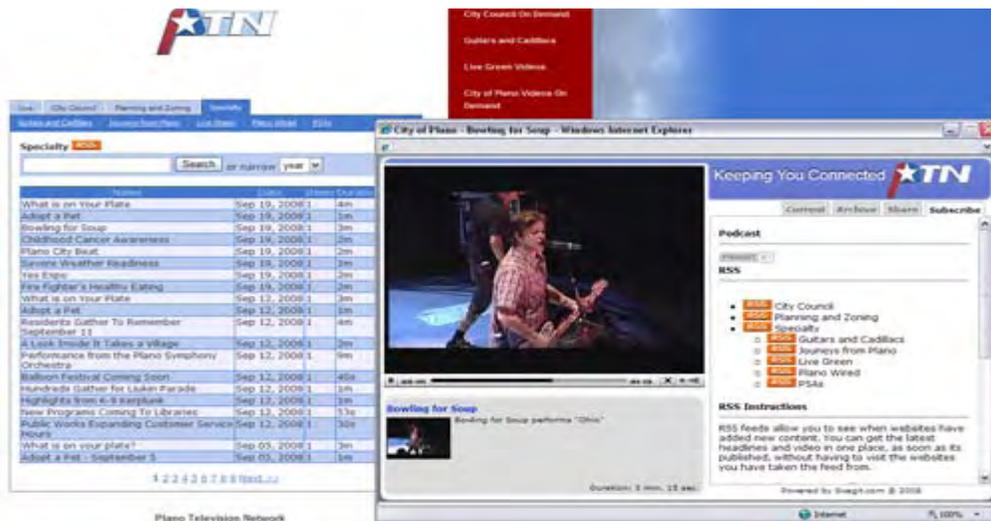


March 12, 2013

Angela Fritz
Communications Director
City of Rosenberg, TX

This letter is to provide notification that Swagit Productions, LLC, a Texas Limited Liability Company, with offices at 850 Central Parkway East., Ste. 100, Plano, Texas 75075, is the sole source provider of Swagit's Extensible Automated Streaming Engine (EASE) software framework. The EASE application is manufactured, leased and distributed by Swagit alone. No other company offers a competing service and all in one solution that combines an automated editing and indexing tool (EASE) in combination with a "hands-free" broadcast system, agenda integration, and the ability to stream video live or on-demand via the Internet. What sets Swagit's solution apart from other vendors is the ability of Swagit's system to require no city staff involvement for the operation, service and running of any equipment from Broadcast to Streaming, offering a true "hands-free" solution.





If you desire additional information on any products or services, don't hesitate to contact my or any member of our sales staff for a consultation.

Regards,

Michael Osuna
Swagit Productions, LLC
michael@swagit.com
(214) 432-5905
www.swagit.com

7. **REVIEW AND DISCUSS PROPOSED AGREEMENT FOR VIDEO STREAMING SERVICES, AND TAKE ACTION AS NECESSARY.**

Executive Summary: Video recording and streaming of City Council meetings was funded in the FY2014 Budget. In addition to adding recording equipment in the City Council Chamber, project implementation will require several additional improvements including: upgrading existing municipal channel design and broadcast equipment (ongoing); executing an Agreement for the installation of recording, production, and dissemination of meeting videos (Agreement attached for discussion here); and, possible additional improvements to Council Chamber technology to better facilitate communications for the public, City Council, and staff.

Project implementation will require an up-front investment in equipment (both for recording/streaming, and for municipal channel station management) which will be funded via the Public, Education, Government (PEG) Capital Fund; as well as ongoing fees for production and streaming services (funded through the General Fund). An Agreement was attached in the agenda documentation for City Council's review and comment and is for the video recording/streaming portion of the project. The Agreement includes: \$24,453 for video recording equipment and installation; \$6,719 for streaming equipment; and a recurring \$1,135/month (\$13,620/year) for on-demand, live video streaming, and remote-switching (off-site production, indexing, etc.).

The Agreement will be finalized and brought back for final consideration at a future meeting. Once the Agreement is finalized, staff will work with Swagit Productions, LLC, to develop a more detailed implementation schedule in conjunction with the other items that must be completed for implementation.

Key discussion points:

- Angela Fritz, Communications Director explained the executive summary as stated above. The Public, Education, Government (PEG) Capital Funds will be used to pay for the video streaming. The PEG Funds can only be used for certain projects which benefit the municipal channel. The recurring monthly charge will be paid out of the Communications General Fund as a professional services fee.
- Angela Fritz summarized the changes needed to the Council Chamber in order to implement the video streaming.
- Angela Fritz has been working with Swagit Productions, LLC, to produce a more accurate timeline on this work. Angela Fritz showed several examples of other cities/clients' video streaming to explain how the video streaming will operate. The streaming will be live on the website, as well as on the Comcast television channel. This is a good communication tool for those who cannot make a meeting or have questions about a particular agenda item. The users have the choice to view only the item or item(s) they are interested in. Usually, thirty-six (36) months are archived on the website.
- Councilor McConathy stated she is excited about this.
- Councilor Benton said this was not on the top of his list. He would like to see people show up at the meetings.
- Councilor Bolf asked if the people out of Plano were chosen by the City. Angela Fritz answered she has been researching this for several years and this firm is very cost effective, versus buying equipment and hiring personnel to run and upkeep the system. Councilor Bolf felt this is a good thing for the elderly.
- Councilor Grigar stated he thinks it is much needed. Councilor Grigar asked for an explanation of the PEG Funds. Angela Fritz stated when the state passed a state franchise fee for the cable companies, the City of Rosenberg opted into the state franchise. This imposes a 1% PEG fee to the customers and the Federal Communications Company regulates the expenditures for the PEG Funds, which can only be used to pay for projects which benefit the cable channels or similar projects. Angela Fritz explained the branding of the cable channel and website and some of the changes she plans to implement.
- Councilor Euton and Mayor Morales also thanked Angela Fritz for her implementation of the project.
- No action is required at this time. Council's consensus was to move forward with this project.



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
D	Ordinance No. 2014-09 - Authorizing MUD No. 159 Bond Sale, Series 2014
ITEM/MOTION	
Consideration of and action on Ordinance No. 2014-09, an Ordinance granting consent to the Fort Bend County Municipal Utility District No. 159 for the sale and issuance of Unlimited Tax Bonds, Series 2014, in an amount not to exceed \$2,700,000.	
FINANCIAL SUMMARY	ELECTION DISTRICT

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

1. Ordinance No. 2014-09
2. Location Map
3. TCEQ Approval – 11-25-13
4. Water Supply and Wastewater Service Agreement Excerpt – 05-17-05

MUD #: 159 (Oaks of Rosenberg)

APPROVALS

Submitted by:

Charles Kalkomey, P.E.
City Engineer

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney **LL/ks**
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

Fort Bend County Municipal Utility District No. 159 (MUD No. 159) is located southeast of US 59 with one (1) tract bounded by Spacek Road to the east and US 59 to the north. The other tract is bounded by Bryan Road to the south and Spacek Road to the east. The entire District lies within the corporate boundaries of the City of Rosenberg. The development is identified as Oaks of Rosenberg subdivision.

The City consented to the creation of MUD No. 159 on May 17, 2005, through Ordinance No. 2005-10. Water Supply and Wastewater Services and Development Agreements between the City, Perry Homes, and US59/Reading 108 GP, Ltd., were executed on May 17, 2005. MUD No. 159 contains approximately 148 acres.

This will be the second bond sale for MUD No. 159. The first bond sale was approved under Ordinance No. 2011-23 on September 20, 2011.

Much of the submission documentation provided by MUD No. 159 for this proposed sale, such as the TCEQ application, the Bond Order authorizing the Issuance of Bonds by MUD No. 159, the Preliminary Official Statement/Notice of Sale, Resolution Authorizing the Issuance of Bonds by MUD No. 159, Cash Flow Analysis, Debt Fund Schedule, Summary of Costs, along with additional minute excerpts and related Ordinances are available for review in the City Secretary's Office.

Staff has reviewed the documentation and found it to be in compliance with applicable City ordinances. Staff is recommending approval of Ordinance No. 2014-09, thus consenting to the sale of the Unlimited Tax Bonds, Series 2014, in an amount not to exceed \$2,700,000.

ORDINANCE NO. 2014-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, GRANTING CONSENT TO THE FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 159 FOR THE SALE AND ISSUANCE OF UNLIMITED TAX BONDS, SERIES 2014, IN AN AMOUNT NOT TO EXCEED \$2,700,000.

WHEREAS, the City of Rosenberg, Texas (the "City") consented to the creation of the Fort Bend County Municipal District No. 159 (the "District") by Ordinance No. 2005-10, adopted on May 17, 2005 (the "Consent Ordinance"); and,

WHEREAS, the District was created in accordance with the provisions of Article V of Chapter 29 of the City's Code of Ordinances (the "Code"); and,

WHEREAS, the District is within the corporate limits of the City; and,

WHEREAS, the District has requested the City's consent to the District's sale and issuance of Unlimited Tax Bonds, Series 2014, in an amount not to exceed \$2,700,000.; and,

WHEREAS, the City Council of the City has reviewed the District's request for the sale and issuance of such Bonds and the documentation and certifications submitted in support thereof; and,

WHEREAS, the City Council has determined that the sale and issuance of such Bonds by the District is in accordance with the Consent Ordinance, adopted on May 17, 2005, the Water Supply and Wastewater Services Contract and Development Agreement entered into by and between the City and the District on May 17, 2005, including all amendments and addendums thereto, and the terms and conditions set forth in Chapter 29 of the Code; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. The City Council hereby approves the sale and issuance of Unlimited Tax Bonds, Series 2014, in an amount not to exceed \$2,700,000, by the Fort Bend County Municipal Utility District No. 159. Such approval is subject to the certifications, representations, and conditions set forth in the District's request for approval of the sale and issuance of such Bonds, and the terms and provisions of the Consent Ordinance, adopted on May 17, 2005, and the Water Supply and Wastewater Services Contract and Development Agreement entered into by and between the City and District on May 17, 2005, including all amendments and addendums thereto, and the applicable provisions set forth in Chapter 29 of the Code.

PASSED AND APPROVED by a vote of _____ "ayes" in favor and _____ "noes" against on this first and final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on the _____ day of _____ 2014.

ATTEST:

APPROVED:

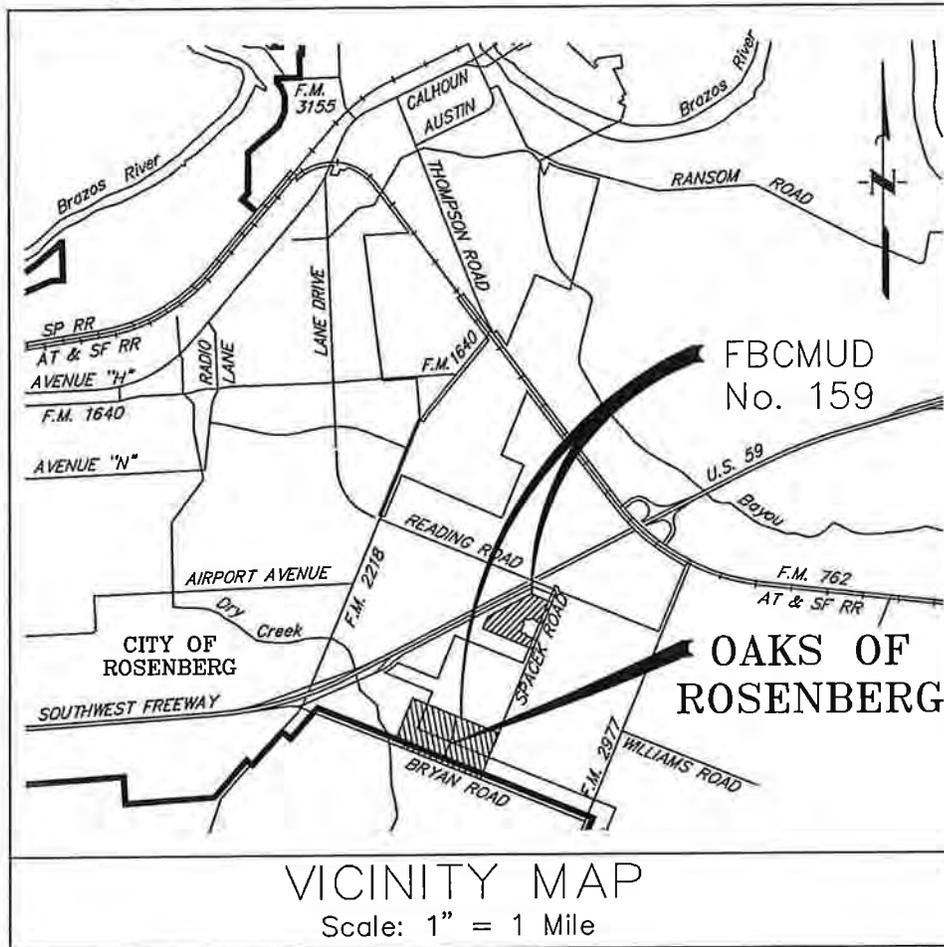
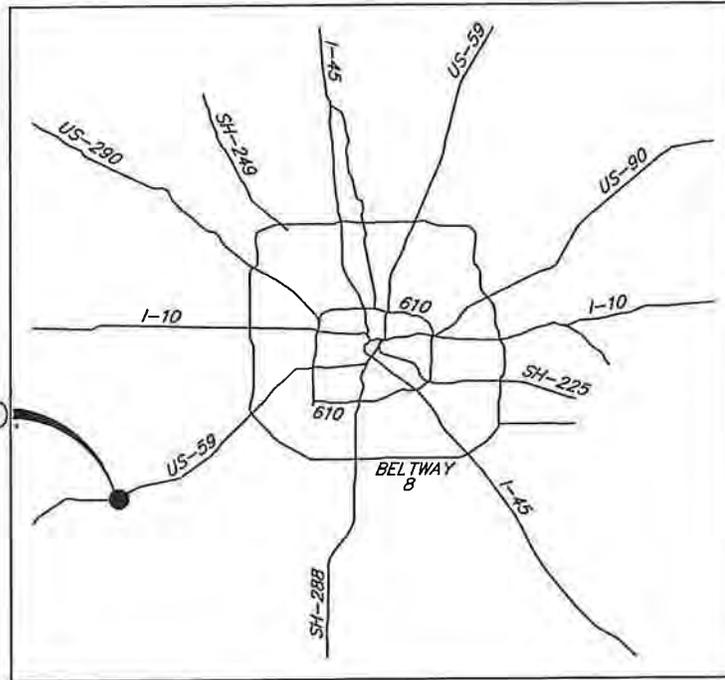
Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

APPROVED AS TO FORM:

Lora Jean D. Lenzsch, **City Attorney**

F.B.C.M.U.D.
No. 159



ATTACHMENT IV

FORT BEND COUNTY
MUNICIPAL UTILITY DISTRICT No. 159

LOCATION MAP
FEBRUARY 2013

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS
COUNTY OF TRAVIS
COMMISSIONER OF THE COMMISSION ON ENVIRONMENTAL QUALITY

DEC 17 2013

AN ORDER APPROVING AN ENGINEERING PROJECT
AND THE ISSUANCE OF \$2,700,000 IN UNLIMITED TAX BONDS FOR
FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 159

An application by Fort Bend Municipal Utility District No. 159 (the "District") was presented to the Executive Director of the Texas Commission on Environmental Quality (TCEQ) for consideration of approval pursuant to TEX. WATER CODE §§ 5.122 and 49.181. The District requests approval of an engineering project and the issuance of \$2,700,000 in bonds to finance: water and wastewater impact fees; remaining construction costs for water, wastewater and drainage facilities for Oaks of Rosenberg Section 2; operating advances; and water, wastewater and drainage facilities to serve single-family development in Oaks of Rosenberg Sections 1, 3, and 4. The TCEQ has jurisdiction to consider this matter, and the following Findings of Fact and Conclusions of Law are appropriate after examining the application and supporting documentation.

FINDINGS OF FACT

1. The District filed an application with the TCEQ on April 24, 2013 for approval of a proposed engineering project and the issuance of \$2,700,000 in bonds.
2. The Executive Director has investigated the District.
3. The application and accompanying documents have been examined. The project site was visited by a member of the Utilities and Districts Section on September 5, 2013, and a memorandum was prepared on the project dated November 25, 2013 a copy of which is attached and made a part hereof.
4. The District's project and issuance of \$2,700,000 in bonds at a maximum net effective interest rate of 4.69% to finance the project should be approved.
5. The District should be directed not to advertise for the sale of bonds pending TCEQ approval which is contingent upon receipt of a certificate of assessed valuation from the Fort Bend Central Appraisal District evidencing a District taxable value of \$51,500,000 or greater.
6. The request for a waiver of the 30% developer contribution and market study requirements should be granted in accordance with 30 TEX. ADMIN. CODE § 293.47(a)(1) and (c), and 30 TEX. ADMIN. CODE § 293.59(1)(5)(A), respectively.

7. The District's request for approval to reimburse additional accrued interest up to five years should be approved pursuant to 30 TEX. ADMIN. CODE § 293.50(b).

8. The District should be directed not to purchase facilities or assume facility contracts from the developer until either (a) the TCEQ's region office has inspected the project, and the District has received a region office report with no deficiencies noted, for which approval is valid for 120 days from the date of this Order; or, if a region office report indicates deficiencies, (b) the TCEQ's Utilities and Districts Section has received a request from the District and a region office report, reviewed the contract administration, and given written authorization to finalize the purchase or assumption; either one in accordance with 30 TEX. ADMIN. CODE § 293.69.

9. The District's Board of Directors should be directed to review to its satisfaction the detailed calculations of the developer's interest to ensure that the costs are authorized District expenditures and in accordance with 30 TEX. ADMIN. CODE § 293.50 before reimbursement to the developer is made.

10. The District should be advised that the legal, fiscal agent, and engineering fees have not been evaluated to determine whether these fees are reasonable or competitive. These fees are included as presented in the engineering report.

11. The District should be directed that any surplus bond proceeds resulting from the sale of bonds at a lower interest rate than that proposed shall be shown as a contingency line item in the Official Statement and the use of such funds shall be subject to approval pursuant to TCEQ rules on surplus funds.

CONCLUSIONS OF LAW

1. The TCEQ has jurisdiction to consider the engineering report and bond application pursuant to TEX. WATER CODE § 49.181.

2. The Executive Director has investigated the District, and the TCEQ has found it legally organized and feasible.

3. The Utilities and Districts Section's memorandum dated November 25, 2013, on this engineering project and bond issue should be adopted as the written TCEQ project report in compliance with TEX. WATER CODE § 49.181(d).

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that the Utilities and Districts Section's memorandum dated November 25, 2013 on this engineering project and bond issue is adopted as the written TCEQ project report. Pursuant to TEX. WATER CODE § 49.181, the engineering project for Fort Bend Municipal Utility District No. 159 is hereby approved together with the issuance of \$2,700,000 in bonds at a maximum net effective interest rate of 4.69%. Further, The District is directed not to advertise for the sale of bonds approved herein pending TCEQ approval which is contingent upon receipt of a certificate of assessed valuation from the Fort Bend Central Appraisal District evidencing a District taxable value of \$51,500,000 or greater. The request for a waiver of the 30% developer contribution and market study requirements associated with this bond issue is granted in accordance with 30 TEX. ADMIN. CODE § 293.47(a)(1) and (c), and 30 TEX. ADMIN. CODE § 293.59(l)(5)(A), respectively. District funding of additional accrued interest up to five

years is approved in this bond issue, in accordance with 30 TEX. ADMIN. CODE § 293.50(b). The District is directed not to purchase facilities or assume facility contracts from the developer until either (1) the TCEQ's region office has inspected the project, and the District has received a region office report with no deficiencies noted, for which approval is valid for 120 days from the date of this Order; or, if a region office report indicates deficiencies, (2) the TCEQ's Utilities and Districts Section has received a request from the District and a region office report, reviewed the contract administration, and given written authorization to finalize the purchase or assumption; either one in accordance with 30 TEX. ADMIN. CODE § 293.69. The District's Board of Directors is directed to review to its satisfaction the detailed calculations of the developer's interest to ensure that the costs are authorized District expenditures and in accordance with 30 TEX. ADMIN. CODE § 293.50 before reimbursement to the developer is made. The District is advised that the legal, fiscal agent, and engineering fees have not been evaluated to determine whether these fees are reasonable or competitive. These fees are included as presented in the engineering report. The District is directed that any surplus bond proceeds resulting from the sale of bonds at a lower interest rate than that proposed shall be shown as a contingency line item in the Official Statement and the use of such funds shall be subject to approval pursuant to TCEQ rules on surplus funds. The approval of the sale of these bonds herein shall be valid for one year from the date of this Order unless extended by written authorization from the TCEQ.

BE IT FURTHER ORDERED that pursuant to TEX. WATER CODE § 5.701, the District shall pay to the TCEQ 0.25% of the principal amount of bonds actually issued not later than the seventh (7th) business day after receipt of the bond proceeds. The fees shall be paid by check payable to the Texas Commission on Environmental Quality.

BE IT FURTHER ORDERED that to enable the TCEQ to carry out the responsibilities imposed by TEX. WATER CODE §§ 49.181–182, the District shall (1) furnish the Utilities and Districts Section copies of all bond issue project construction documentation outlined under 30 TEX. ADMIN. CODE § 293.62, including detailed progress reports and as-built plans required by TEX. WATER CODE § 49.277(b), that has not already been submitted; (2) notify the Utilities and Districts Section and obtain approval of the TCEQ for any substantial alterations in the engineering project approved herein before making such alterations; and (3) ensure, as required by TEX. WATER CODE § 49.277(b), that all construction financed with the proceeds from the sale of bonds is completed by the construction contractor according to the plans and specifications contracted.

BE IT FURTHER ORDERED that failure of said District to comply with all applicable laws and with provisions of this Order shall subject the District and its directors to all penalties that are provided by law and shall further be considered by the TCEQ as grounds for refusal to approve other bonds of the District.

The Chief Clerk of the TCEQ is directed to forward the District a copy of this Order.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: **December 10, 2013**



For the Commission

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

To: *JBT for* Tammy Benter, Manager
11/26/13 Utilities and Districts Section

Date: November 25, 2013

Thru: *JBT for* Tom Glab, P.E., Leader
11/26/13 Districts Bond Team

From: Ruben Soto, Jr.
RSJ Districts Bond Team
11/25/13

Subject: Fort Bend County Municipal Utility District No. 159; Application for Approval of \$2,700,000 Unlimited Tax Bonds, Second Issue, 4.69% Net Effective Interest Rate, Series 2013; Pursuant to Texas Water Code Section 49.181. TCEQ Internal Control No. D-04242013-029 (TC) CN: 602863912 RN: 105447940

A. GENERAL INFORMATION

The Texas Commission on Environmental Quality (TCEQ) received an application from Fort Bend County Municipal Utility District No. 159 (the "District") requesting approval for the issuance of \$2,700,000 in unlimited tax bonds to finance the following:

1. Water and wastewater impact fees.
2. Remaining construction costs for water, wastewater, and drainage (W, WW, & D) facilities for Oaks of Rosenberg Section 2.
3. Operating advances.
4. W, WW & D facilities serving the following developments within the District:

<u>Development</u>	<u>Type of Development</u>	<u>Acreage</u>	<u>Active ESFCs⁽¹⁾</u>	<u>Ultimate ESFCs</u>
Oaks of Rosenberg Section 1	Single-Family	16.60	64	64
Oaks of Rosenberg Section 3 ⁽²⁾	Single-Family	24.86	60	74
Oaks of Rosenberg Section 4	Single-Family	<u>13.29</u>	<u>52</u>	<u>52</u>
Total		54.75	176	190

Notes:

- (1) Equivalent Single-Family Connections as of February 7, 2013, as stated in the engineering report.
- (2) This bond issue includes partial funding of the section.

The District's previous bond issue funded utilities to serve 118 ESFCs on 30.21 acres. Including this bond issue, the District will have funded (or partially funded) utilities to serve 308 ESFCs on 84.96 acres. According to the engineering report and based on a current District area of 148.47 acres, the District's ultimate development is projected to serve 785 ESFCs on 134.46 developable acres.

B. ECONOMIC ANALYSIS

Tax Rate Analysis

The feasibility of this bond issue is based on the existing 294 ESFCs (as of February 7, 2013), plus the build-out of 4 ESFCs, for a total of 298 ESFCs with a projected January 1, 2014 assessed valuation of \$51,803,870. Projections are within Oaks of Rosenberg Section 3, for which streets and utilities were observed complete during inspection of the District. A market study was not provided; however, growth projections have been reviewed and appear consistent with historical growth.

According to a Fort Bend Central Appraisal District certificate, the District's January 1, 2013 estimated taxable assessed valuation is \$49,403,870. The annual debt service requirement for the proposed bond amount of \$2,700,000 and existing debt averages \$344,983 for the 26-year life of the District's bond debt. The District levied a maintenance tax of \$0.26 in 2012 and, according to the engineering report, is projecting to levy a maintenance tax of \$0.26 in the future.

The District's financial advisor submitted cash flow schedules considering the requested \$2,700,000 bond issue, growth to \$51,803,870 by January 1, 2014, no capitalized interest, a bond interest rate of 4.50%, a 3% bond discount, a 99% collection rate, and a projected tax rate of \$0.68 per \$100 assessed valuation. The Utilities and Districts Section's financial analyst has reviewed the financial information submitted and concluded that the following level debt service tax rates would be sufficient.

<u>District</u>	<u>Projected Tax Rate</u>	<u>No-Growth Tax Rate</u>
Debt Service	\$ 0.68 ⁽¹⁾⁽²⁾	\$ 0.71 ⁽³⁾
Maintenance	<u>\$ 0.26</u>	<u>\$ 0.26</u>
District Total	\$ 0.94	\$ 0.97
City Tax Rate	<u>\$ 0.11</u> ⁽⁴⁾	<u>\$ 0.11</u> ⁽⁴⁾
Total	\$ 1.05 ⁽⁵⁾	\$ 1.08 ⁽⁶⁾

Notes:

- (1) Based on a net effective interest rate of 4.69%, a 99% collection rate, growth as indicated above, no capitalized interest, and at least a 25% ending debt service fund balance.
- (2) The term "commission-approved tax rate" in 30 Texas Administrative Code (TAC) Section 293.85 refers to an initial ad valorem debt service tax rate of at most \$0.68 per \$100 assessed valuation.
- (3) Based on a net effective interest rate of 4.69%, a 100% collection rate, no-growth to a taxable assessed valuation of \$49,403,870, and at least a 25% ending debt service fund balance.
- (4) By letter dated October 31, 2012, the portion of the City's tax rate attributable to water, wastewater, and drainage debt service and maintenance is approximately \$0.11.
- (5) Represents the combined projected tax rate as defined by 30 TAC Section 293.59(f).
- (6) Represents the combined no-growth tax rate as defined by 30 TAC Section 293.59(e).

Additional Financial Comments

The District is exempt from the 75% and 25% build-out requirements of 30 TAC Sections 293.59(l)(4) and 293.59(k)(7), respectively, based on its combined no-growth tax rate of \$0.97 being less than \$1.50 pursuant to 30 TAC Sections 293.59(l) and 293.59(k)(11)(C).

C. ENGINEERING ANALYSIS

Water Supply

Water supply for the District is provided by groundwater wells from the City of Rosenberg (the "City") pursuant to the Water Supply and Wastewater Services Agreement between the City and Perry Homes and US 59/Reading 108, LTD, dated May 17, 2005. Pursuant to the agreement, the City has reserved 785 ESFCs and provides the District. Water supply service has been assigned to the District as per the assignment agreement dated November 15, 2006.

The District's reserved water supply capacity appears adequate to serve 298 ESFCs upon which the feasibility of this bond issue is based.

Wastewater Treatment

Wastewater treatment for the District is provided by the City's wastewater treatment plant pursuant to the Water Supply and Wastewater Services Agreement between the City and Perry Homes and US 59/Reading 108, LTD, dated May 17, 2005. Pursuant to the agreement, the City has reserved 785 ESFCs to provide wastewater service to the District. Wastewater supply service has been assigned to the District as per the assignment agreement dated November 15, 2006.

The District's reserved wastewater treatment capacity appears adequate to serve 298 ESFCs upon which the feasibility of this bond issue is based.

Storm Water Drainage

Storm water from the District generally drains through curb inlets to internal stormwater collection lines to the Districts detention/drainage channel that drains to Dry Creek through Smithers Lake into the Gulf of Mexico.

Purchase of Existing Facilities / Assumption of Contracts

<u>Project</u>	<u>Contractor</u>	<u>% Complete (Date)</u>	<u>Contract Amount⁽¹⁾</u>	<u>Amt. Subj. to Distr. Contrib.</u>
Oaks of Rosenberg Section 1 - W, WW, & D	Gonzales Construction Enterprises, Inc.	100% (12/17/07)	\$366,208	\$366,208
Oaks of Rosenberg Section 2 - W, WW, & D	Pace Services, L.P.	100% (4/30/06)	\$1,453,432	\$1,452,472 \$362,398 ⁽²⁾
Oaks of Rosenberg Section 3 - W, WW, & D	Bay Utilities, LLC	100% (1/13/11)	\$322,872	\$322,872 ⁽³⁾ \$37,532 ⁽⁴⁾

Oaks of Rosenberg Section 4 - W, WW, & D	B&D Construction Company, Inc.	100% (5/17/07)	\$721,004	\$721,004
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Notes:

- (1) Represents original contract amounts plus or minus change orders and/or final quantity adjustments.
- (2) The District's previous bond issue funded \$1,090,074.
- (3) This bond issue is only partially funding the project. The remaining \$285,340 (\$322,872 minus \$37,532) may be requested in the future and is considered eligible based on current rules.
- (4) The city of Rosenberg has been assigned the W, WW & Dr facilities. An inspection from the TCEQ is not required.

Approved plans and specifications, preconstruction agreements, and various construction contract documents have been provided.

Facilities to be Constructed

None.

Inspection

The District was inspected by a member of the Utilities and Districts Section on September 5, 2013. Streets and utilities appeared to be complete within Oaks of Rosenberg Sections 1, 3, and 4, which are being funded from the current bond issue and/or used in the feasibility. District name signs were properly posted.

D. SUMMARY OF COSTS

<u>Construction Costs</u>	District's Share ⁽¹⁾
A. Developer Contribution Items	
1. Oaks of Rosenberg Section 1 – W, WW & Dr	\$ 366,208
2. Oaks of Rosenberg Section 2 – W, WW & Dr	362,398
3. Oaks of Rosenberg Section 3 – W, WW & Dr	37,532
4. Oaks of Rosenberg Section 4 – W, WW & Dr	721,004
5. Engineering (Items 1-4)	<u>257,913</u>
Total Developer Contribution Items	\$ 1,745,055
B. District Items	
1. Water Impact Fees	\$ 265,046 ⁽²⁾
2. Wastewater Impact Fees	<u>120,070</u> ⁽²⁾
Total District Items	\$ <u>385,116</u>
TOTAL CONSTRUCTION COSTS	\$ 2,130,171
<u>Non-Construction Costs</u>	
A. Legal Fees	\$ 81,000 ⁽³⁾
B. Fiscal Agent Fees	54,000 ⁽⁴⁾
C. Developer Interest	235,943 ⁽⁵⁾
D. Bond Discount (3%)	81,000
E. Bond Issuance Expenses	48,436
F. Bond Application Report Costs	40,000
G. Operating Advances	20,000

H. Attorney General Fee (0.10%)	2,700
I. TCEQ Bond Issuance Fee (0.25%)	<u>6,750</u>
TOTAL NONCONSTRUCTION COSTS	\$ 569,829
TOTAL BOND ISSUE REQUIREMENT	<u>\$2,700,000</u>

Notes:

- (1) The District has requested a waiver of the 30% developer contribution requirement.
- (2) Represents water and wastewater impact fees for sections included in the current bond issue (excluding Oaks of Rosenberg Section 2.
- (3) Pursuant to contract provided, fees are 3% of the first 3,000,000 in bonds issued, 2.5% of bonds issued between \$3,000,000 and \$5,000,000, and 2% of bonds issued above \$5,000,000.
- (4) Pursuant to contract provided, fees are 2% of bonds issued above \$1,000,000.
- (5) Estimated at 4.50% through October 1, 2013. The District has requested to reimburse more than two years of interest in accordance with 30 TAC Section 293.50(b).

E. SPECIAL CONSIDERATIONS

1. 30% Developer Contribution and Market Study Requirements

The District has requested a waiver of the 30% developer contribution requirement (30 TAC Section 293.47), pursuant to 30 TAC Section 293.47(a)(1), based on the District obtaining a debt to assessed valuation ratio of 10% or less. The District's existing (\$2,450,000) and proposed (\$2,700,000) debt is \$5,150,000. The District's January 1, 2013, estimated taxable assessed valuation is (\$49,403,870). Based on projections in the build-out schedule provided and activity observed during inspection, it appears that the District should have the necessary assessed valuation to qualify for the waiver in the near future. Therefore, the District's request for a waiver of the 30% developer contribution requirement can be granted pursuant to 30 TAC Sections 293.47(a)(1) and (c). The District will be required to provide a certificate from the Fort Bend Central Appraisal District indicating a District taxable value of \$51,500,000 or greater prior to the District being authorized to advertise for the sale of bonds.

The District has also requested a waiver of the market study requirement [30 TAC Section 293.59(k)(10)], pursuant to 30 TAC Section 293.59(l)(5)(A). Based on build-out observations during inspection, the District qualifies for the requested waiver.

2. Developer Interest for a Period of More Than Two Years

By board resolution, the District has requested to reimburse developer interest for a period of more than two years. However, pursuant to 30 TAC Section 293.50(b)(2), interest costs are limited to 4 years on the total bond amount. For a \$2,700,000 bond amount at 4.5%, the total interest is limited to \$486,000. The \$235,943 in interest to be funded is within that limit. Therefore, the request to reimburse developer interest should be approved pursuant to 30 TAC Section 293.50(b).

F. CONCLUSIONS

1. Based on \$20,000,000 in unlimited tax bonds for W, WW, & D authorized by voters and \$2,500,000 previously approved by the TCEQ and issued by the District, the District has sufficient voter-authorized bonds (\$17,500,000) for the proposed bond issue.
2. Based on the review of the engineering report, plans, specifications, and supporting documents, the bond issue is considered feasible and meets the economic feasibility criteria established by 30 TAC Section 293.59.
3. The recommendations are made under authority delegated by the Executive Director of the TCEQ.

G. RECOMMENDATIONS

1. Approve the bond issue in the amount of \$2,700,000, in accordance with the recommended summary of costs, at a maximum net effective interest rate of 4.69%.
2. Direct the District not to advertise for the sale of bonds pending TCEQ approval, which is contingent upon receipt of a certificate of assessed valuation from the Fort Bend Central Appraisal District evidencing a District taxable value of \$51,500,000 or greater.
3. Grant a waiver of the 30% developer contribution and market study requirements pursuant to 30 TAC Sections 293.47(a)(1) and (c), and 293.59(l)(5)(A), respectively.
4. Approve the District's request to reimburse developer interest for a period of more than two years pursuant to 30 TAC Section 293.50(b).
5. Standard recommendations regarding developer interest, consultant fees, surplus proceeds, time of approval, and bond proceeds fee apply.

vicinity of the Tract, should cooperate and negotiate contract terms in good faith for the equitable cost-sharing of the design and construction of improvements to Spacek Road from U.S. Highway 59/Reading Road to Bryan Road; and, Bryan Road from F.M. Highway 2218 to F.M. Highway 2977. The parties agree that approved costs of the agreed-upon road improvements should be allocated on the basis of the demand placed by the tract on the roads.

2.11. Temporary Service to the Tract. The City agrees that, if necessary, the Developer may serve the original voter house or mobile homes within the District from a potable water well and septic systems, for a period of not more than 18 months, while the District Water System and District Wastewater System are under construction. Any such well and septic systems will be subject to the same restrictions, as such may be amended from time to time in the sole discretion of the City, as if the facilities were located within the City. At the end of such eighteen-month period, the well shall be abandoned and plugged in accordance with applicable local and state regulations. The septic systems shall also be abandoned and removed from the site in accordance with applicable local and state regulations.

2.12. Wells for Lake Water. The Developer acknowledges that the drilling of wells for the purposes of filling lakes, and not to supply potable water, will be subject to the same restrictions, as such restrictions may change from time to time, as if such wells were located within the City.

ARTICLE III. DEVELOPMENT AGREEMENT

3.1. Development Agreement. The parties acknowledge that the City and the Developer have entered into the Development Agreement contemporaneously with the execution of this Agreement, which describes the development plans for the Tract and the City's and the Developer's obligations relating to such development. The Developer's Development Plan for the overall development of the District is attached hereto as **Exhibit B**.

ARTICLE IV. FINANCING OF FACILITIES

4.1. Authority of District to Issue Bonds. The District shall have authority to issue, sell and deliver Bonds from time to time, as deemed necessary and appropriate by the Board of Directors of the District and for the purposes, in such forms and manner, and as permitted or provided by federal law, state law, Commission regulations, and the City's Ordinance No. 2005- 10. No Bonds shall be issued by the District unless all terms and conditions of the City's Procedures for the Creation of In-City Municipal Utility Districts and the City's Consent Ordinance have been followed.

4.2. Bonds as Obligation of District. Unless and until the City shall dissolve the District and assume the properties, assets, obligations and liabilities of the District, the Bonds, as to both principal and interest, shall be and remain obligations solely of the District and shall never be deemed or construed to be obligations, liabilities or indebtedness of the City.



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
E	Resolution No. R-1757 - Hay Production Lease Extension
ITEM/MOTION	
Consideration of and action on Resolution No. R-1757, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a Lease Extension on City-owned property for hay production, by and between the City and P. F. Vacek, Jr., for a two-year term.	
FINANCIAL SUMMARY	ELECTION DISTRICT

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1757
2. City Council Meeting Draft Minute Excerpt – 01-28-14

MUD #: N/A

APPROVALS

Submitted by:

John Maresh
Assistant City Manager for
Public Services

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney *LJL/rjm*
- City Engineer
- Parks and Recreation Director

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

As discussed at the January 28, 2014 City Council Workshop, the Lease of Real Property for Hay Production (Lease) includes approximately 209 acres of open acreage. The annual Lease payment generates a positive cash flow of \$3,858.60. Based on the current right-of-way mowing contract rate for open acreage (\$17.50/acre X 6 mowing cycles), it would cost the City approximately \$21,945.00 per year to keep the property mowed if it were not leased for hay production. The initial two-year Lease will expire on April 01, 2014. The Lease does provide the City with the option to extend for two (2) additional one-year terms. The present "Lessee" is Pete F. Vacek, Jr., and he has abided by the terms of the Lease and staff has not encountered any issues or problems during the past two (2) years.

Staff is recommending approval of Resolution No. R-1757, which provides for a two-year Lease Extension for Pete F. Vacek, Jr., until April 01, 2016, in the amount of \$3,858.60 per year. A copy of said Lease Extension is attached to Resolution No. R-1757 as Exhibit "A".

RESOLUTION NO. R-1757

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A LEASE EXTENSION ON CITY-OWNED PROPERTY FOR HAY PRODUCTION, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND P. F. VACEK, JR., FOR A TWO-YEAR TERM.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The City Council of the City of Rosenberg hereby authorizes the City Manager to execute a Lease Extension, by and between the City of Rosenberg, Texas, and P. F. Vacek, Jr., for the lease of City-owned property for hay production for a term of two (2) years.

Section 2. A copy of said Lease Extension is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this ____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **CITY SECRETARY**

Vincent M. Morales, Jr., **MAYOR**

Lease Extension Agreement

This Agreement is made and entered on this _____ day of _____, 2014, between the City of Rosenberg, (hereinafter referred to as "Lessor") and Pete F. Vacek, Jr., (hereinafter referred to as "Lessee") regarding the premises of Lessor generally located at:

- Parcel A. - Approximately 70.8 Acres, located on Ricefield Road;
- Parcel B. - Approximately 22.49 Acres, located on Avenue A;
- Parcel C. - Approximately 98 Acres, located in Seabourne Creek Park;
- Parcel D. - Approximately 26.6 Acres, located on Koeblen Road;

and leased to Lessee under a lease entered into on April 1, 2012, the term of which is to expire April 1, 2014, and said lease is attached hereto and incorporated herein for all purposes as **Exhibit "A"**.

Now, therefore, it is agreed as follows:

1. The above-described lease is hereby renewed for a term of two (2) years beginning April 1, 2014, and ending April 1, 2016.
2. All terms, provisions and covenants of the above-described lease, shall remain in full force for the duration of the extended term, including the rental rate.

In WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written, as evidenced by their signatures below.

Executed by "Lessor" on this _____ day of _____ 2014.

City of Rosenberg
2110 4th Street
Rosenberg, TX 77471

By: _____
Robert Gracia, City Manager

Attest: _____
Linda Cernosek, City Secretary

Executed by "Lessee" on this 10 day of February 2014

By: Pete F. Vacek Jr
Printed Name: PETE F. VACEK JR
Title: HAY MAKER
Address: P.O. BOX 616
City, State, Zip Code: NEEDVILLE, TEXAS-77461

Attest: Sheni Nichols
Printed Name: Sheni Nichols
Title: Administrative Assistant

Lease

This Lease, made and entered into this 1st day of April, 2012, by and between the City of Rosenberg ("Lessor") with address at 2110 Fourth Street, Rosenberg, Texas 77471, and Pete F. Vacek, Jr. ("Lessee") with a mailing address of P.O. Box 616, Needville, Texas 77461.

WHEREAS, the Lessor owns and controls the surface rights in, on and related to the tract of real property ("Land"), which is described as:

- Parcel A. – Approximately 70.8 Acres, located on Ricefield Road as shown on map attached as Exhibit "A".
- Parcel B. – Approximately 22.49 Acres, located on Avenue A as shown on map attached as Exhibit "B".
- Parcel C. - Approximately 89 Acres, located in Seabourne Creek Park as shown on map attached as Exhibit "C".
- Parcel D. - Approximately 26.6 Acres, located on Koeblen Road as shown on map attached as Exhibit "D".

WHEREAS, Lessee desires to lease said Land from Lessor for hay production; and

WHEREAS, Lessor is willing to enter into a Lease with Lessee with respect to the Land.

NOW THEREFORE, for and in consideration of the rights, covenants and obligations of the parties as set forth herein, and in consideration of the rent payable hereunder to Lessor by Lessee, Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the Land for hay production purposes pursuant to the following terms and conditions:

1. **Term.** The term of this Lease shall be for a period of two (2) years, commencing on the date shown herein. The Lessee shall surrender possession at the end of the term or at the end of any extension thereof. Extensions of this Lease must be placed in writing. Both parties agree that failure to execute an extension at least 60 days before the end of the current term shall be constructive notice of intent to allow the lease to expire. The City, at its sole discretion, may extend this lease for two (2) additional one (1) year terms.
2. **Property.** The Lessor hereby leases to the Lessee, to occupy and use for hay production and baling purposes only the land described above. Lessee accepts the Leased Premises "as is" and in their current condition. Lessee has inspected the Leased Premises and finds them to be suitable for Lessee's purpose of hay production.
3. **Limitations on Lease Rights.** The Lessee shall have all rights to use the Land thereon for the sole purpose of hay production.
4. **Right of Entry.** The Lessor reserves the right to itself, its agents, its employees, or its assigns to enter the Land at any time for the purposes of: (a) consultation with the tenant; (b) to make repairs, improvements, and inspections; (c) developing mineral resources, including seismic operations; (d) after notice of termination of the lease is given, for purposes of plowing, seeding, fertilizing, and such customary seasonal work, none of which is to interfere with the Lessee in carrying out regular agricultural operations. Second, the Lessor reserves the right to itself, its agents, its employees or its assigns to enter the Land for residential, commercial, industrial, utility or drainage development.

5. **Simultaneous Development.** The Lessor reserves the right to develop and lease the Land and to grant rights-of-way for roads, or pipelines, etc.
6. **Transfer of Land.** In the event that the Lessor shall sell, assign, or otherwise transfer title to the Land, it shall do so subject to the provisions of this Lease. Lessor shall provide Lessee notice of any sale, or assignment within 30 days of such sale or assignment.
7. **Assignment.** Lessee shall not assign, sublease or otherwise transfer any of its rights or obligations under this Lease without the express written consent of Lessor. In the absence of Lessor's express written consent, any attempted or purported assignment, sublease or other transfer of the Lease by Lessee shall be of no effect as to Lessor and shall not relieve Lessee of any of its obligations to Lessor under this Lease. Lessor shall be under no obligation whatsoever to consent to any assignment, sublease or other transfer of this Lease by Lessee. Moreover, any assignment, or sublease, or attempted assignment, or sublease of this Lease by Lessee shall constitute a material breach of this Lease and Lessor shall thereupon have the right to immediately terminate this Lease.
8. **Heirs and Successors.** The terms of this Lease shall be binding upon the heirs, executors, administrators and successors of both the Lessor and Lessee in like manner as upon the original parties.
9. **Additional Provisions.** The following additional agreement shall apply to this Lease:

Lessee agrees not to use the Leased premises, nor grant permission to any person(s) to enter onto the Leased premises for the purposes of: hunting, fishing, swimming, camping, horseback riding, ATV riding, dog training, woodcutting, cattle grazing, storing of equipment, storage of fuel or hazardous materials or crop production, nor any other non-agricultural activity that is not directly related to hay production purposes and hay baling.

10. **Land Use.** Except when mutually agreed otherwise by Lessor and Lessee, in writing, the Land shall be used solely for hay production purposes including hay baling.
11. **Improving, Conserving and Maintaining the Land.** To improve the Land, conserve its resources and maintain it in high state of cultivation, the parties agree as follows:
 - a. **Damage and Waste.** Lessee shall not commit waste on or damage to the Land and shall use due care to prevent others from doing so.
 - b. **Additional Improvements.** Lessee shall not, without the advance written consent of Lessor, (i) erect or permit to be erected on the Land any non-removable structure or building.
 - c. **Conservation Structures.** Lessee shall keep in good repair all open ditches and inlets and outlets of the drains, preserve all established waterways or ditches and refrain from any operation or practice that will injure them.

- d. **Use of Pesticides and Fertilizers.** Lessee shall be responsible for complying with all applicable Federal and State laws and regulations and licensing requirements for the purchase and application of all pesticides and fertilizers used for the hay production. Lessee shall, upon request of Lessor produce documentations of applicator licenses authorized by the Texas Department of Agriculture.
- e. **Compensation for Damages.** Upon the termination of this Lease, Lessee shall pay to Lessor reasonable compensation for any damages to the Land which Lessee has caused, permitted to occur, or for which it is otherwise responsible.
- f. **Grass and Weed Control.** If Lessee elects not to cut or bale the hay for any reason the Lessee shall, at its own expense, completely mow the leased properties a minimum of two (2) times during the term of the lease to control noxious weed and grass growth. Parcel C, approximately 89 acres located in Seabourne Creek Park shall be baled or mowed so that the grass height will be six (6) inches or less, on July 01 of each year to accommodate a "July 4th" Fireworks show. If Lessee fails to bale or mow the grass by said date, Lessor has the right to mow said Parcel C for safety purposes and Lessee hereby waives any claims for loss of hay or any other damages.
- g. **Hay Removal.** All hay bales will be promptly removed from the property within fourteen (14) days after baling. Hay bales may not be stacked or left on the property beyond the fourteen (14) day time period after baling. In any case all bales shall be removed from Parcel C, approximately 89 acres located in Seabourne Creek Park shall be removed from the property no later than July 01 of each year to accommodate a "July 4th" Fireworks show. If Lessee fails to remove any bales by said date, Lessor has the right to remove bales from said Parcel C for safety purposes and Lessee hereby waives any claims for loss of hay or any other damages.
12. **Non-Partnership.** This Lease does not give rise to a partnership. Neither party shall have the right to bind the other in any way without advance written consent signed by both parties. Neither party shall be liable for debts or obligations incurred by the other.
13. **Rental Rate.** The Lessee shall pay rent to Lessor in the amount of **\$3,858.60** per year. Provided however, in the event Lessor permits development or substantial disturbance to portions of the land during the term of the lease, Lessor will refund to Lessee the remaining portion of rent based on a per acre calculation of the acres developed and/or substantially disturbed in a pro-rata calculation for the number of months remaining on said lease. Provided, however, Lessee must submit a written request for said refund within sixty (60) days after said development or substantial disturbance commences.
14. **Recording.** Lessee shall not record this Lease without the prior written consent of Lessor. Any recording or attempted recording of this Lease by Lessee shall constitute a material breach of this Lease and Lessor shall have the right to immediately terminate this Lease.
15. **Termination.** Lessor may terminate this Lease for any reason with 30 days written notice. In the event of termination of this Lease under this provision, Lessee shall immediately remove him (her) self and all his (her)

possessions (equipment). Such termination and removal shall in no way excuse Lessee from performance of any responsibilities or obligations accruing prior to the termination.

16. **Indemnity and Insurance.** Lessee agrees to indemnify, defend, and save Lessor harmless against any and all claims, damages, loss and expense, including attorneys fees and other legal expenses, by reason of liability imposed or claimed to be imposed by law for damage because of bodily injuries (including death) or on account of damage to property, sustained by any person or persons, arising out of or in consequence of any operation in any way related to the use of the lease property described in this Lease whether or not such bodily injuries, death or damage to property arise or are claimed to have arisen in whole or in part out of the negligence or any other grounds of legal liability, including violation of any duty imposed by statute, or ordinance or regulation, on the part of the Lessee, any sub-lessees, the employees or agents or any of them, but excluding however, any liability caused by the sole negligence or willful misconduct of employees or agents of Lessor.

Prior to occupancy or use of the Land described hereunder, Lessee shall furnish to Lessor (in form satisfactory to Lessor) a certificate of general liability insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00), naming the City as an additional insured and showing that the requirements of this Section 16 have been satisfied.

17. **Severability.** In the event that any one of more provisions of this Lease shall be determined by law to be unenforceable, then the remaining provisions of this Lease shall continue in full force and effect as if such unenforceable provision(s) had not been made a part of this Lease.
18. **Law Governing and Venue.** This Lease Agreement is governed by the laws of the State of Texas. A lawsuit may only be prosecuted on this Lease Agreement in a court of competent jurisdiction located in or having jurisdiction in Fort Bend County, Texas.
19. **Entire Agreement.** This Lease Agreement represents the entire Agreement between the Lessee and Lessor and supersedes all prior negotiations, representations, or contracts, either written or oral. This Agreement may be amended only by written instrument signed by both Parties.
20. **Notice.** Any notice provided by this Lease Agreement or required by law to be given to the Lessee or Lessor shall be deemed to have been given and received on the next business day after such written notice has been deposited in the U.S. mail in Rosenberg, Texas, by Registered or Certified Mail with sufficient postage affixed thereto, addressed to the respective party at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

In WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written, as evidenced by their signatures below.

Executed by "Lessor" on this 4th day of March 2012.



City of Rosenberg
2110 4th Street
Rosenberg, TX 77471

By: Jack S. Hamlett
Jack S. Hamlett, City Manager

Attest: Linda Cernosek
Linda Cernosek, City Secretary

Executed by "Lessee" on this 29th day of February, 2012

By: P.F. Vacek Jr
Printed Name: P. F. Vacek Jr.
Title: Rancher & Haymaker

Address: P.O. Box 616
City, State, Zip Code: Needville, Texas 77461

Attest: Sherri Nichols
Printed Name: Sherri Nichols
Title: Secretary II

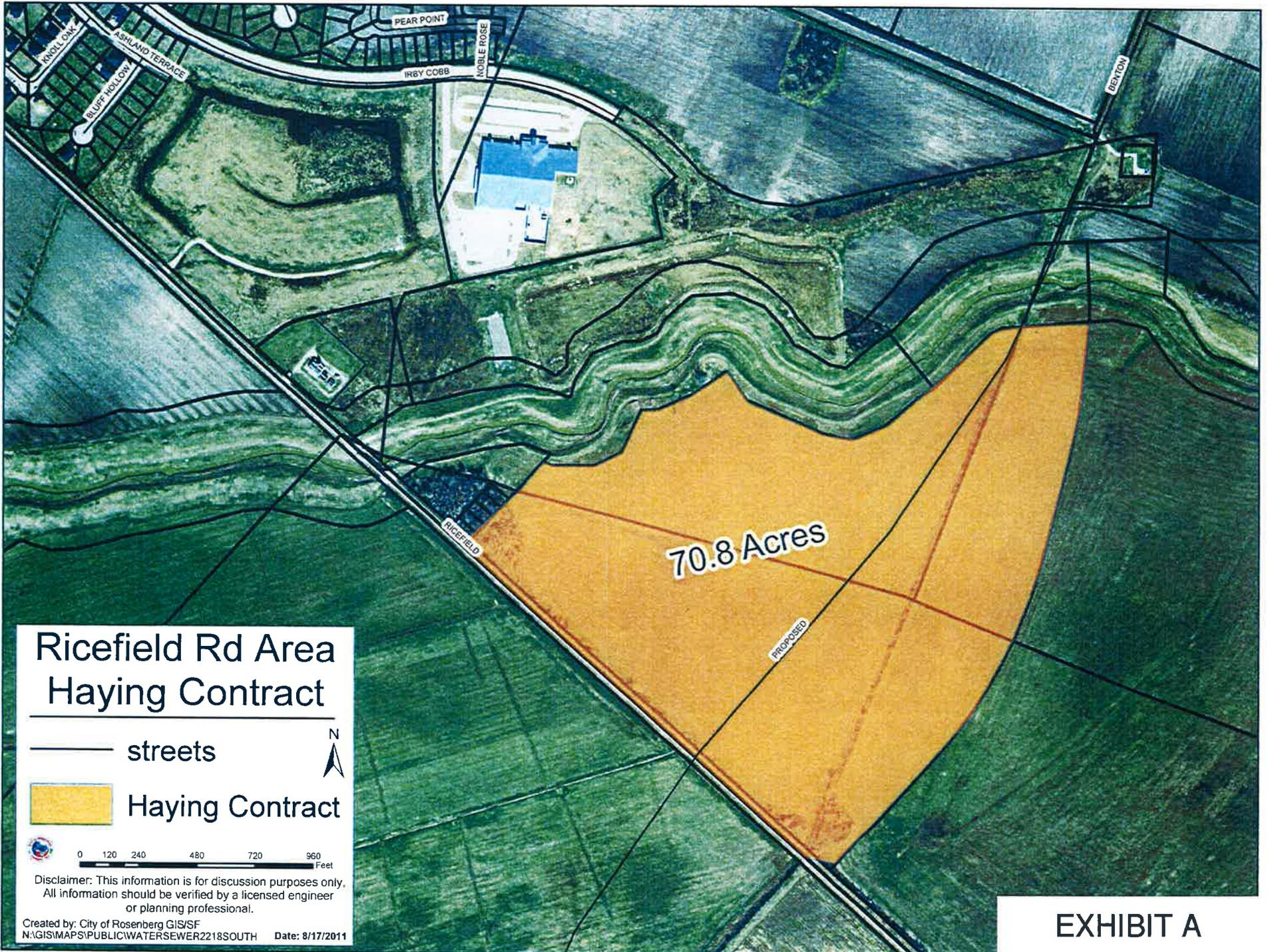
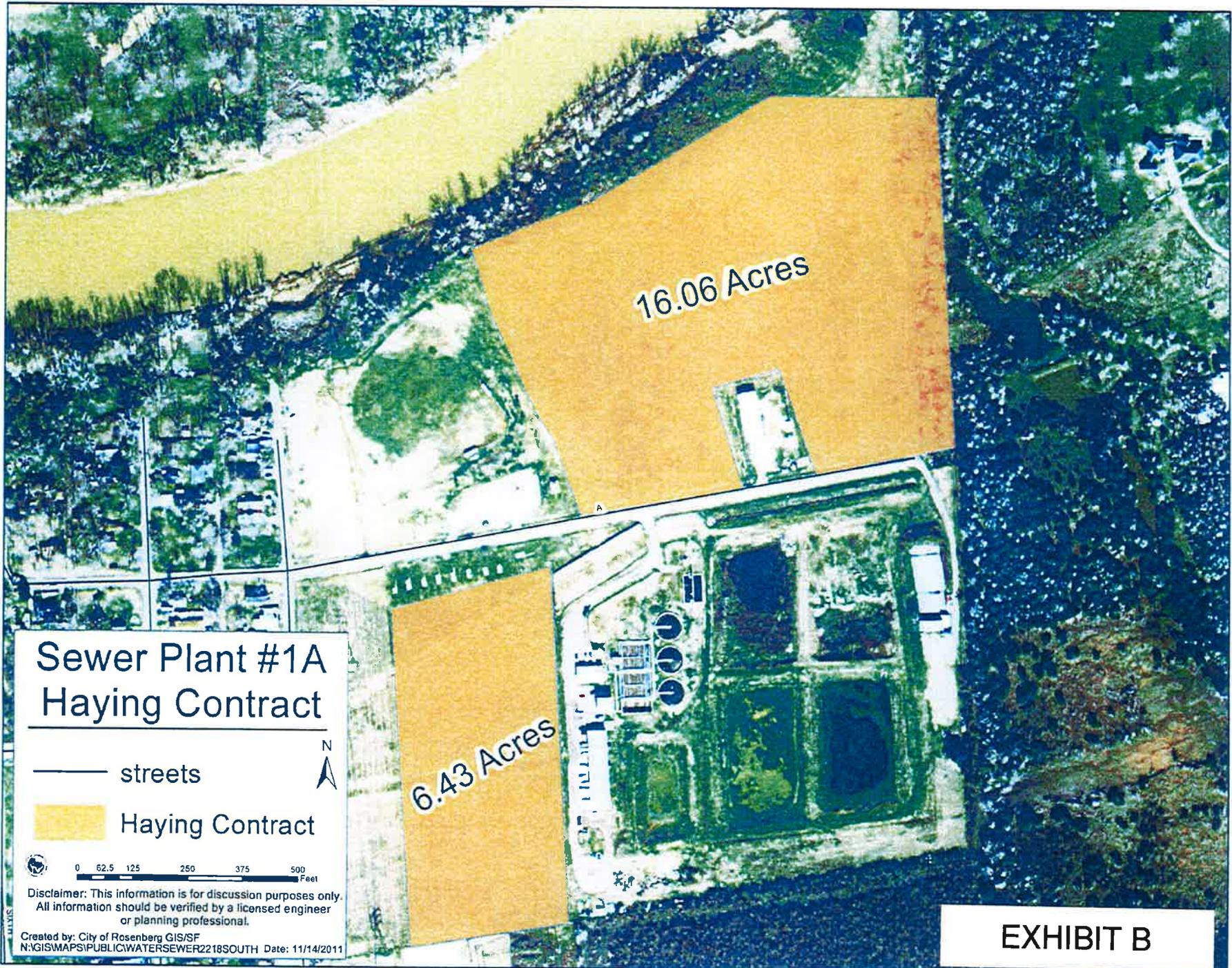
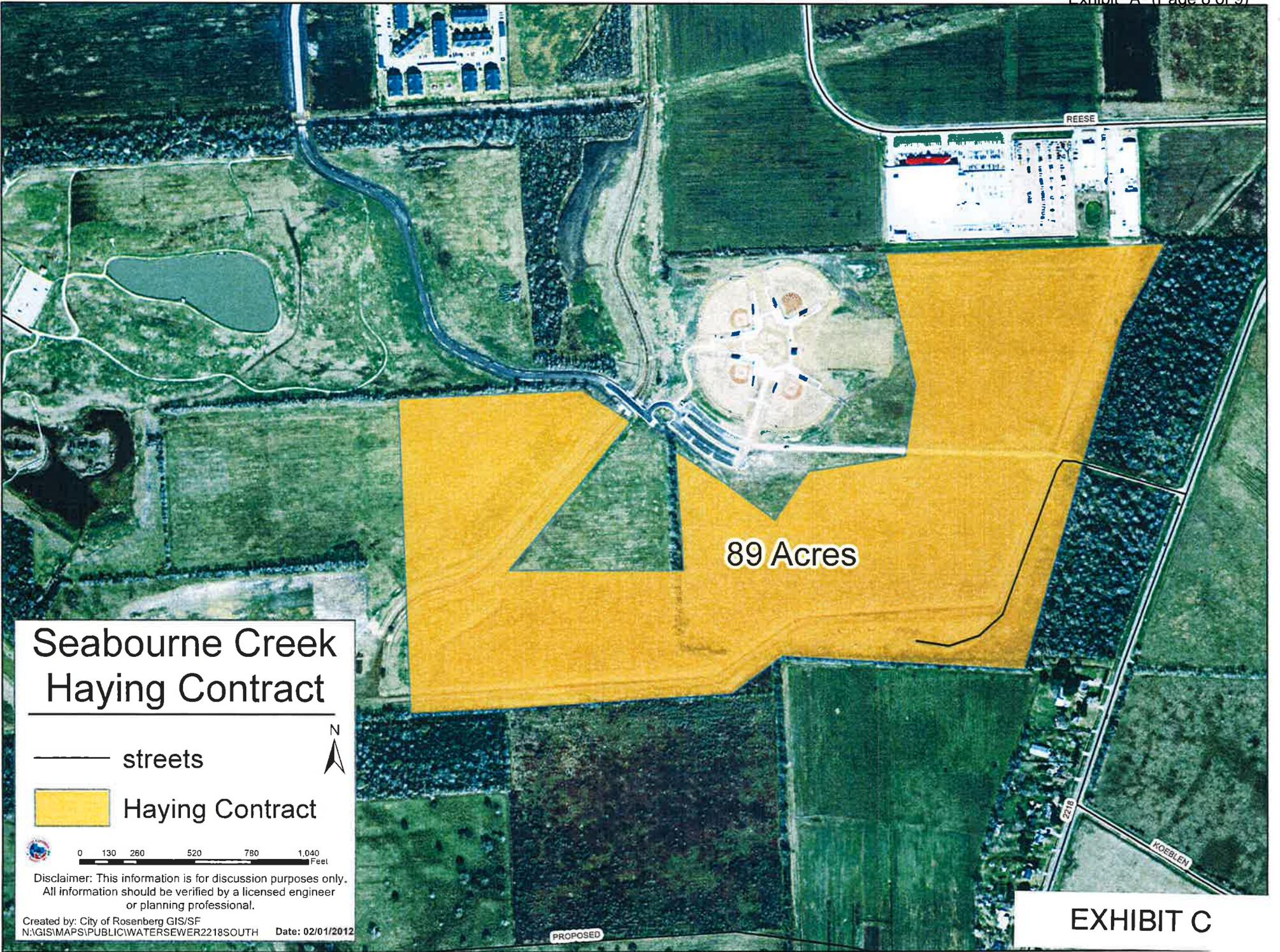
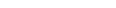


EXHIBIT A





Seabourne Creek Haying Contract

-  streets
-  Haying Contract



Disclaimer: This information is for discussion purposes only.
All information should be verified by a licensed engineer
or planning professional.

Created by: City of Rosenberg GIS/SF
N:\GIS\MAPS\PUBLIC\WATERSEWER\2218SOUTH Date: 02/01/2012

EXHIBIT C



City of Rosenberg Koeblen Rd. Property Location Map

— Streets

Rosenberg's Koeblen Rd Property

0 80 160 320 480 640 Feet

Disclaimer: This Information is for discussion purposes only.
All information should be verified by a licensed engineer
or planning professional.

CITY OF ROSENBERG
REGULAR COUNCIL MEETING MINUTES
*****DRAFT*****

On this the 28th day of January, 2014, the City Council of the City of Rosenberg, Fort Bend County, Texas, met in a Special Session, in the Rosenberg City Hall Council Chamber, located at 2110 4th Street, Rosenberg, Texas.

PRESENT

Vincent M. Morales, Jr.	Mayor
William Benton	Councilor at Large, Position 1
Cynthia McConathy	Councilor at Large, Position 2
Jimmie J. Pena	Councilor, District 1 (arrived at meeting at 7:18 p.m.)
Susan Euton	Councilor, District 2
Amanda Bolf	Councilor, District 4

ABSENT

Dwayne Grigar	Councilor, District 3
---------------	-----------------------

STAFF PRESENT

Robert Gracia	City Manager
Linda Cernosek	City Secretary
John Maresh	Assistant City Manager
Jeff Trinker	Assistant to the City Manager
Lora Lenzsch	City Attorney
Charles Kalkomey	City Engineer
Joyce Vasut	Finance Director
Rachelle Kanak	Interim Economic Development Director
Dallis Warren	Interim Police Chief
Wade Goates	Fire Chief
Travis Tanner	Planning Director
John Johnson	Police Officer
Angela Fritz	Communications Director
Karl Zwahr	Public Works Director
Tommy Havelka	Police Officer
Kaye Supak	Executive Assistant

CALL TO ORDER.

Mayor Morales called the meeting to order at 6:00 p.m.

AGENDA

1. REVIEW AND DISCUSS THE LEASE OF CITY-OWNED PROPERTY FOR HAY PRODUCTION, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: This item has been placed on the Workshop Agenda to offer City Council the opportunity to discuss extending the Lease of Real Property for Hay Production (Lease). A copy of the current Lease Agreement, which includes maps identifying the locations of the properties, is included in the packet. The Lease includes approximately 209 acres of open acreage. The annual Lease payment generates a positive cash flow of \$3,858.60. Based on the current right-of-way mowing contract rate for open acreage (\$17.50/acre X 6 mowing cycles), it would cost the City approximately \$21,945.00 per year to keep the property mowed if it were not leased for hay production. The initial two-year Lease will expire on April 01, 2014. The Lease does provide the City with the option to extend for two (2) additional one-year terms. The present "Lessee" is Pete F. Vacek, Jr., and he has abided by the terms of the Lease and staff has not encountered any issues or problems during the past two (2) years.

Staff is recommending City Council approve both of the additional one-year terms at this time, thereby extending the current Lease with Pete F. Vacek, Jr., until April 01, 2016, in the amount of \$3,858.60 per year.

Key discussion points:

- John Maresh, Assistant City Manager read the Executive Summary regarding the item.
- Councilor Benton asked if Council could get a list of City owned property.
- Robert Gracia, City Manager stated staff is in the process of doing an inventory of all City owned property.
- Councilor McConathy stated her only concern is that the City maintains the appropriate buffer especially around the business.
- No action was taken on the item.

2. REVIEW AND DISCUSS SANITARY SEWER COLLECTION SYSTEM, LIFT STATION AND WASTEWATER TREATMENT PLANT REHABILITATION PROJECT, AND COST ESTIMATES FOR WASTEWATER TREATMENT PLANT 1-A SERVICE AREA, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: This item has been placed on the Workshop Agenda to offer City Council the opportunity to discuss the overall condition of the sanitary sewer collection system within the Wastewater Treatment Plant No. 1-A service area and providing funding for the required improvements to protect the health, safety and welfare of our citizens. While efforts have been made over the past five (5) year period to replace as many of the sewer lines as possible, the overall system remains in poor condition. In many instances, the sewer collection lines have deteriorated to the point the pipe is non-existent resulting in street cave-ins and complete line stoppages that often necessitate emergency repairs.

Staff has prepared and included in the packet, cost estimates for the for the following projects:

1. Collection system line replacement within Wastewater Treatment Plant No. 1-A service area
2. Lift Station rehabilitation/replacements
3. Conversion of Wastewater Treatment Plant No. 1A effluent disinfection from chlorine gas to liquid bleach

In order to protect the health, safety and welfare of the public and the environment, the above listed projects will need to be considered for funding and construction at the earliest time possible.

Key discussion points:

- John Maresh read the Executive Summary regarding the item. Slides were shown pointing out the overall condition of the sanitary sewer collection system:
- Root intrusions in pipe
- Pipe completely deteriorated causing cave-ins.
- Cracks in joints and pipe separation
- Grease accumulation
- Cable and missing pipe in main line
- Mayor Morales asked if there are any recommendations prior to going to budget.
- John Maresh stated the system is in need of rehabilitation. The cost estimate we put together with the help of the City Engineer is \$12.5 million for the collection line work. The lift station in the worst condition is in the Wastewater Plant 2 service area, lift station #11 on B.F. Terry by Fort Bend Appraisal District office. We are keeping that lift station operating with a band aid right now. The approximate cost for that is \$1.1 million. The lift station in Service Area 1 at Fiesta. The Fiesta lift station is a very large lift station and is in bad shape and is approximately \$2.1 million project. Lift Station #4 is located at 1818 Jones Street is approximately \$700,000.
- From a safety aspect, Wastewater Plant 1A still operates using chlorine gas for disinfection and to convert that to bleach is approximately \$266,000 for the conversion.
- Mayor Morales asked if there is a recommendation from staff for Council.
- John Maresh stated it all needs attention. The budget aspect is Council's call. Staff can look at some options whether through CO's. We have to remember it is a health/safety issue and we



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
F	Quarterly Review of the City's Financial Report and Investment Report
ITEM/MOTION	
Consideration of and action on Quarterly Financial Report and Quarterly Investment Report for quarter ending December 31, 2013.	
FINANCIAL SUMMARY	ELECTION DISTRICT

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

MUD #: N/A**SUPPORTING DOCUMENTS:**

1. Vasut Memorandum – 02-06-13
2. Quarterly Investment Report

APPROVALS**Submitted by:**

Joyce Vasut
Executive Director of
Administrative Services

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

Overall, the financial status of the City is stable. Most funds have positive variances when compared to budget and prior year actuals. The largest revenues of sales tax and property tax are positive when compared to budget and expenses which are within the 25% benchmark for the first quarter of FY2014.

Staff will continue to monitor the revenues and expenses. At this time, no major changes need to be made to meet budget projections. Additionally, the Quarterly Investment Report is included for your review as required by the Public Funds Investment Act.

Staff recommends the acceptance of the Quarterly Financial Reports and the Investment Report for the first quarter of Fiscal Year 2014.

I N T E R

O F F I C E

MEMO

To: Robert Gracia, City Manager
From: Joyce Vasut, Finance Director 
Subject: Quarterly Financial Statements as of December 31, 2013
Date: February 6, 2014

The Finance Department has reviewed revenues and expenditures through December 31, 2013. The totals for the first three months of the fiscal year have been compared against the FY2014 operating budget and the FY2013 actual amounts as of the same time last year for all significant funds.

Overall, the financial status of the City is in a stable position at this time, with most funds showing positive variances when compared to budget and prior year actual. The largest revenue of sales tax is positive when compared to budget and the majority of expenses are within the 25% benchmark for the first three months of the fiscal year.

General Fund

Property Taxes: Property taxes were due by January 31, 2014. As of December 31, 2013, the City has received 25% of the budgeted amount. An increase of 76.5% from the actual amount collected for the first quarter of FY2013.

Sales Taxes: Sales tax collections are at 28% of budget, which is 3% higher than the expected budgeted amount of 25%, Sales tax revenues are also 11.7% greater than the actual amount collected at the same time last year. The budgeted sales tax revenues were increase by \$867,562, or 9% for FY2014 over FY2013.

Franchise Taxes: Franchise Taxes are collected quarterly, with the exception of electricity franchise which is collected monthly, and are at 30% of budget which is 5% higher than the budgeted amount.

Permit Fees: Permit and Licenses are at 28% of budget, an increase of 3% higher from the budgeted amount for FY2014 and a 23.7% increase from the actual amount collected for the first quarter of FY2013.

Fines/Forfeitures: Fines and Forfeitures are at 17% of budget, which is 8% below the benchmark of 25% of budget. As well as a 22.9% decrease from the actual amount collected for the first quarter of FY2013. We will continue to monitor revenues.

Total Revenues: Total revenues year to date are at 26% of budget, total revenues are 11.3% greater than at this time last year. Since revenues as a whole are budgeted at \$1,201,141 more than last year, it is very positive that the percentage of budget is also higher.

Expenditures: Total expenditures to date are at 20% of the budget. All departments are within the 25% benchmark.

Overall, the General Fund is in a net positive position year-to-date with total revenues at \$5,497,477 and total expenditures at \$4,577,879.

Hotel/Motel Fund

Hotel/Motel Taxes: These taxes are collected on a monthly basis and are at 23% of budget which is a slight 2% below the benchmark. Hotel/Motel Tax Revenues were budgeted with an increase of \$100,000 over last year's revenues. Hotel/Motel tax revenues are actually 17.1% greater than the actual amount collected at the same time last year. We will continue to monitor these revenues.

Expenditures: Currently expenditures are at 21% of budget which is 4% under the 25% benchmark.

Rosenberg Development Corporation

Sales Taxes: Sales tax collections through December 31, 2013 are at 27% of budget, which is a positive variance of 2% increase over the 25% benchmark.

Expenses: Total expenditures to date are at 8% of budget which is 17% under the 25% benchmark.

Overall, the Rosenberg Development Corporation Fund is in a net positive position with revenues exceeding expenditures by \$511,519.

Debt Service Fund

Property Tax Revenues were due on January 31, 2014, and are at 23% as of December 31, 2013. Tax revenues show an increase of 61% over last year's actual amount collected.

Debt Service expenses are at 2% of budget and this is due to the majority of payments for general obligation debt being due at the beginning of the calendar year. Interest only payments were due during the first quarter of the fiscal year.

Water/Wastewater Fund

W/WW Revenue: Current revenue is at 27% of budget for the first quarter, which is at the same percentage when compared to budget to last year. Water and Sewer Tap revenues continue to increase and are above the 25% benchmark. Water taps are at 34% and sewer taps are at 33% of budget. Connect fees and backflow permit revenue also show a positive variance with connect fees at 38% and backflow permit revenue at 51% of budget.

Expenses: Total operating expenses year to date are at 27% of budget, which is slightly over the benchmark of 35%. This is partly is due to the fund transfers from the Water Wastewater Fund to the W/WW Capital Improvement Project Funds for funding of projects.

Overall, the Water/Wastewater fund is meeting expectations at this time and is on track to meet the budget for both the revenues and expenses.

If you have any questions about this analysis or need additional information, please let me know.

**CITY OF ROSENBERG
STATEMENT OF REVENUES AND EXPENDITURES- BUDGET TO ACTUAL
GENERAL FUND
FISCAL YEAR 2014 - 1st Qtr**

	GENERAL FUND		
	ADJUSTED BUDGET	ACCRUED ACTUAL	PERCENT OF BUDGET 25%
REVENUES:			
PROPERTY TAXES	4,160,200	1,047,943	25%
SALES TAXES	9,890,562	2,748,554	28%
FRANCHISE AND OTHER TAXES	1,672,500	504,195	30%
LICENSES AND PERMITS	498,091	139,923	28%
FINES AND FORFEITURES	559,600	97,112	17%
INTERGOVERNMENTAL	920,399	2,476	0%
CHARGES FOR SERVICE	3,556,601	935,746	26%
INVESTMENT EARNINGS	5,000	469	9%
OTHER	78,900	21,059	27%
TOTAL REVENUE	\$ 21,341,853	\$ 5,497,477	26%

EXPENDITURES:

GENERAL GOVERNMENT			
MAYOR AND CITY COUNCIL	44,122	10,542	24%
CITY MANAGER	1,023,845	205,561	20%
CITY SECRETARY	217,706	40,121	18%
FINANCE	515,256	109,226	21%
MUNICIPAL COURT	366,728	57,370	16%
LEGAL	205,000	28,786	14%
GENERAL GOVERNMENT	1,068,822	212,710	20%
TOTAL GENERAL GOVERNMENT	3,441,479	664,316	19%
PUBLIC SAFETY			
POLICE	7,363,275	1,519,201	21%
EMERGENCY MANAGEMENT	12,345	80	1%
ANIMAL CONTROL	204,055	39,821	20%
SCHOOL OFFICERS & CROSSING GUARDS	910,398	218,755	24%
FIRE AND FIRE MARSHAL	3,611,568	908,506	25%
TOTAL PUBLIC SAFETY	12,101,641	2,686,362	22%
PUBLIC WORKS			
STREETS AND DRAINAGE	3,882,143	674,787	17%
STREET LIGHTING AND SIGNALS	438,000	70,586	16%
FLEET MAINTENANCE	295,068	61,832	21%
TOTAL PUBLIC WORKS	4,615,211	807,204	17%
COMMUNITY DEVELOPMENT			
PLANNING ADMINISTRATION	234,102	47,110	20%
ENGINEERING	150,980	10,440	7%
CODE ENFORCEMENT	540,307	102,984	19%
HEALTH	118,152	18,029	15%
COMMUNICATIONS	111,399	19,419	17%
PARKS AND RECREATION	955,712	214,692	22%
TOTAL COMMUNITY DEVELOPMENT	2,110,652	412,673	20%
CAPITAL OUTLAY	342,175	7,324	2%
TOTAL EXPENDITURES	\$ 22,611,158	\$ 4,577,879	20%

EXCESS (DEFICIENCY) OF REVENUES OVER (UNDER) EXPENDITURES			
	(1,269,305)	919,598	
OTHER FINANCING SOURCES (USES)			
TRANSFER IN	1,575,236	391,778	25%
TRANSFER OUT	(752,293)	(188,073)	25%
GAIN ON SALE OF ASSETS	5,000	-	0%
TOTAL OTHER FINANCING SOURCES (USES)	827,943	203,704	
NET CHANGE IN FUND BALANCE	(441,362)	1,123,303	
FUND BALANCES, BEGINNING	6,401,991	6,779,610	
FUND BALANCES, ENDING	5,960,629	7,902,913	

CITY OF ROSENBERG
STATEMENT OF REVENUES AND EXPENDITURES- BUDGET TO ACTUAL
HOTEL/ MOTEL FUND
FISCAL YEAR 2014 - 1st Qtr

	HOTEL/ MOTEL FUND		
	ADJUSTED BUDGET	ACCRUED ACTUAL	PERCENT OF BUDGET 25%
REVENUES:			
HOTEL OCCUPANCY TAX	500,000	115,565	23%
INVESTMENT EARNINGS	1,100	104	9%
OTHER REVENUE	32,000	18,130	57%
TOTAL REVENUE	\$ 533,100	\$ 133,799	25%

EXPENDITURES:

COMMUNITY DEVELOPMENT			
PERSONAL SERVICES	68,488	20,104	29%
SUPPLIES	3,250	408	13%
CONTRACTUAL SERVICES	167,600	18,215	11%
TRANSFER OUT	256,208	64,052	25%
TOTAL EXPENDITURES	\$ 495,546	\$ 102,779	21%

EXCESS (DEFICIENCY) OF REVENUES			
OVER (UNDER) EXPENDITURES	37,554	31,020	
NET CHANGE IN FUND BALANCE	37,554	31,020	
FUND BALANCES, BEGINNING	1,163,103	1,083,687	
FUND BALANCES, ENDING	1,200,657	1,114,707	

CITY OF ROSENBERG
STATEMENT OF REVENUES AND EXPENDITURES- BUDGET TO ACTUAL
RDC FUND
FISCAL YEAR 2014 - 1st Qtr

	RDC FUND		
	ADJUSTED BUDGET	ACCRUED ACTUAL	PERCENT OF BUDGET 25%
REVENUES:			
SALES AND USE TAXES	3,445,200	917,676	27%
INVESTMENT EARNINGS	5,000	939	19%
TOTAL REVENUE	\$ 3,450,200	\$ 918,616	27%

EXPENDITURES:

COMMUNITY DEVELOPMENT			
ADMINISTRATION	255,451	61,300	24%
MARKETING	118,142	55,948	47%
STRATEGIC PLANNING	40,000	40,000	100%
PROFESSIONAL SERVICES	20,000	-	0%
INFRASTRUCTURE	500,000	-	0%
PRINCIPAL & INTEREST	999,394	249,848	25%
TRANSFER TO OTHER FUNDS	2,914,000	-	0%
TOTAL EXPENDITURES	\$ 4,846,987	\$ 407,097	8%

EXCESS (DEFICIENCY) OF REVENUES		
OVER (UNDER) EXPENDITURES	(1,396,787)	511,519
NET CHANGE IN FUND BALANCE	(1,396,787)	511,519
FUND BALANCES, BEGINNING *	4,650,911	3,489,342
FUND BALANCES, ENDING	3,254,124	4,000,861

* Working Capital Basis is used to calculate fund balance.

CITY OF ROSENBERG
STATEMENT OF REVENUES AND EXPENDITURES- BUDGET TO ACTUAL
DEBT SERVICE FUND
FISCAL YEAR 2014 - 1st Qtr

	DEBT SERVICE FUND		
	ADJUSTED BUDGET	ACCRUED ACTUAL	PERCENT OF BUDGET 25%
REVENUES:			
CURRENT TAXES	3,935,817	898,822	23%
DELINQUENT TAXES	30,000	17,839	59%
PENALTY AND INTEREST	40,000	4,872	12%
INTEREST EARNINGS	6,000	439	7%
TRANSFERS FROM OTHER FUNDS	2,986,720	746,680	25%
TOTAL REVENUE	\$ 6,998,537	\$ 1,668,651	24%

EXPENDITURES:

PRINCIPAL RETIREMENT	4,903,510	147,199	3%
INTEREST RETIREMENT	2,028,828	14,823	1%
FISCAL AGENT FEES	25,000	6,250	25%
TOTAL EXPENDITURES	\$ 6,957,338	\$ 168,272	2%

EXCESS (DEFICIENCY) OF REVENUES OVER (UNDER) EXPENDITURES	41,199	1,500,379	
NET CHANGE IN FUND BALANCE	41,199	1,500,379	
FUND BALANCES, BEGINNING	5,079,063	5,170,780	
FUND BALANCES, ENDING	5,120,262	6,671,159	

CITY OF ROSENBERG
STATEMENT OF REVENUES AND EXPENSES- BUDGET TO ACTUAL
WATER WASTEWATER FUND
FISCAL YEAR 2014 - 1st Qtr

	WATER/WASTEWATER FUND		
	ADJUSTED BUDGET	ACCRUED ACTUAL	PERCENT OF #REF! 25%
REVENUES:			
WATER SALES	4,020,000	1,123,457	28%
WASTEWATER SALES	3,920,000	1,011,384	26%
WATER TAP FEES	80,000	26,965	34%
SEWER TAP FEES	80,000	26,720	33%
RECONNECT FEES	40,000	10,725	27%
CONNECT FEES	25,000	9,555	38%
PENALTY FEES	170,000	50,338	30%
RECLAIMED WATER SOURCE	15,000	-	0%
BACKFLOW PERMIT REVENUE	1,500	760	51%
RETURNED CHECK FEES	5,000	1,600	32%
INTEREST EARNINGS	7,000	545	8%
PROPERTY LEASE	80,000	48,986	61%
OTHER REVENUE	5,000	19	0%
TOTAL REVENUE	\$ 8,448,500	\$ 2,311,054	27%
TRANSFERS FROM OTHER FUNDS	75,398	18,850	25%
TOTAL REVENUES AND TRANSFERS	\$ 8,523,898	\$ 2,329,903	27%
EXPENSES:			
DEPARTMENT			
CUSTOMER SERVICE	395,835	73,200	18%
WATER/WASTEWATER ADMINISTRATION	225,131	40,853	18%
WATER PRODUCTION	518,861	107,263	21%
WATER DISTRIBUTION	829,956	229,274	28%
WASTEWATER COLLECTION	620,956	121,734	20%
WASTEWATER TREATMENT	1,179,177	206,093	17%
RECLAIMED WATER	27,100	-	0%
TOTAL DEPARTMENT EXPENSES	3,797,015	778,417	21%
OTHER EXPENSES			
HEALTH INSURANCE FEE	6,000	1,500	25%
INFORMATION SERVICES FEE	118,485	29,621	25%
BAD DEBT EXPENSES	26,897	-	0%
PERFORMANCE ASSURANCE SERVICES	35,988	35,988	100%
TOTAL OTHER EXPENSES	187,370	67,109	36%
TRANSFERS			
TRANSFER TO GENERAL FUND	1,484,056	371,014	25%
TRANSFER TO CDBG	69,900	69,900	100%
TRANSFER TO DEBT SERVICE FUND	1,923,503	480,876	25%
TRANSFER TO W/WW SUPPLEMENTAL	96,500	96,500	100%
TRANSFER TO GRP PROJECTS FUND	200,000	200,000	100%
TOTAL OPERATING EXPENSES	\$ 7,758,344	\$ 2,063,816	27%
NET OPERATING REVENUE	\$ 690,156	\$ 247,238	36%
CAPITAL OUTLAY	-	-	0%
DEBT SERVICE	778,978	189,805	24%
TOTAL EXPENSES	\$ 8,537,322	\$ 2,253,621	26%
EXCESS (DEFICIENCY) OF REVENUES OVER (UNDER) EXPENSES	(13,424)	76,282	
FUND BALANCES, BEGINNING *	4,559,773	5,167,794	
FUND BALANCES, ENDING	4,546,349	5,244,076	

* Working Capital Basis is used to calculate fund balance.

**CITY OF ROSENBERG, TEXAS
QUARTERLY INVESTMENT REPORT
FOR THE QUARTER ENDED DECEMBER 31, 2013**

The investment portfolio detailed in the attached report includes all investment transactions made during the above referenced period. The investment portfolio and all related transactions comply with the investment policy of the City of Rosenberg, Texas and the Public Funds Investment Act of the State of Texas.



Investment Officer: _____

Joyce Vasut, Finance Director

Date: _____

2/4/2014

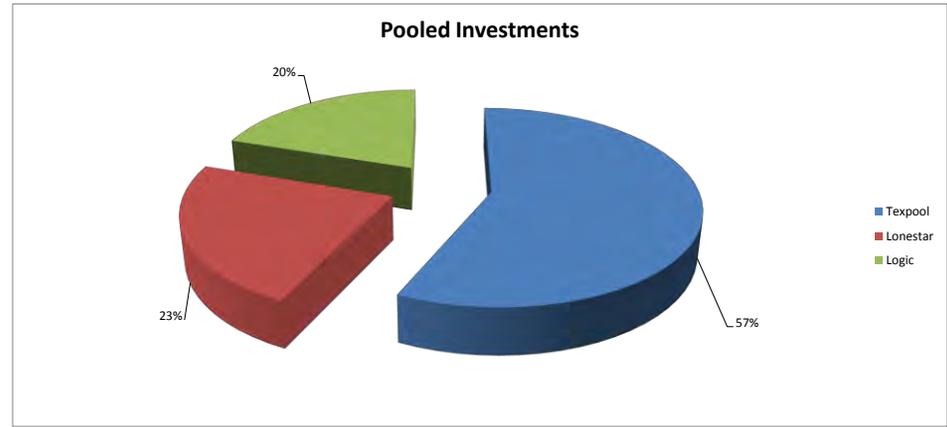
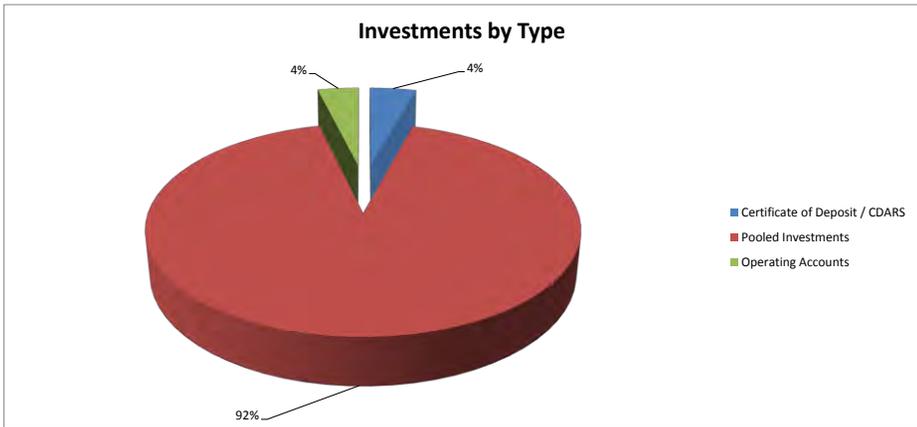
**CITY OF ROSENBERG, TEXAS
 QUARTERLY INVESTMENT REPORT
 AS OF DECEMBER 31, 2013**

Balance Comparison by Quarter

INVESTMENT BALANCES BY TYPE	Book Value 3/31/2013	Book Value 6/30/2013	Book Value 9/30/2013	Book Value 12/31/2013
CERTIFICATE OF DEPOSIT / CDARS	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	2,000,000
TEXPOOL	27,948,622	29,245,454	29,572,503	24,427,860
LOGIC	13,406,508	13,160,861	8,507,025	8,509,336
LONESTAR	9,202,887	8,704,591	7,955,736	9,957,042
AMEGY BANK - OPERATING ACCOUNT	823,347	978,321	869,087	1,770,041
TOTAL CASH AND INVESTMENTS	\$ 53,381,364	\$ 54,089,227	\$ 48,904,351	\$ 46,664,279

**CITY OF ROSENBERG, TEXAS
INVESTMENTS OUTSTANDING AS OF DECEMBER 31, 2013**

Purchase Date	Description	Maturity Date	# Days to Maturity	Cost	Par Value	Coupon Yield	9/30/2013		Quarterly Activity			12/31/2013		Unrealized Gain/Loss	
							Book Value	Market Value	Purchases	Maturities	Interest	Book Value	Market Value		
CERTIFICATES OF DEPOSIT															
9/12/2013	CDARS	09/11/14	364	2,000,000	2,000,000	0.27%	2,000,000	2,000,000				2,000,000	2,000,000		
							\$ 2,000,000	\$ 2,000,000	-	-	-	\$ 2,000,000	\$ 2,000,000		
														4%	
N/A	Texpool - Consolidated Cash	N/A	N/A		24,427,860	0.04%	29,572,503	29,572,503	3,670,126	(8,817,676)	2,907	24,427,860	24,427,860	OF TOTAL	
							29,572,503	29,572,503	3,670,126	(8,817,676)	2,907	24,427,860	24,427,860		
														4%	
														OF POOLS	
N/A	LONESTAR - General Fund Liquidity Plus	N/A	N/A		2,188,092	0.04%	187,887	187,931	2,000,000		205	2,188,092	2,188,393	301	
N/A	LONESTAR - CO Series 2013	N/A	N/A		7,768,950	0.04%	7,767,849	7,769,669			1,101	7,768,950	7,770,018	1,068	
							7,955,736	7,957,600	-	-	1,306	9,957,042	9,958,411	1,369	
														OF POOLS	
														23%	
N/A	Logic - Consolidated Cash	N/A	N/A		3,952,445	0.10%	3,951,372	3,951,372			1,074	3,952,445	3,952,445	-	
N/A	Logic - CO 2010B	N/A	N/A		912,810	0.10%	912,562	912,562			248	912,810	912,810		
N/A	Logic - Series 2012 Bonds	N/A	N/A		3,644,081	0.10%	3,643,091	3,643,091			990	3,644,081	3,644,081		
							8,507,025	8,507,025	-	-	2,311	8,509,336	8,509,336		
														OF POOLS	
														20%	
TOTAL POOLED INVESTMENTS							46,035,264	46,037,128	3,670,126	(8,817,676)	6,524	42,894,238	42,895,607	OF TOTAL	
CITY DEPOSITORY- Amegy Bank															92%
N/A	Consolidated Cash	N/A	N/A		1,770,041	0.00%	869,087	869,087	16,279,802	(15,378,847)	-	1,770,041	1,770,041		
							869,087	869,087	16,279,802	(15,378,847)	-	1,770,041	1,770,041		
														OF TOTAL	
														4%	
TOTAL PORTFOLIO					\$ 46,664,279	0.06%	48,904,351	48,906,215	19,949,928	(24,196,524)	6,524	46,664,279	46,665,648	1,369	





CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
G	Surplus Property Item List Consideration
ITEM/MOTION	
Consideration of and action on authorization to offer for sale a proposed list of surplus radio equipment items.	
FINANCIAL SUMMARY	ELECTION DISTRICT

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

MUD #: N/A

SUPPORTING DOCUMENTS:

1. Surplus Radio Equipment List

APPROVALS

Submitted by:

Dallis Warren
Interim Police Chief

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

In December 2012, City Council authorized the City-wide replacement of all radio equipment that had met and/or exceeded its useful life. All radio equipment on the attached list has exceeded its useful life; staff recommends the sale or disposal of all surplus radio equipment.

For City Council's consideration, staff has provided a list of items to be offered for sale or disposed of as retired surplus equipment.

Staff recommends approval of the surplus list as presented.

SURPLUS RADIO EQUIPMENT LIST

204 - Portable Radios

113 - Mobile Radios

7- Multi Unit Portable Radio Charger

143 - Single Unit Radio Chargers

17 - Astro Spectra Base Radios

1 - Gold Elite Dispatch System; Equipment and Hardware for 6 stations

- Miscellaneous Portable Radio Accessories (batteries, microphones)



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
2	Second Reading of Ordinance No. 2014-05 – Location of Stop Signs

ITEM/MOTION

Consideration of and action on a second reading of Ordinance No. 2014-05, an Ordinance amending the Code of Ordinances by deleting all of Section 28-41 (b) and (d), Stop Signs Designated, of Article II, Division 2 of Chapter 28, Stop Streets, and substituting therefor a new Section 28-41 (b) and (d) of Article II, Division 2 of Chapter 28 thereof; providing a penalty in an amount of not less than \$1.00 or more than \$200.00 for violation of any provision hereof; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith; and, providing for severability.

FINANCIAL SUMMARY	ELECTION DISTRICT
-------------------	-------------------

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:**MUD #:** N/A

1. Ordinance No. 2014-05 – Redline
2. Ordinance No. 2014-05
3. City Council Meeting Draft Minute Excerpt – 02-04-14
4. City Council Meeting Draft Minute Excerpt – 01-21-14

APPROVALS

Submitted by:

John Maresh
Assistant City Manager for
Public Services

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney *LJL/rl*
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

During the January 21, 2014 meeting, City Council discussed the proposed installation of four-way stop signs at the intersection of Avenue L and Millie Street. City Council did take action directing the installation of four-way stop signs at this intersection.

Staff has prepared an Ordinance that deletes the above listed intersection from the two-way stop sign designations and adds said intersection to the four-way stop sign designations. This Ordinance was initially considered at the February 04, 2014 City Council Meeting where it was approved by a vote of four (4) to three (3). Pursuant to Section 3.10 of the City Charter, a second reading of the Ordinance is required without an affirmative vote of five (5) Council members.

Staff recommends approval of Ordinance No. 2014-05 as presented on this second reading.

ORDINANCE NO. 2014-05

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, BY DELETING ALL OF SECTION 28-41 (b) AND (d), STOP SIGNS DESIGNATED, OF ARTICLE II, DIVISION 2 OF CHAPTER 28, STOP STREETS, AND SUBSTITUTING THEREFOR A NEW SECTION 28-41 (b) AND (d) OF ARTICLE II, DIVISION 2 OF CHAPTER 28 THEREOF; PROVIDING A PENALTY IN AN AMOUNT OF NOT LESS THAN \$1.00 OR MORE THAN \$200.00 FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND, PROVIDING FOR SEVERABILITY.

WHEREAS, the City Council of the City of Rosenberg, Texas, has determined that the safety and welfare of the citizens of the City and other members of the traveling public require removing certain stop signs and placing stop signs at certain locations which requires deleting the following stop sign designations from Section 28-41 (b) and (d) of Article II, Division 2 of Chapter 28, Stop Streets, and substituting a new Section 28-41 (b) and (d) with new stop sign designations; and,

WHEREAS, Chapter 28 is hereby amended to include a penalty range of a fine in an amount of not less than one dollar (\$1.00) and not more than two hundred dollars (\$200.00); now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. That the Code of Ordinances of the City of Rosenberg is hereby amended by deleting from Chapter 28, Section 28-41 (b) and (d) Stop Signs Designated, of Article II, Division 2, and substituting a new Section 28-41 (b) and (d) Stop Signs Designated as follows:

“Sec. 28-41. - Stop signs designated.

* * *

(b) *Two-way stops.* Stop signs indicating two-way stops shall be placed at the following locations within the city:

<i>Stop Street</i>	<i>Intersecting Streets</i>
1 st Street	1 st Street and Avenue D
1 st Street	1 st Street and Avenue E
2 nd Street	2 nd Street and Avenue D
2 nd Street	2 nd Street and F.M. Highway 1640 (Avenue I)
2 nd Street	2 nd Street and U.S. Highway 90A (Avenue H)
3 rd Street	3 rd Street and Avenue M
3 rd Street	3 rd Street and Brooks Avenue
3 rd Street	3 rd Street and F.M. Highway 1640 (Avenue I)
3 rd Street	3 rd Street and Main Street
4 th Street	4 th Street and Avenue D
4 th Street	4 th Street and U.S. Highway 90A (Avenue H)
5 th Street	5 th Street and Avenue D
5 th Street	5 th Street and Avenue G
5 th Street	5 th Street and Avenue M
5 th Street	5 th Street and Avenue N
5 th Street	5 th Street and Avenue O
5 th Street	5 th Street and F.M. Highway 1640 (Avenue I)
5 th Street	5 th Street and U.S. Highway 90A (Avenue H)
6 th Street	6 th Street and Avenue G
6 th Street	6 th Street and Avenue M
6 th Street	6 th Street and Avenue N
6 th Street	6 th Street and Avenue O
6 th Street	6 th Street and F.M. Highway 1640 (Avenue I)
7 th Street	7 th Street and Avenue G
7 th Street	7 th Street and Avenue L
7 th Street	7 th Street and Avenue M
7 th Street	7 th Street and Avenue O

7 th Street	7 th Street and F.M. Highway 1640 (Avenue I)
7 th Street	7 th Street and U.S. Highway 90A (Avenue H)
8 th Street	8 th Street and Avenue A
8 th Street	8 th Street and Avenue G
Alamo Street	Alamo Street and Avenue G
Alamo Street	Alamo Street and Avenue J
Alamo Street	Alamo Street and Avenue K
Alamo Street	Alamo Street and F.M. Highway 1640 (Avenue I)
Allen Street	Allen Street and Avenue K
Allen Street	Allen Street and F.M. Highway 1640 (Avenue I)
Allwright Street	Allwright Street and Reading Road
Aquarius Street	Aquarius Street and Pisces Street
Avenue A	Avenue A and 2 nd Street
Avenue A	Avenue A and 7 th Street
Avenue B	Avenue B and 2 nd Street
Avenue B	Avenue B and 7 th Street
Avenue C	Avenue C and 5 th Street
Avenue D	Avenue D and 6 th Street
Avenue E	Avenue E and 3 rd Street
Avenue E	Avenue E and Mulcahy Street
Avenue E	Avenue E and Willow Street
Avenue F	Avenue F and 8 th Street
Avenue F	Avenue F and Jennetta Street
Avenue F	Avenue F and San Jacinto Street
Avenue G	Avenue G and Houston Street
Avenue G	Avenue G and Mulcahy Street
Avenue J	Avenue J and 2 nd Street
Avenue J	Avenue J and 3 rd Street
Avenue J	Avenue J and 4 th Street
Avenue J	Avenue J and 5 th Street
Avenue J	Avenue J and 6 th Street
Avenue J	Avenue J and 8 th Street
Avenue J	Avenue J and Allen Street
Avenue J	Avenue J and Austin Street

Avenue J	Avenue J and Brazos Street
Avenue J	Avenue J and Carlisle Street
Avenue J	Avenue J and Damon Street
Avenue J	Avenue J and Frost Street
Avenue J	Avenue J and Houston Street
Avenue J	Avenue J and James Street
Avenue J	Avenue J and Lawrence Street
Avenue J	Avenue J and MacArthur Street
Avenue J	Avenue J and Miles Street
Avenue J	Avenue J and Mulcahy Street
Avenue J	Avenue J and San Jacinto Street
Avenue J	Avenue J and State Highway 36 (1 st Street)
Avenue J	Avenue J and Tobola Street
Avenue J	Avenue J and Ward Street
Avenue J	Avenue J and West Street
Avenue K	Avenue K and 3 rd Street
Avenue K	Avenue K and 4 th Street
Avenue K	Avenue K and 5 th Street
Avenue K	Avenue K and 6 th Street
Avenue K	Avenue K and 7 th Street
Avenue K	Avenue K and Austin Street
Avenue K	Avenue K and Carlisle Street
Avenue K	Avenue K and Frost Street
Avenue K	Avenue K and George Street
Avenue K	Avenue K and Mulcahy Street
Avenue K	Avenue K and State Highway 36 (1 st Street)
Avenue K	Avenue K and West Street
Avenue L	Avenue L and 2 nd Street
Avenue L	Avenue L and 3 rd Street
Avenue L	Avenue L and 4 th Street
Avenue L	Avenue L and 6 th Street
Avenue L	Avenue L and Brazos Street
Avenue L	Avenue L and Carlisle Street
Avenue L	Avenue L and Damon Street

Avenue L	Avenue L and Frost Street
Avenue L	Avenue L and Georgina Street
Avenue L	Avenue L and Miles Street
Avenue L	Avenue L and Millie Street
Avenue L	Avenue L and State Highway 36 (1 st Street)
Avenue L	Avenue L and Tobola Street
Avenue L	Avenue L and West Street
Avenue M	Avenue M and Frost Street
Avenue M	Avenue M and George Street
Avenue M	Avenue M and Mulcahy Street
Avenue N	Avenue N and 7 th Street
Avenue P	Avenue P and Tobola Street
Avenue R	Avenue R and Avenue P
Bamore Road	Bamore Road and F.M. Highway 1640 (Avenue I)
Brazos Street	Brazos Street and Avenue E
Brazos Street	Brazos Street and Avenue K
Brazos Street	Brazos Street and F.M. Highway 1640 (Avenue I)
Brazos Street	Brazos Street and U.S. Highway 90A (Avenue H)
Brooks Avenue	Brooks Avenue and State Highway 36 (1 st Street)
Callaway Cove Court	Callaway Cove Court and Iris Hills Lane
Carlisle Street	Carlisle Street and Dyer Avenue
Carlisle Street	Carlisle Street and F.M. Highway 1640 (Avenue I)
Carlisle Street	Carlisle Street and U.S. Highway 90A (Avenue H)
Cottage Creek Lane	Cottage Creek Lane and Heath Ridge Lane
Cypress Lane	Cypress Lane and Mons Avenue
Dallas Avenue	Dallas Avenue and Brazos Street
Dallas Avenue	Dallas Avenue and Carlisle Street
Dallas Avenue	Dallas Avenue and Frost Street
Dallas Avenue	Dallas Avenue and George Street
Dallas Avenue	Dallas Avenue and Houston Street
Dallas Avenue	Dallas Avenue and Mulcahy Street
Dallas Avenue	Dallas Avenue and West Street
Damon Street	Damon Street and U.S. Highway 90A (Avenue H)
Davis Avenue	Davis Avenue and Ward Street

Divin Drive	Divin Drive and Town Center Boulevard
Dyer Avenue	Dyer Avenue and Brazos Street
Dyer Avenue	Dyer Avenue and Frost Street
Dyer Avenue	Dyer Avenue and Mulcahy Street
Dyer Avenue	Dyer Avenue and West Street
Elizabeth Avenue	Elizabeth Avenue and West Street
Frances Drive	Frances Drive and Lane Drive
Frost Street	Frost Street and F.M. Highway 1640 (Avenue I)
Frost Street	Frost Street and U.S. Highway 90A (Avenue H)
George Street	George Street and Avenue J
George Street	George Street and Walger Avenue (North)
Georgina Street	Georgina Street and Avenue J
Glenmeadow Drive	Glenmeadow Drive and Tobola Street
Hemple Drive	Hemple Drive and Town Center Boulevard
Houston Street	Houston Street and F.M. Highway 1640 (Avenue I)
Houston Street	Houston Street and U.S. Highway 90A (Avenue H)
James Street	James Street and Avenue K
Jones Street	Jones Street and Avenue N
Klauke Street	Klauke Street and Avenue N
Lark Street	Lark Street and Meadow Lane
Laurel Street	Laurel Street and Brumbelow Street
Laurel Street	Laurel Street and Jones Street
Laurel Street	Laurel Street and Junker Street
Laurel Street	Laurel Street and Klauke Street
Laurel Street	Laurel Street and Marilyn Street
Lawrence Street	Lawrence Street and F.M. Highway 1640 (Avenue I)
Leaman Avenue	Leaman Avenue and State Highway 36 (1 st Street)
Leonard Street	Leonard Street and Brumbelow Street
Leonard Street	Leonard Street and Jones Street
Leonard Street	Leonard Street and Junker Street
Leonard Street	Leonard Street and Klauke Street
Leonard Street	Leonard Street and Marilyn Street
Lindsey Drive	Lindsey Drive and Lane Drive
Longhorn Drive	Longhorn Drive and Airport Avenue

Louise Street	Louise Street and Avenue J
Louise Street	Louise Street and Avenue L
Louise Street	Louise Street and Avenue N
Louise Street	Louise Street and F.M. Highway 1640 (Avenue I)
Madison Avenue	Madison Avenue and Ward Street
Mahlman Street	Mahlman Street and Avenue N
Manor Drive	Manor Drive and Village Court Drive
Matamoros Drive	Matamoros Drive and Blume Road
Miles Street	Miles Street and F.M. Highway 1640 (Avenue I)
Mulcahy Street	Mulcahy Street and F.M. Highway 1640 (Avenue I)
Mulcahy Street	Mulcahy Street and U.S. Highway 90A (Avenue H)
Oak Briar Lane	Oak Briar Lane and Heath Ridge Lane
Pecan Park Drive	Pecan Park Drive and Westwood Drive
Randon Dyer Road	Randon Dyer Road and US Highway 90A
Randon School Road	Randon School Road and Spur 10
Raven Street	Raven Street and Meadow Lane
Rice Street	Rice Street and State Highway 36 (1 st Street)
Ripple Creek Drive	Ripple Creek Drive and Freeway Manor Drive
Robinowitz Road	Robinowitz Road and Spur 10
San Jacinto Street	San Jacinto Street and Avenue G
San Jacinto Street	San Jacinto Street and F.M. Highway 1640 (Avenue I)
San Jacinto Street	San Jacinto Street and U.S. Highway 90A (Avenue H)
Silverton Bend	Silverton Bend and Wagon Wheel Lane
Spur 10 Ramp North of U.S. Highway 59	Spur 10 Ramp North of U.S. Highway 59 and Spur 10
Spur 529	Spur 529 and U.S. Highway 59 (Southbound)
Texas Avenue	Texas Avenue and Brazos Street
Texas Avenue	Texas Avenue and Carlisle Street
Texas Avenue	Texas Avenue and Frost Street
Texas Avenue	Texas Avenue and Houston Street
Texas Avenue	Texas Avenue and Mulcahy Street
Texas Avenue	Texas Avenue and West Street
Timber Lane	Timber Lane and Lane Drive

Tobola Street	Tobola Street and Avenue N
Turtle Creek Drive	Turtle Creek Drive and Longhorn Drive
U.S. Highway 59 Frontage Road (Northbound)	U.S. Highway 59 Frontage Road (Northbound) and Cottonwood Church Road
Vera Cruz Drive	Vera Cruz Drive and Blume Road
Vera Cruz Drive	Vera Cruz Drive and Seabourne Meadows Drive
Ward Street	Ward Street and Avenue F
Ward Street	Ward Street and Avenue G
West Street	West Street and Avenue D
Wild Cotton Road	Wild Cotton Road and Bamore Road
Wilson Drive	Wilson Drive and Lane Drive
Winding Lakes Lane	Winding Lakes Lane and F.M. Highway 2977

* * *

(d) *Four-way stops.* Stop signs indicating four-way stops shall be placed at the following locations within the city:

3rd Street and Avenue F
3rd Street and Avenue G
Avenue C and 3rd Street
Avenue D and Mulcahy Street
Avenue D, Willow Drive, and Candler Street
Avenue D and 3rd Street
Avenue E and Carlisle Street
Avenue E and 6th Street
Avenue F and Alamo Street
Avenue F and Damon Street
Avenue F and 6th Street
Avenue G and 4th Street
Avenue G and 2nd Street
Avenue J and Millie Street
Avenue J and 7th Street
Avenue K and 2nd Street
Avenue K and Ward Street
Avenue L and 5th Street
Avenue L and Lawrence Street
Avenue L and Millie Street
Avenue L and Mulcahy Street
Avenue M and Brazos Street
Avenue M and 4th Street
Avenue N and Alamo Street and the driveway opposite Alamo Street
Avenue N and 8th Street

Avenue N and Ward Street
Avenue O and Tobola Street
Brazos Center Boulevard, Winding Lakes Lane, Brazos Town Crossing, and driveway
opposite Brazos Center Boulevard
Carlisle Street and Avenue M
Commercial Drive, Mercantile Drive, and driveway opposite Mercantile Drive
Commercial Drive, Plaza Drive, and driveway opposite Plaza Drive
Ellis Grove Lane and Archer Ranch Lane
George Street and Avenue L
Hartledge Road, Spur 10, and U.S. Highway 59 Frontage Road (Northbound)
Herbie Road and Debbie Street
Louise Street and Airport Avenue
Mahlman Street and Avenue O
Monroe Avenue and Ward Street
Mulcahy Street and Walger Avenue
Mustang Avenue and Lane Drive
Oakland Valley Drive and Wagon Wheel Lane
Parrott Avenue and Ward Street
Radio Lane, Ida Street, and Mustang Avenue
Reading Road and Spacek Road
Reading Road and Town Center Boulevard
Sally Anne Drive and Lane Drive
Southgate Drive and West Street
Spacek Road and Brazos Town Crossing
Spur 10 and U.S. Highway 59 Frontage Road (Southbound)
Timber Lane and Frances Drive
Town Center Boulevard and driveways approximately 320 feet north of Commercial
Drive
Walger Avenue (North) and West Street
West Street and Avenue M”

Section 3. Any person who shall violate any provision contained in this Ordinance, or who shall commit or perform any act declared herein to be unlawful shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount of not less than one dollar (\$1.00) and not more than two hundred dollars (\$200.00).

Section 4. All ordinances or parts inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 5. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any

reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED by a vote of four (4) “ayes” in favor and three (3) “noes” against on this first ~~and final~~ reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on the 4th day of February 2014.

PASSED AND APPROVED by a vote of _____ “ayes” in favor and _____ “noes” against on this the second/final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on this the _____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

APPROVED AS TO FORM:

Lora Jean D. Lenzsch, **CITY ATTORNEY**

ORDINANCE NO. 2014-05

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, BY DELETING ALL OF SECTION 28-41 (b) AND (d), STOP SIGNS DESIGNATED, OF ARTICLE II, DIVISION 2 OF CHAPTER 28, STOP STREETS, AND SUBSTITUTING THEREFOR A NEW SECTION 28-41 (b) AND (d) OF ARTICLE II, DIVISION 2 OF CHAPTER 28 THEREOF; PROVIDING A PENALTY IN AN AMOUNT OF NOT LESS THAN \$1.00 OR MORE THAN \$200.00 FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND, PROVIDING FOR SEVERABILITY.

WHEREAS, the City Council of the City of Rosenberg, Texas, has determined that the safety and welfare of the citizens of the City and other members of the traveling public require removing certain stop signs and placing stop signs at certain locations which requires deleting the following stop sign designations from Section 28-41 (b) and (d) of Article II, Division 2 of Chapter 28, Stop Streets, and substituting a new Section 28-41 (b) and (d) with new stop sign designations; and,

WHEREAS, Chapter 28 is hereby amended to include a penalty range of a fine in an amount of not less than one dollar (\$1.00) and not more than two hundred dollars (\$200.00); now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. That the Code of Ordinances of the City of Rosenberg is hereby amended by deleting from Chapter 28, Section 28-41 (b) and (d) Stop Signs Designated, of Article II, Division 2, and substituting a new Section 28-41 (b) and (d) Stop Signs Designated as follows:

“Sec. 28-41. - Stop signs designated.

* * *

(b) *Two-way stops.* Stop signs indicating two-way stops shall be placed at the following locations within the city:

<i>Stop Street</i>	<i>Intersecting Streets</i>
1 st Street	1 st Street and Avenue D
1 st Street	1 st Street and Avenue E
2 nd Street	2 nd Street and Avenue D
2 nd Street	2 nd Street and F.M. Highway 1640 (Avenue I)
2 nd Street	2 nd Street and U.S. Highway 90A (Avenue H)
3 rd Street	3 rd Street and Avenue M
3 rd Street	3 rd Street and Brooks Avenue
3 rd Street	3 rd Street and F.M. Highway 1640 (Avenue I)
3 rd Street	3 rd Street and Main Street
4 th Street	4 th Street and Avenue D
4 th Street	4 th Street and U.S. Highway 90A (Avenue H)
5 th Street	5 th Street and Avenue D
5 th Street	5 th Street and Avenue G
5 th Street	5 th Street and Avenue M
5 th Street	5 th Street and Avenue N
5 th Street	5 th Street and Avenue O
5 th Street	5 th Street and F.M. Highway 1640 (Avenue I)
5 th Street	5 th Street and U.S. Highway 90A (Avenue H)
6 th Street	6 th Street and Avenue G
6 th Street	6 th Street and Avenue M
6 th Street	6 th Street and Avenue N
6 th Street	6 th Street and Avenue O
6 th Street	6 th Street and F.M. Highway 1640 (Avenue I)
7 th Street	7 th Street and Avenue G
7 th Street	7 th Street and Avenue L
7 th Street	7 th Street and Avenue M
7 th Street	7 th Street and Avenue O

7 th Street	7 th Street and F.M. Highway 1640 (Avenue I)
7 th Street	7 th Street and U.S. Highway 90A (Avenue H)
8 th Street	8 th Street and Avenue A
8 th Street	8 th Street and Avenue G
Alamo Street	Alamo Street and Avenue G
Alamo Street	Alamo Street and Avenue J
Alamo Street	Alamo Street and Avenue K
Alamo Street	Alamo Street and F.M. Highway 1640 (Avenue I)
Allen Street	Allen Street and Avenue K
Allen Street	Allen Street and F.M. Highway 1640 (Avenue I)
Allwright Street	Allwright Street and Reading Road
Aquarius Street	Aquarius Street and Pisces Street
Avenue A	Avenue A and 2 nd Street
Avenue A	Avenue A and 7 th Street
Avenue B	Avenue B and 2 nd Street
Avenue B	Avenue B and 7 th Street
Avenue C	Avenue C and 5 th Street
Avenue D	Avenue D and 6 th Street
Avenue E	Avenue E and 3 rd Street
Avenue E	Avenue E and Mulcahy Street
Avenue E	Avenue E and Willow Street
Avenue F	Avenue F and 8 th Street
Avenue F	Avenue F and Jennetta Street
Avenue F	Avenue F and San Jacinto Street
Avenue G	Avenue G and Houston Street
Avenue G	Avenue G and Mulcahy Street
Avenue J	Avenue J and 2 nd Street
Avenue J	Avenue J and 3 rd Street
Avenue J	Avenue J and 4 th Street
Avenue J	Avenue J and 5 th Street
Avenue J	Avenue J and 6 th Street
Avenue J	Avenue J and 8 th Street
Avenue J	Avenue J and Allen Street
Avenue J	Avenue J and Austin Street

Avenue J	Avenue J and Brazos Street
Avenue J	Avenue J and Carlisle Street
Avenue J	Avenue J and Damon Street
Avenue J	Avenue J and Frost Street
Avenue J	Avenue J and Houston Street
Avenue J	Avenue J and James Street
Avenue J	Avenue J and Lawrence Street
Avenue J	Avenue J and MacArthur Street
Avenue J	Avenue J and Miles Street
Avenue J	Avenue J and Mulcahy Street
Avenue J	Avenue J and San Jacinto Street
Avenue J	Avenue J and State Highway 36 (1 st Street)
Avenue J	Avenue J and Tobola Street
Avenue J	Avenue J and Ward Street
Avenue J	Avenue J and West Street
Avenue K	Avenue K and 3 rd Street
Avenue K	Avenue K and 4 th Street
Avenue K	Avenue K and 5 th Street
Avenue K	Avenue K and 6 th Street
Avenue K	Avenue K and 7 th Street
Avenue K	Avenue K and Austin Street
Avenue K	Avenue K and Carlisle Street
Avenue K	Avenue K and Frost Street
Avenue K	Avenue K and George Street
Avenue K	Avenue K and Mulcahy Street
Avenue K	Avenue K and State Highway 36 (1 st Street)
Avenue K	Avenue K and West Street
Avenue L	Avenue L and 2 nd Street
Avenue L	Avenue L and 3 rd Street
Avenue L	Avenue L and 4 th Street
Avenue L	Avenue L and 6 th Street
Avenue L	Avenue L and Brazos Street
Avenue L	Avenue L and Carlisle Street
Avenue L	Avenue L and Damon Street

Avenue L	Avenue L and Frost Street
Avenue L	Avenue L and Georgina Street
Avenue L	Avenue L and Miles Street
Avenue L	Avenue L and State Highway 36 (1 st Street)
Avenue L	Avenue L and Tobola Street
Avenue L	Avenue L and West Street
Avenue M	Avenue M and Frost Street
Avenue M	Avenue M and George Street
Avenue M	Avenue M and Mulcahy Street
Avenue N	Avenue N and 7 th Street
Avenue P	Avenue P and Tobola Street
Avenue R	Avenue R and Avenue P
Bamore Road	Bamore Road and F.M. Highway 1640 (Avenue I)
Brazos Street	Brazos Street and Avenue E
Brazos Street	Brazos Street and Avenue K
Brazos Street	Brazos Street and F.M. Highway 1640 (Avenue I)
Brazos Street	Brazos Street and U.S. Highway 90A (Avenue H)
Brooks Avenue	Brooks Avenue and State Highway 36 (1 st Street)
Callaway Cove Court	Callaway Cove Court and Iris Hills Lane
Carlisle Street	Carlisle Street and Dyer Avenue
Carlisle Street	Carlisle Street and F.M. Highway 1640 (Avenue I)
Carlisle Street	Carlisle Street and U.S. Highway 90A (Avenue H)
Cottage Creek Lane	Cottage Creek Lane and Heath Ridge Lane
Cypress Lane	Cypress Lane and Mons Avenue
Dallas Avenue	Dallas Avenue and Brazos Street
Dallas Avenue	Dallas Avenue and Carlisle Street
Dallas Avenue	Dallas Avenue and Frost Street
Dallas Avenue	Dallas Avenue and George Street
Dallas Avenue	Dallas Avenue and Houston Street
Dallas Avenue	Dallas Avenue and Mulcahy Street
Dallas Avenue	Dallas Avenue and West Street
Damon Street	Damon Street and U.S. Highway 90A (Avenue H)
Davis Avenue	Davis Avenue and Ward Street
Divin Drive	Divin Drive and Town Center Boulevard

Dyer Avenue	Dyer Avenue and Brazos Street
Dyer Avenue	Dyer Avenue and Frost Street
Dyer Avenue	Dyer Avenue and Mulcahy Street
Dyer Avenue	Dyer Avenue and West Street
Elizabeth Avenue	Elizabeth Avenue and West Street
Frances Drive	Frances Drive and Lane Drive
Frost Street	Frost Street and F.M. Highway 1640 (Avenue I)
Frost Street	Frost Street and U.S. Highway 90A (Avenue H)
George Street	George Street and Avenue J
George Street	George Street and Walger Avenue (North)
Georgina Street	Georgina Street and Avenue J
Glenmeadow Drive	Glenmeadow Drive and Tobola Street
Hemple Drive	Hemple Drive and Town Center Boulevard
Houston Street	Houston Street and F.M. Highway 1640 (Avenue I)
Houston Street	Houston Street and U.S. Highway 90A (Avenue H)
James Street	James Street and Avenue K
Jones Street	Jones Street and Avenue N
Klauke Street	Klauke Street and Avenue N
Lark Street	Lark Street and Meadow Lane
Laurel Street	Laurel Street and Brumbelow Street
Laurel Street	Laurel Street and Jones Street
Laurel Street	Laurel Street and Junker Street
Laurel Street	Laurel Street and Klauke Street
Laurel Street	Laurel Street and Marilyn Street
Lawrence Street	Lawrence Street and F.M. Highway 1640 (Avenue I)
Leaman Avenue	Leaman Avenue and State Highway 36 (1 st Street)
Leonard Street	Leonard Street and Brumbelow Street
Leonard Street	Leonard Street and Jones Street
Leonard Street	Leonard Street and Junker Street
Leonard Street	Leonard Street and Klauke Street
Leonard Street	Leonard Street and Marilyn Street
Lindsey Drive	Lindsey Drive and Lane Drive
Longhorn Drive	Longhorn Drive and Airport Avenue
Louise Street	Louise Street and Avenue J

Louise Street	Louise Street and Avenue L
Louise Street	Louise Street and Avenue N
Louise Street	Louise Street and F.M. Highway 1640 (Avenue I)
Madison Avenue	Madison Avenue and Ward Street
Mahlman Street	Mahlman Street and Avenue N
Manor Drive	Manor Drive and Village Court Drive
Matamoros Drive	Matamoros Drive and Blume Road
Miles Street	Miles Street and F.M. Highway 1640 (Avenue I)
Mulcahy Street	Mulcahy Street and F.M. Highway 1640 (Avenue I)
Mulcahy Street	Mulcahy Street and U.S. Highway 90A (Avenue H)
Oak Briar Lane	Oak Briar Lane and Heath Ridge Lane
Pecan Park Drive	Pecan Park Drive and Westwood Drive
Randon Dyer Road	Randon Dyer Road and US Highway 90A
Randon School Road	Randon School Road and Spur 10
Raven Street	Raven Street and Meadow Lane
Rice Street	Rice Street and State Highway 36 (1 st Street)
Ripple Creek Drive	Ripple Creek Drive and Freeway Manor Drive
Robinowitz Road	Robinowitz Road and Spur 10
San Jacinto Street	San Jacinto Street and Avenue G
San Jacinto Street	San Jacinto Street and F.M. Highway 1640 (Avenue I)
San Jacinto Street	San Jacinto Street and U.S. Highway 90A (Avenue H)
Silverton Bend	Silverton Bend and Wagon Wheel Lane
Spur 10 Ramp North of U.S. Highway 59	Spur 10 Ramp North of U.S. Highway 59 and Spur 10
Spur 529	Spur 529 and U.S. Highway 59 (Southbound)
Texas Avenue	Texas Avenue and Brazos Street
Texas Avenue	Texas Avenue and Carlisle Street
Texas Avenue	Texas Avenue and Frost Street
Texas Avenue	Texas Avenue and Houston Street
Texas Avenue	Texas Avenue and Mulcahy Street
Texas Avenue	Texas Avenue and West Street
Timber Lane	Timber Lane and Lane Drive
Tobola Street	Tobola Street and Avenue N

Turtle Creek Drive	Turtle Creek Drive and Longhorn Drive
U.S. Highway 59 Frontage Road (Northbound)	U.S. Highway 59 Frontage Road (Northbound) and Cottonwood Church Road
Vera Cruz Drive	Vera Cruz Drive and Blume Road
Vera Cruz Drive	Vera Cruz Drive and Seabourne Meadows Drive
Ward Street	Ward Street and Avenue F
Ward Street	Ward Street and Avenue G
West Street	West Street and Avenue D
Wild Cotton Road	Wild Cotton Road and Bamore Road
Wilson Drive	Wilson Drive and Lane Drive
Winding Lakes Lane	Winding Lakes Lane and F.M. Highway 2977

* * *

(d) *Four-way stops.* Stop signs indicating four-way stops shall be placed at the following locations within the city:

- 3rd Street and Avenue F
- 3rd Street and Avenue G
- Avenue C and 3rd Street
- Avenue D and Mulcahy Street
- Avenue D, Willow Drive, and Candler Street
- Avenue D and 3rd Street
- Avenue E and Carlisle Street
- Avenue E and 6th Street
- Avenue F and Alamo Street
- Avenue F and Damon Street
- Avenue F and 6th Street
- Avenue G and 4th Street
- Avenue G and 2nd Street
- Avenue J and Millie Street
- Avenue J and 7th Street
- Avenue K and 2nd Street
- Avenue K and Ward Street
- Avenue L and 5th Street
- Avenue L and Lawrence Street
- Avenue L and Millie Street
- Avenue L and Mulcahy Street
- Avenue M and Brazos Street
- Avenue M and 4th Street
- Avenue N and Alamo Street and the driveway opposite Alamo Street
- Avenue N and 8th Street
- Avenue N and Ward Street

Avenue O and Tobola Street
Brazos Center Boulevard, Winding Lakes Lane, Brazos Town Crossing, and driveway
opposite Brazos Center Boulevard
Carlisle Street and Avenue M
Commercial Drive, Mercantile Drive, and driveway opposite Mercantile Drive
Commercial Drive, Plaza Drive, and driveway opposite Plaza Drive
Ellis Grove Lane and Archer Ranch Lane
George Street and Avenue L
Hartledge Road, Spur 10, and U.S. Highway 59 Frontage Road (Northbound)
Herbie Road and Debbie Street
Louise Street and Airport Avenue
Mahlman Street and Avenue O
Monroe Avenue and Ward Street
Mulcahy Street and Walger Avenue
Mustang Avenue and Lane Drive
Oakland Valley Drive and Wagon Wheel Lane
Parrott Avenue and Ward Street
Radio Lane, Ida Street, and Mustang Avenue
Reading Road and Spacek Road
Reading Road and Town Center Boulevard
Sally Anne Drive and Lane Drive
Southgate Drive and West Street
Spacek Road and Brazos Town Crossing
Spur 10 and U.S. Highway 59 Frontage Road (Southbound)
Timber Lane and Frances Drive
Town Center Boulevard and driveways approximately 320 feet north of Commercial
Drive
Walger Avenue (North) and West Street
West Street and Avenue M”

Section 3. Any person who shall violate any provision contained in this Ordinance, or who shall commit or perform any act declared herein to be unlawful shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount of not less than one dollar (\$1.00) and not more than two hundred dollars (\$200.00).

Section 4. All ordinances or parts inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 5. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it

shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED by a vote of four (4) “ayes” in favor and three (3) “noes” against on this first reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on the 4th day of February 2014.

PASSED AND APPROVED by a vote of _____ “ayes” in favor and _____ “noes” against on this the second/final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on this the _____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

APPROVED AS TO FORM:

Lora Jean D. Lenzsch, **CITY ATTORNEY**

when making comments.

COMMENTS FROM THE AUDIENCE FOR CONSENT AND REGULAR AGENDA ITEMS.

Citizens who desire to address the City Council with regard to matters on the Consent Agenda or Regular Agenda will be received at the time the item is considered. Each speaker is limited to three (3) minutes. Comments or discussion by the City Council Members will only be made at the time the agenda item is scheduled for consideration. It is our policy to have all speakers identify themselves by providing their name and residential address when making comments.

***The following speakers addressed Council under the Comments from the Audience.
Carol Moore, 5914 Homestead Road, Rosenberg, Texas:***

- I am here tonight to give you an update on Suburban Estates. You all know the song and title "What a Difference a Day Makes", well tonight I can report to you "what a difference a stop sign makes". In just a little over a month since stop signs and reduced speed limits signs were put into place, there has been a significant change in our neighborhood. This has certainly slowed down the traffic. It is much safer for the students walking to school and for residents backing out of their driveways. Our neighborhood cannot be compared to any other subdivision street or whatever else critics want to compare us to in the City. Any criticism on our stop signs from non-residents of this neighborhood should be dropped by the wayside. The action of Council to proceed with stop signs was a great compromise of all residents of this neighborhood. Everyone who wanted Homestead Road reopened got their wish; therefore, this should be end of this on-going saga. The end result is we have a safer neighborhood and we are getting back the neighborhood we once had. Former Councilwoman, Fran Naylor had a very good response letter in the January 30, 2014 edition of the Fort Bend Herald. She has given me permission to quote her last two paragraphs of her letter which deserves to be acknowledged. It reads as follows: "As Rosenberg continues to grow, the City may need to look at these types of requests and take action to encourage drivers to either slow down or go to streets meant to be used as thoroughfares. New subdivisions are planned in ways that ensure that safe travel in residential areas. The older parts of town may need a little relief." I commend all of you on Council who responded to our need for help. To all of City government from City Manager, Mayor, Interim Police Chief, and all Council Members thank you for your commitment to the City. I would also like to say thanks to Assistant City Manager, John Maresh; City Secretary, Linda Cernosek; and Citizen Relations Coordinator, Karen Zwahr. Over the last two years, all of you have been so helpful, polite and professional.

Mike Parsons, 2635 Sequoia Lane, Rosenberg, Texas:

- [start 6:56:59 pm]

CONSENT AGENDA

1. REVIEW OF CONSENT AGENDA.

All Consent Agenda items listed are considered to be routine by the City Council and may be enacted by one (1) motion. There will be no separate discussion of Consent Agenda items unless a City Council Member has requested that the item be discussed, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Regular Agenda.

A. CONSIDERATION OF AND ACTION ON REGULAR MEETING MINUTES FOR JANUARY 07, 2014.

B.

C. CONSIDERATION OF AND ACTION ON ORDINANCE NO. 2014-05, AN ORDINANCE AMENDING THE CODE OF ORDINANCES BY DELETING ALL OF SECTION 28-41 (B) AND (D), STOP SIGNS DESIGNATED, OF ARTICLE II, DIVISION 2 OF CHAPTER 28, STOP STREETS, AND SUBSTITUTING THEREFOR A NEW SECTION 28-41 (B) AND (D) OF ARTICLE II, DIVISION 2 OF CHAPTER 28 THEREOF; PROVIDING A PENALTY IN AN AMOUNT OF NOT LESS THAN \$1.00 OR MORE THAN \$200.00 FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; AND, PROVIDING FOR SEVERABILITY.

Executive Summary: During the January 21, 2014 meeting, City Council discussed the proposed installation of four-way stop signs at the intersection of Avenue L and Millie Street. City Council did take action directing the installation of four-way stop signs at this intersection.

Staff has prepared an Ordinance that deletes the above listed intersection from the two-way stop sign designations and adds said intersection to the four-way stop sign designations.

Staff recommends approval of Ordinance No. 2014-05 as presented.

D.

E.

REGULAR AGENDA

2A.

This item was formerly Item C.

CONSIDERATION OF AND ACTION ON ORDINANCE NO. 2014-05, AN ORDINANCE AMENDING THE CODE OF ORDINANCES BY DELETING ALL OF SECTION 28-41 (B) AND (D), STOP SIGNS DESIGNATED, OF ARTICLE II, DIVISION 2 OF CHAPTER 28, STOP STREETS, AND SUBSTITUTING THEREFOR A NEW SECTION 28-41 (B) AND (D) OF ARTICLE II, DIVISION 2 OF CHAPTER 28 THEREOF; PROVIDING A PENALTY IN AN AMOUNT OF NOT LESS THAN \$1.00 OR MORE THAN \$200.00 FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND, PROVIDING FOR SEVERABILITY.

Executive Summary: During the January 21, 2014 meeting, City Council discussed the proposed installation of four-way stop signs at the intersection of Avenue L and Millie Street. City Council did take action directing the installation of four-way stop signs at this intersection.

Staff has prepared an Ordinance that deletes the above listed intersection from the two-way stop sign designations and adds said intersection to the four-way stop sign designations.

Staff recommends approval of Ordinance No. 2014-05 as presented.

Key discussion points:

- Councilor Grigar asked this item to be pulled into the Regular Agenda because of the outcome of the vote at the last meeting and did not want to say no to all the Consent Agenda items, so he wanted to vote on this item individually.
- Councilor Benton stated we heard some comments from Carol Moore that were precise. Before he was on City Council, he contacted Councilor Grigar about these intersections which were four (4) way intersections without any stop signs at all. Councilor Benton addressed Council in 2001-2003 and the Council at that time took action to install stop signs, but they that live in this neighborhood would say they put them in the wrong direction, because they put them east/west, instead of north/south, which protected those going north/south and now use this street as a drag strip. It was not as easy as some made it sound to get Council approval or to get any action on this stop sign. It was in fact a process that took at least two and a half years. There are dozens and dozens of more intersections, I feel, that need to be addressed. I would like to note that studies are not required, they are not required by law to have a study as far as my knowledge, unless it is at an intersection that connects with a state street, is that a correct statement?
- John Maresh stated as he read the State Traffic Manual, it addresses stop signs at any intersection.
- Councilor Benton stated he spoke to Texas Municipal League to their legal counsel, and he was told that it is not required.
- John Maresh stated he cannot speak as to what TML advised him, but the information in the traffic manual generally states that a study should be done to document the need or warrant of that stop sign.
- Councilor Benton stated that if we do not do a study, we are breaking the law?
- Lora Lenzsch, City Attorney, stated that Section 2b.07 of the Texas Manual of the Uniform Traffic Control Device, does state that for a traffic control device, such as a stop sign, a study needs to be done. Are you breaking the law? I think last time I explained the situation. When you charge someone with a violation, one of the elements is that the sign is lawfully placed. Arguably, does the City have the authority on their own, without anything to substantiate the sign to place it there—that would be an argument for the Judge to decide, if that would come up. I am asked to go into the courts to prosecute and one of the elements in running a stop sign if someone had a trial, it would be I would have to prove that the sign is lawfully placed there. Usually, if the issue comes up to ask for a study, rarely but it has come up. If there is

no study the judge is going to dismiss the case.

- Councilor Benton asked if there is passing or failing with a study or is it just for your information?
- Lora Lenzsch advised that the manual provides what the study needs to show. It gives you the standards. You don't need to guess on it. There is a percentage you have to hit, how many cars, at how many speeds, and how many times at that intersection.
- Councilor Benton asked if a study has been done at this intersection. John Maresh stated it probably has, but it has been some time.
- Councilor Benton stated he asked for it, after he had an accident. Charles Kalkomey stated the last study at this intersection was done in 2011. We haven't been asked to do a study since then.
- Councilor Benton stated we did a study in 2011 and there was no passing or failing, so it is up to the discretion of the Council whether or not we wish to install a stop sign there.
- Lora Lenzsch answered she did not know what the study showed. Sometimes the study makes a conclusion at the end.
- Charles Kalkomey stated the way the manual is written they are created certain warrant conditions that will warrant the placement of the stop sign, just like there are warrant conditions that will warrant the placement of a traffic light, and those are the conditions we test against to see if a stop sign is warranted.
- Councilor Benton asked if a fatality or several accidents warrant a particular device. Charles Kalkomey answered there is one of the warrants that has to do with the number of accidents in the previous three (3) year period, I believe.
- Councilor Benton stated this is what he is trying to avoid. Charles Kalkomey stated that is not the way the warrant is written--that is the way TXDOT wrote the manual.
- Councilor Benton stated if there is no prohibition in having the stop sign, we heard statement from someone tonight what a world of difference a day makes or a stop sign makes.
- Lora Lenzsch stated I told you what the issue is, I am not saying do it or don't do it, I am saying these are the issues that surround the placement of a stop sign. There is a standardized manual that has been provided throughout the State of Texas for placement of stop signs. It does specifically say an engineer study for traffic control devices, but again, if a stop sign is there-it is there.
- Councilor Benton stated we don't want to do anything to break the law.
- Lora Lenzsch stated she thinks the problem will start arising if you start putting several of these stop signs out without a study, then the City will be in a situation where eventually people are going to start understanding that some of these signs are not warranted.
- Councilor Benton stated we had this discussion before about Homestead Road, about stop signs, and you said you can't answer for other cities, but think of the logic, you get little towns like Orchard and Needville.
- Councilor Benton asked Charles Kalkomey what the cost is for a low budget study of these stop signs? Charles Kalkomey stated \$500-\$600.
- Lora Lenzsch stated these cities do studies, they just don't hire an engineer and they use the manual or use their Public Works Director who has been there for years and has done these studies. The manual dictates how to do the studies and maybe some of the cities are not doing studies—the stop signs are just there. I am educating in the fact that many people do not understand – is a stop sign legally posted there. People can go that extra step and they do.
- Councilor Benton is trying to get a legal opinion because he is getting mixed messages.
- Lora Lenzsch stated she is not saying do not put a stop sign out, I am saying as your prosecutor, when I go into the court, there will be stop signs not supported by a traffic study and if that is the case, the police are not authorized to issue citations. Does the general public know that?
- Councilor Benton stated he is not here to get something over on the general public, I am trying to save someone from getting killed.
- Councilor Benton stated when the time comes, he would move that we approve these stop signs.
- Councilor McConathy asked Charles Kalkomey if the signs on page 2-8, the signs both two way and four way stop signs, you are saying that all of these signs before they were placed had a traffic study to justify their position in installation?
- Charles Kalkomey stated back many years ago, the City undertook a project to identify intersections with stop signs, because we came to the realization that not every stop sign on

the street was contained in the ordinance. At that time, we prepared a map of all the stop signs in the city and all the intersections. Council made a policy decision that said every intersection shall have at least one traffic control device. In other words, if it's a T-intersection the street coming into the T would have a stop sign. If it was a four (4) way intersection, at least one of the cross streets would have a stop sign. We gave preference to north-south movement of traffic if there was a decision to be made which way it was to go. We prepared a map and Council adopted those stop sign placements in one big ordinance. Ever since that time, stop sign placements have been done with traffic studies as far as I am aware.

- Councilor McConathy stated that if any one of these stop signs were to contest the ticket, they could get out of it, because it was not done by a traffic study.
- Lora Lenzsch stated that is up to the judge to make that determination, but it has happened—not often and it surprises you, because they will ask for the traffic study for that particular intersection. Sometimes, the city will have the study and sometimes they will have a study. Councilor Benton is correct, not every sign, not only in Rosenberg, but throughout the State of Texas every sign is supposed to be supported by a traffic study.
- Mayor Morales asked in new developments, don't new developments have to do certain traffic studies to qualify for certain traffic control devices?
- Charles Kalkomey stated in the newer developments following the policy of council where there needs to be a stop sign at an intersection, we make sure those stop signs are placed and the ordinances are changed at the appropriate time. The major intersections of developments where they enter out onto Reading Road for example, those are obviously stop signs. I think some of the TIA's done for those developments have indicated that, but I am sure there may be some that did not, but one of the warrants for a traffic sign would be an entrance into a major highway or roadway, you always want to have a stop sign so that one is not necessarily needing a study to place because it's one of those warrant conditions that are on the books. It's the ones you don't know if it's warranted or not is where the study comes in handy.
- Councilor Bolf stated besides Ms. Moore, she has heard from others who have said that putting in stop signs has helped a great deal, it has helped on the cut through traffic and I know that sometimes studies can be a big benefit, but sometimes depending on the area of the neighborhood, we can rely on the common sense of the people who have lived there twenty (20) years and have seen the traffic and I agree with what we did last week and what we are doing today.
- Councilor Grigar didn't mean for it to get into this depth of a conversation again. We have already done this and all I wanted to do is take it out of the Consent Agenda because of the outcome of the last vote. I didn't want to vote "no" on all the Consent Agenda items. We already know how everyone up here feels and all I want to do is pull it into the Regular Agenda and have a vote of "no" for myself.
- Councilor Pena stated we already made our decision on this, and I am going to stand by it.
- Councilor Euton stated she didn't say it before, but she will say it this time, I did vote against it before. I talked to some residents who were not on the petition, and they said it is an "iffy" thing, but it's probably a good idea and since the intersection before has a four (4)-way stop, I felt that a traffic study would help determine whether an additional four (4) way stop just one block down would be of any benefit and that is why I had voted no the first time.
- Mayor Morales stated he voted no. Without the traffic study again as he said that evening, we take these seriously, but we have to have some type of criteria to base it on. Just like Homestead Road, the traffic studies that were done, made my decision because of the fact we saw that 47% of the traffic coming through Homestead Road were not residents in that area. There was some criteria to be able to base that decision. As far as this particular item at Millie Street, again, that area had the traffic study in 2011, but should have been updated and based on that, there would be some criteria to decide whether it would be warranted or not after hearing what the residents had to say. Again, as our legal counsel said, we can make that decision up here, but it could be challenged by a lawyer. I think going forward, that we should have some type of mechanism in place that warrants whatever type of traffic calming device that we provide. Again, we should listen to our citizens if there is a request, but I think there is some criteria to be done. As I stated that night, on my own street, Bryan Road, the residents did a petition and did not ask me to lower the speed limit. I told them the City has a policy that we do a traffic study and what the traffic study shows, we do. That traffic study showed that a portion of Bryan Road needed to be reduced. The other portion from Spacek Road to FM 2977 (Minnonite Road) needed to stay at the 45 mph. I would not have known to make that decision. If they would have said to lower to 40 mph, not being a traffic engineer, we probably would have lowered the entire street to 40 mph, so I think we need to have some type of

criteria to make our decisions on. This particular item did not agree without the traffic study at that time, but this item is to put it into a four (4)-way stop sign.

- Lora Lenzsch clarified that this vote is to pass the Ordinance placing the stop signs in at Millie Street and Avenue L.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to approve Ordinance No. 2014-05, An Ordinance amending the Code of Ordinances by deleting all of Section 28-41 (b) and (d), Stop Signs Designated, of Article II, Division 2 of Chapter 28, Stop Streets, and substituting therefor a new Section 28-41 (b) and (d) of Article II, Division 2 of Chapter 28 thereof; providing a penalty in an amount of not less than \$1.00 or more than \$200.00 for violation of any provision hereof; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith; and, providing for severability. Upon voting, the motion passed by a vote of 4-3 as follows: **Ayes: Councilors Benton, McConathy, Pena, and Bolf. Noes: Mayor Morales, Councilors Euton and Grigar.**

2B. ***This item was formerly Item E.***

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ADJOURNMENT.

There being no further business Mayor Morales adjourned the meeting at 9:01 p.m.

Linda Cernosek, TRMC, City Secretary

8. **REVIEW AND DISCUSS PROPOSED INSTALLATION OF FOUR-WAY STOP SIGNS AT THE INTERSECTION OF AVENUE L AND MILLIE STREET, AND TAKE ACTION AS NECESSARY.**

Executive Summary: This item has been included on the Agenda to allow City Council the opportunity to discuss the proposed addition of four-way stop signs at the intersection of Avenue L at Millie Street.

Speakers:

- The following citizens spoke at the meeting:
- **Diana Cook, 1312 Millie Street, Rosenberg:**
- She has resided at this address for almost 40 years. There is much traffic that goes through on Millie Street. Much of this traffic moves at a high rate of speed, sometimes it sounds like a racetrack and goes on all the time. In the mornings, there are young children and teenagers standing near this intersection waiting for the school bus to pick them up. In the afternoon, the bus drops them off at this intersection as well. Please, for the safety of the children, the subdivision, as well as community as a whole, drivers included, let us make this a safe area. I strongly believe that a preventative action needs to be taken and that a four way stop sign needs to be placed at the intersection of Avenue L and Millie Street. Thank you for letting me speak to you today.
- **Evelyn Ward, 1317 Mille Street, Rosenberg:**
- Councilor Benton stated that Evelyn Ward has laryngitis and he would help her speak. She has seen a lot of accidents and it scares her.
- Councilor Benton stated that Evelyn has been home a lot recently, since she has been sick, and has seen a lot of near misses. Before he was on Council, Evelyn, along with the Dresner's and others, have expressed concern about the danger and near misses of accidents. There is fast traffic and requested Council to consider a four way stop sign at that location.
- **Wanda Sebesta, 1220 Millie Street, Rosenberg:**
- She has lived there for approximately 13 years and for 13 years the speeding traffic has been an issue. There is a four way stop on the north side of Millie Street and Avenue K, which slows down the traffic on the north side, but once they clear that four way stop, it has increased speed all the way to Avenue N. I am here to ask that you give us consideration in placing a four way stop at Avenue L and Millie Street. Thank you.
- **Nina Davis, 1217 Millie Street, Rosenberg:**
- She lives directly across the street from Wanda Sebesta and has lived there for just over ten (10) years and wants to express the same concern as the other. The traffic is exceptionally fast. The cars seem to have no concern for anybody on the street or close to the street. We have children that walk to school and walk home down to the corner where there is no stop sign. There seems to be a cross through from the Walgreens and the bank down the street for people to get to Avenue N. It is quite a thoroughfare day and night, so please consider putting the four way stop signs in at Avenue L and Millie Streets. Thank you.
- **Mike Parsons, 2635 Sequoia Lane, Rosenberg:**
- While I have little issue with any individual or individuals suggesting that stop signs be placed on their street, I would assume that the Council person or persons who represent them have explained in detail the process in which streets are considered. In addition, I would suggest that this Council or Councils in the future use uniform methods to arrive at those decisions or every corner in Rosenberg may find itself with four way stops.
- Trust me when I say that there would be no problem to attain 19 to 20 signatures for a number of stop signs on Mons Avenue--a street, which was "improved" at the disfavor of the citizens who live on it or live on streets that have direct access.
- A street where the average speed was verified to be 38 miles per hour (mph), with highs to 50 to 60 mph after an accident at the corner of Mons and Sequoia several years back. A street where I encourage the Rosenberg Police Department and any other law enforcement agency to use my driveway to monitor speeds and issue tickets thereon, including access to my house, facilities if they so desire.
- Once Council goes down the silly road (no pun intended) of petitions they will be smothered with petition after petition to deal with, rather than focus and concentrate on the long term growth of Rosenberg.
- It is of interest that some members of this Council scoff at the recorded instances of traffic issues as it has to do with Avenues H (90) and I (1640), but appear not to have considered accident rates on either L or Millie? Could this be a prelude to the addition of other requests for four way stops on other streets in the area having been sought for years?

- Council might consider some consistency in making decisions regarding streets with regard to safety, in my humble opinion. Suggest a traffic study in the area and determine if safety incidents appear to require a four way stop, as has been done in the past and make a uniform and consistent decision on the topic. It is these kinds of issue that appear to be, at best, a simulation of politics at a national level. Thank you.

Key discussion points:

- Councilor Benton stated that Council has received a copy of the request signed by nineteen (19) individuals that live closest to the area and are most affected by the lack of traffic control. He respectfully asked that Council place a four way stop sign at the intersection of Avenue L and Millie Street. He doesn't object to Mr. Parson's comments that there are a lot of intersections around town that need stop signs, but you can't finish until you start, and we have folks that are interested and four folks here tonight. I don't think as representatives of folks we cannot help them out in situations like this.
- Mayor Morales stated that Council takes these requests very seriously. On his own street, Bryan Road, he had a petition last year given to him to lower the speed limit. He explained to the citizens that the City has a process and criteria to follow. We do a traffic study, the traffic study may come back it may be in your favor, it may not. The traffic study was done, and part of Bryan Road qualified for a lower speed, and part of it did not. Without the requested criteria, this Council could not have made that decision. We are not traffic engineers. I do take your request very seriously, but I think a traffic study should be done and that should be the criteria that we follow on what the results are. I hope you respect what I am asking.
- Councilor Benton stated we have done traffic studies.
- Councilor McConathy had a question. Have we done a recent traffic study on that street? Charles Kalkomey stated last time we took traffic counts was the latter half of 2011 which is about 2.5 years.
- Councilor McConathy asked how much of a gap do we allow before we do another traffic study. Charles Kalkomey stated there is no policy on the time and another count would be appropriate if Council desired.
- Councilor Bolf stated everyone knows what she thinks about studies, but I think the people who live there is a great study. We definitely need to look at it, and do something. I think the citizens see it every day, but something needs to go in that direction.
- Councilor Grigar stated he agrees something may need to be looked at, but to be across the board, we need to be fair. Just because I think someone is speeding, speed is deceiving. With our counters we have, they count the axles so we know if 18-wheelers are going through there and they count the speed, and how many axles. The manual on Uniform Traffic Control devices takes the politics out of it. It keeps it uniform across the City, so that we apply these all across. If we keep on doing it without a traffic study, without any criteria that's being followed, then this City could be in chaos and we could begin having stop signs everywhere. Avenue N is a perfect example. We have no stop sign between Alamo Street and Radio Lane. You could have how many stop signs along there—at every intersection. That's not feasible. There are other places in the City that are the same way, so I would like to have a traffic study and count done to see what those speeds are and if it does warrant that, then I would like to have those put in place.
- At this intersection, are there already two stop signs? Charles Kalkomey answered yes there are two stop signs at the cross street. Councilor Grigar asked if we had any accidents at this there since 2011? Charles Kalkomey answered that in 2011 there was one accident at the intersection in the previous three years. We have not looked at any accident counts since then. If we do another study, we would look at that.
- Councilor Pena stated he doesn't think these people are looking at the speed limit being lowered, they are asking for someone to regulate the traffic coming through there with a stop sign. I don't believe everyone wants a stop sign in their corner. I don't like driving down some of the streets in Rosenberg. In fact, I avoid them because they do have stop signs everywhere. I think the lady might have seen me almost have an accident in that same intersection. I personally experienced a near accident at that very intersection and I do think it is very dangerous and if we need to follow the traffic study, then we will do that. They park a lot of trucks close to the intersection there and it makes it a blind spot. I think I didn't see the car. Maybe there is some other way to help you. We thank you for your concern.
- Councilor Euton stated she agrees with Councilor Bolf in that she is not a real fan of all the studies, but in a city of this size, we probably need to have some sort of criteria in order to establish the rules uniformly, so I would propose we do a study and try to find out some cure for the residents there.

- Councilor Benton stated this intersection has been studied to death. We are not being good stewards of the people's money to continue to pay for studies. We have people that have requested action by their representatives. They are taxpayers too. We know what we need. I, myself, Charles, had an accident of March 2012 at this intersection. Also, to compare Avenue N with Millie is not a fair comparison. Avenue N is designated as a thoroughfare. I do not believe Millie Street is a thoroughfare. We have a lot of drag strips in this town. We need to start addressing them.
- Mayor Morales stated one thing brought up by Councilor Pena is that like the truck there may be some no parking that needs to be done. This is where the traffic study comes in and not us guessing what needs to be done.

Action: Councilor Benton made a motion, seconded by Councilor Pena to approve the four way stop signs at the intersection of Avenue L and Millie Street. The motion carried 4-3, as follows: **Ayes: Councilors Benton, McConathy, Pena, and Bolf. Noes: Mayor Morales, Councilors Euton and Grigar.**

Mayor Morales stated he respects the vote, but thinks a traffic study should be done. Thank you very much.

9. **CONSIDER MOTION TO ADJOURN FOR EXECUTIVE SESSION.**

Action: Councilor McConathy made a motion, seconded by Councilor Benton to adjourn for executive session. The motion carried by a unanimous vote.

10. **HOLD EXECUTIVE SESSION PURSUANT TO TEXAS GOVERNMENT CODE SECTION 551.074 TO DELIBERATE THE APPOINTMENT OF THE POLICE CHIEF; AND, FOR DELIBERATIONS REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS AS AUTHORIZED BY SECTION 551.087 OF THE TEXAS GOVERNMENT CODE.**

An Executive Session was held pursuant to Texas Government Code Section 551.074 to deliberate the appointment of the police chief; and, for deliberations regarding economic development negotiations as authorized by Section 551.087 of the Texas Government Code.

11. **ADJOURN EXECUTIVE SESSION, RECONVENE INTO REGULAR SESSION, AND TAKE ACTION AS NECESSARY AS A RESULT OF EXECUTIVE SESSION.**

12. **REVIEW AND DISCUSS POLICE CHIEF POSITION, AND TAKE ACTION AS NECESSARY.**

Executive Summary: This Agenda item has been included for City Council to take action if deemed necessary following Executive Session.

No action to be taken as a result of executive session.

13. **ANNOUNCEMENTS.**

- Councilor McConathy congratulated the City of Rosenberg Parks Department for their recognition by the Houston-Galveston Area Council particularly the Texas Master Naturalists for all the work they have done in the parks. The City received a big recognition on behalf of the Parks and the Texas Master Naturalists today.
- Mayor Morales recognized the Police Department and Sergeant Ariel Soltura for the positive national media attention.

14. **ADJOURNMENT.**

There being no further business, Mayor Morales adjourned the meeting at 9:45 p.m.

Linda Cernosek, TRMC, City Secretary



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
3	Receive Public Comment on MUD No. 162 Restated and Amended Fire Protection Agreement

ITEM/MOTION

Receive public comment from Fort Bend County Municipal Utility District No. 162 regarding the increase in monthly fire protection fee pursuant to the Restated and Amended Fire Protection Agreement.

FINANCIAL SUMMARY

ELECTION DISTRICT

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

MUD #: 162 (Sunrise Meadow)

1. Lutz Email – 01-03-14
2. Restated and Amended Fire Protection Agreement (2012) – 09-04-12
3. Resolution No. R-1701 – 09-17-13
4. City Council Meeting Minute Excerpt – 09-17-13

APPROVALS

Submitted by:

Lora Lenzsch/rlm

Lora Lenzsch
City Attorney

Reviewed by:

- Exec. Dir. for Administrative Services
- Asst. City Manager for Public Services
- City Attorney
- City Engineer
- Fire Chief *MLA*

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

The Board of Directors for Municipal Utility District No. 162 (MUD No. 162) has requested an Agenda item to address City Council regarding the Restated and Amended Fire Protection Agreement (2012) as it relates to Resolution No. R-1701, which extended the compliance deadline for the provision of fire services to September 30, 2016.

Renee LeLaurin

From: Angela Lutz [alutz@abhr.com]
Sent: Friday, January 03, 2014 2:09 PM
To: llenzsch@yahoo.com; Kaye Supak
Cc: Michael Gutierrez (gutierrm@co.fort-bend.tx.us)
Subject: Fort Bend 162

Ms. Lenzsch and Ms. Supak –

The Directors of Fort Bend MUD 162 are requesting that a specific agenda item be placed on the next City of Rosenberg city council agenda to discuss the increase in the Rosenberg Fire Fee. Please let me know if you need anything further from me on this item. I am happy to help in any way I can.

Sincerely,
Angie Lutz
Attorney for FB MUD 162

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RESTATED AND AMENDED FIRE PROTECTION AGREEMENT (2012)

This Restated and Amended Fire Protection Agreement (2012) (the "Agreement") is entered into this 4th day of September, 2012, by and between the City of Rosenberg, Texas (the "City") and Fort Bend County Municipal Utility District No. 162 (the "District"), a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Texas Constitution.

RECITALS

The District is located within the extraterritorial jurisdiction of the City but outside its corporate limits. The District entered into a Fire Protection Agreement with the City dated July 18, 2007 (the "Original Agreement"). The parties now desire to terminate the Original Agreement and to enter into a new Amended and Restated Fire Protection Agreement (2012) for the City to provide services on a long-term basis. The District is entering into this Agreement pursuant to Section 49.351(e) of the Texas Water Code.

NOW, THEREFORE, the District and the City hereby covenant and agree as follows:

Section 1. Definitions. Unless the context indicates otherwise, the following words and phrases used in this Agreement shall have the meanings ascribed thereto:

"City" means the City of Rosenberg, Texas.

"Cost of Station Equipment/Furnishings" means the actual cost to equip and furnish Fire Station No.3 or as may be adjusted as provided in Section 6.

"Current Participating Districts" means the following districts: Fort Bend County Municipal Utility District No. 152, Fort Bend County Municipal Utility District No. 155, Fort Bend County Municipal Utility District No. 158 and Fort Bend County Municipal Utility District No. 162.

"District" means Fort Bend County Municipal Utility District No. 162.

"Equivalent Single-Family Connection" or "ESFC" means the daily amount of water and wastewater that is attributable to one single-family residential home, as determined by the City.

"Estimated Cost of Station Equipment/Furnishings" means the estimated cost to equip and furnish Fire Station No. 3. Such equipment and furnishings are generally identified and described in Exhibit "A" attached hereto and incorporated into this Agreement.

"Estimated Station Costs" means the estimated cost to design and construct Fire Station No. 3 as described on Exhibit "A," as may be adjusted as provided in Section 6.

"Fire Protection Services" means the type of fire suppression and rescue services regularly provided by the City of Rosenberg Fire Department within the City's boundaries at the time of this Agreement, except for the following: fire inspections of buildings and properties, code enforcement services, and arson investigations.

“Fire Station No. 3” means the fire station to be constructed on the tract more particularly described on Exhibit “B,” attached hereto and incorporated herein.

“Proportionate Share” means a percentage of the Station Costs, as calculated and described in Section 6(b), which may be adjusted only as provided herein.

“Service Area” means the area served by Fire Station No. 3, as identified and defined in Exhibit “C,” attached hereto and incorporated herein.

“Participating Entities” means the City, the Current Participating Districts, other municipal utility districts and other entities included or to be included in the Service Area, as such area may be expanded by the City from time to time, that execute a fire protection agreement with the City pursuant to which they pay a Proportionate Share or a Buy In Charge as provided in Section 6.

“Station Costs” means the actual cost to design and construct Fire Station No. 3, including the Cost of Station Equipment/Furnishings but excluding the costs to purchase the site for the station, extension of utilities to the site and construction of an entrance road.

“Station Equipment/Furnishings” means fire station furnishings and equipment reasonably necessary for the operation of Fire Station No. 3 to provide Fire Protection Services within the Service Area, including all necessary and appropriate fire trucks and related appurtenances.

“Total Service Area ESFCs” means the sum of all ESFCs in the Service Area, as it may be expanded by the City from time to time.

Section 2. Fire Protection Services.

(a) During the term of this Agreement, the City will provide Fire Protection Services to persons, buildings, and property located within the Service Area, including persons, buildings and property located with the District. The City will provide Fire Protection Services to the District in the same manner and with the same standard of care as it would to those residences and structures in the City limits. The City also agrees to provide to the District the City’s ISO rating as it may vary from time to time.

(b) The parties acknowledge that the City will respond to requests for Fire Protection Services within the corporate limits of the City and that the City has existing contracts and in its sole discretion may enter into additional contracts to provide Fire Protection Services to other entities. For any entities outside the City requesting Fire Protection Services and addition to the Service Area, the City shall require them to execute a fire protection agreement with the City on terms substantially identical to this Agreement. In providing Fire Protection Services to the District, the City will follow its adopted standard operating procedures without being in breach of this Agreement and without liability to the District or its occupants or residents, to determine:

- (1) whether Fire Protection Services are needed in a particular case;
- (2) whether and when personnel or equipment are available to respond to a request for Fire Protection Services;

(3) the order in which to respond to requests for Fire Protection Services; and

(4) the time in which to respond to a request for Fire Protection Services.

(c) The District assumes no responsibility for the reliability, promptness, or response time of the City. The District's sole obligation for provision of Fire Protection Services to areas within its boundaries is to make payments as described in this Agreement.

Section 3. Facilities and Equipment.

(a) As of the date of this Agreement, the City has two (2) existing fire stations. The City currently owns four (4) pumpers (engines that carry the water hoses), one (1) pumper/ladder truck, and one (1) boat for water rescues, and other necessary equipment for the operation of its stations and trucks and expects to purchase additional equipment for Fire Station No. 3. In providing Fire Protection Services to the District, the City shall be solely responsible for the operation and maintenance of its facilities and equipment.

(b) This Agreement shall not obligate the City to keep any fire stations, fire trucks, fire equipment or fire personnel within the District or to designate, reserve, or devote all or part of the City Fire Department's trucks, equipment, or personnel exclusively to or for the use of the District in carrying out this Agreement, but the City will use its best efforts to comply with State standards regarding fire suppression equipment.

(c) The parties acknowledge that in conducting fire suppression efforts on property located in the District, the City will use the fire hydrants, connections, and water supply and distribution systems (collectively the "water distribution system"), and water supply available in the District, but the City shall not be responsible for providing for, constructing, inspecting, maintaining, or repairing any part of the water distribution system in the District and the City shall not be liable to the District or any District occupant or resident for any deficiency or malfunction of the water distribution system located in the District.

(d) The District makes no representations and assumes no responsibility for the type, quality, sufficiency or qualifications of the City's Fire Protection Service equipment used to serve the District.

(e) The District hereby acknowledges that the City has executed or will execute a similar agreement with other entities in the extraterritorial jurisdiction of the City that are within or later included in the Service Area. The failure of one or more of the other entities to comply with their respective agreements shall not void this Agreement. However, the timing of various staffing levels by the City may vary as a result of one or more of the other districts failing to execute a similar agreement or failing to comply.

Section 4. Employees and Staffing. The City shall provide employees who meet or exceed minimum state qualifications to perform Fire Protection Services. The District assumes no responsibility for the actions of the City's employees in performing their fire protection duties. The District will make no recommendations and is in no way

responsible for the sufficiency or qualifications of the City's employees. Fire Station No. 3 shall be staffed consistently with, and not in excess of, other City fire stations.

Section 5. Fire Station Tract for Fire Station No. 3.

(a) The City plans to proceed with the design and construction of Fire Station No. 3 upon entering into new Fire Protection Agreements with the Current Participating Districts. The deadline for the Current Participating District to approve this Agreement and return two copies executed by the Current Participating District is September 4, 2012. The City has awarded a contract for the design and construction of Fire Station No. 3 and plans to take action on authorizing issuance of a notice to proceed for such contract by September 30, 2012, provided however, that if any one of the Current Participating Districts has not delivered to the City a signed Fire Protection Agreement by the deadline, the City may, but shall have no obligation to, proceed with Fire Station No. 3. The Station Equipment/Furnishings are not included in the design/build contract but will be acquired by the City under one or more transactions.

(b) The City has purchased the site for Fire Station No. 3, which tract is described on Exhibit "B." The purchase price for the site included the land, extension of utilities to the site and construction of an entrance road. The District will not bear any portion of the purchase price for the site and these costs.

Section 6. Station Design and Construction

(a) Fire Station No. 3 shall be designed and constructed to generally the standards for similar type fire stations.

(b) The Estimated Station Costs are currently \$2,850,000 with the station building estimated to be \$2,100,000 and the Station Equipment/Furnishings estimated to be \$750,000. The Estimated Station Costs are outlined and described in Exhibit "A". Although it is understood and agreed by the parties that the Estimated Station Costs may require adjustment at the time of design, construction, and/or furnishing of Fire Station No. 3, the current estimated amount of each Participating District's Proportionate Share of the Estimated Station Cost is as follows:

	City	MUD No. 152	MUD No. 155	MUD No. 158	MUD No. 162
Proportionate Share of Estimated Station Costs (as of date of this Agreement)	\$1,339,215.00	\$338,295.00	\$499,890.00	\$286,140.00	\$386,460.00
	(3,462 ESFC) 46.99%	(875 ESFC) 11.87%	(1,293 ESFC) 17.54%	(740 ESFC) 10.04%	(1,000 ESFC) 13.56%

The City and the District understand that during the design phase, the Estimated Costs of the Station may change and that during the construction phase, there may be unanticipated field conditions or regulatory requirements that cause change orders that increase the Station Costs, which in turn, would increase the amount of the District's Proportionate Share of the Estimated Station Costs. However, the parties desire to cap the amount of increase in their costs without their approval. To such end, the parties

agree that they may not be required to pay more than the amounts set out below without their written consent (the "Maximum Participation").

	City	MUD No. 152	MUD No. 155	MUD No. 158	MUD No. 162
	46.99%	11.87%	17.54%	10.04%	13.56%
Costs under the Design/Build Contract for the Station	\$986,790	\$249,270	\$368,340	\$210,840	\$284,760
Proportionate Share plus 5% contingency (Maximum Participation)	\$49,340 \$1,036,130	\$12,464 \$261,734	\$18,417 \$386,757	\$10,542 \$221,382	\$14,238 \$298,998
Costs for Station Equipment/Furnishings	\$352,425	\$89,025	\$131,550	\$75,300	\$101,700
Proportionate Share plus 10% contingency (Maximum Participation")	\$35,243 \$387,668	\$8,903 \$97,928	\$13,155 \$144,705	\$7,530 \$82,830	\$10,170 111,870

(c) The City has or will have funds available for its Proportinate Share of the Station Costs. The District shall pay 20% of its Proportionate Share of the Estimated Station Costs to the City within 60 days of the District's approval of this Agreement, unless other wise agreed between the parties. Any agreement between the parties as to payments shall be signed and attached to this Agreement as **Exhibit "D."**

(d) The City shall place the funds in a separate interest bearing account.

(e) The City shall proceed to have plans and specifications prepared and then the Estimated Station Costs revised, if needed, based on such plans and specifications and to have them delivered to the District for review and comment. The District agrees to deliver its written comments to the City within thirty (30) days of receipt of such information. After receipt and review of comments, the City will revise, if needed, and finalize plans and specifications. After finalization of the plans and specifications, the City will then revise the Estimated Station Costs, if needed, and deliver the new Estimated Station Costs to the District. The District will then pay to the City the remainder of its respective share of the final Estimated Station Costs within thirty (30) days of the District's receipt of the final Estimated Station Costs, taking into consideration the amount the District has already paid to the City for the Estimated Station Costs, unless the City and the District enter into an agreement in substantially the form of **Exhibit "D"** (the "Payment Agreement"). If the District has entered into a Payment Agreement, payments shall be made in accordance with such agreement. The City will then proceed with construction of Fire Station No. 3.

(f) The City will bid or purchase the Station Equipment/Furnishings separately from Fire Station No. 3 in one or more transactions in compliance with all laws applicable to the City. The City will determine the Costs of the Station Equipment/Furnishings through the appropriate procurement procedures (such as competitive bidding, cooperative purchasing programs, etc.) and prior to acquisition, the City will provide the District, for review and comment, a list, description, and the total

costs for the Station Equipment/Furnishings. The District acknowledges that the prices for some or all of the items may be guaranteed for a limited time. Therefore, the District agrees to deliver its written comments to the City within thirty (30) days of receipt of such list. If the Cost of Station Equipment/Furnishings do not exceed the Estimated Costs of Station Equipment/Furnishings, the City shall proceed with acquisition. If Costs of the Station Equipment/Furnishings exceed the Estimated Costs of the Station Equipment/Furnishings but are within the Maximum Participation, the City will give the District (a) notice of its Proportionate Share of the additional amount the District must pay to the City for the Costs of the Station Equipment/Furnishings and (b) the date by which such payment is due, which date shall be not less than thirty (30) days after the date of such notice. The District agrees to pay to the City such additional amount on or before the date such payment is due. If the parties have entered into a Payment Agreement, payments shall be made in accordance with such agreement in lieu of this section.

(g) As soon as possible, but not more than 90 days following the date of acquisition of the Station Equipment/Furnishings, the City shall install the Station Equipment/Furnishings, provide at the City's sole cost City personnel, and begin providing Fire Protection Services from Fire Station No. 3 within the boundaries of the District in accordance with this Agreement.

(h) Within 90 days following the date Fire Station No. 3 begins providing Fire Protection Services to the District, the City will provide each Participating District an accounting of the final actual costs to design, construct, furnish and equip Fire Station No. 3 including a calculation showing the total cost per ESFC (the "Final ESFC Fee"). The City agrees to return to the District any amounts the District paid in excess of the District's Proportionate Share of the actual costs, and the District agrees to pay the City any shortfall, subject to the provisions of this Agreement regarding the Maximum Participation, within forty-five (45) days of receipt of such final accounting.

(i) The City intends to request Fort Bend County (the "County") to provide an EMS Ambulance (the "Ambulance") to be operated by the County from Fire Station No. 3. Upon execution of an agreement with the County, the City will allow the Ambulance, Ambulance personnel, and related equipment to make use of and operate from Fire Station No. 3. Neither the City nor the District shall have any responsibility for the cost or expense to purchase, equip, operate, or maintain the Ambulance.

(j) The Fire Protection Services provided by the City from Fire Station No. 3 will be comparable to those provided by other City fire stations. The City shall own and operate Fire Station No. 3 in accordance with State standards regarding the operation of City-operated fire department and fire suppression equipment. The District shall have no responsibility for the maintenance or operation of such Fire Station, other than the payment of fees pursuant to this Agreement.

(k) If after September 4, 2012, the City desires to enlarge the Service Area to provide fire protection services to additional entities, to enter agreements with additional entities inside the Service Area to provide fire protection services from Fire Station No. 3 or to enter agreements to provide Fire Protection Services outside the Service Area through Fire Station No. 3 and its equipment and personnel, the City will require that such entities either "buy in" to the Station Costs or pay the non-participating rate for services. If the entity elects to buy in, such entity shall pay a buy in charge prior to the receipt of any fire protection services. The buy in charge will be the Final ESFC Fee times the number of ESFC to be served under such entity's agreement plus interest at the rate of 5% (five per cent) per annum, which interest shall accrue from November 1,

2012 to the date of payment of the buy in charge by such entity (the "Buy In Charge"). The Buy In Charge will then be distributed to those entities who were Participating Entities prior to the City's receipt of the Buy In Charge in question (the "Reimbursement"). The amount of the Reimbursement will be calculated as follows: the Buy In Charge times the percentage derived from dividing the ESFC served under the entity's Fire Protection Agreement by the sum of the ESFC for all entities entitled to Reimbursement. To clarify, upon receipt of the first Buy In Charge, the City and the Current Participating Districts will be reimbursed based on the percentages set out in Section 6. Upon the City's receipt of the second Buy In Charge, the entity that paid the first Buy In Charge as well as the City and the Current Participating Districts will be entitled to Reimbursement, but the percentages will be re-calculated. This obligation of the City to impose and collect the Buy In Charge shall continue until the tenth anniversary of the completion of Fire Station No. 3. If the entity elects not to pay the Buy In Charge, such entity shall pay a monthly rate for service that includes a 50% surcharge (the "Non-Contributing Rate") for service.

Section 7. Payment for Fire Protection Services.

(a) In consideration of the City providing Fire Protection Services, the District agrees to make monthly payments ("Monthly Payments") to the City as follows:

(1) Residential Properties. The District shall pay to the City a monthly charge of \$11.00 for each residential unit in the District that is connected to the public water supply system on or before the twentieth (20th) day of the immediately preceding month. A residential unit shall mean any building or part of a building designed for permanent occupancy by one family. (A detached single family residence is one residential unit; a duplex is two residential units; and each living unit in an apartment complex is one residential unit).

(2) Nonresidential Properties. The District shall also pay the City a monthly charge equal to \$11.00 per 2,000 square feet or part thereof of building floor area for every "improved nonresidential property" that is connected to the public water supply system on or before the twentieth (20th) day of the immediately preceding month.. "Improved nonresidential property" means any improved real property, whether or not such property is tax-exempt, on which there is located a building or structure that is not residential property. The square footage used to determine the charge shall be based on the records of the Fort Bend Central Appraisal District.

(3) Effective January 1, 2013, the monthly fee for both residential units and nonresidential units shall be \$17.00. Effective January 1, 2014, the fees shall increase to \$20.00.

(b) Bi-Annual Adjustment. Beginning on January 1, 2014, Monthly Payments will remain effective until changed by the City. The City shall have the right to adjust the Monthly Payments no more frequently than every two years, beginning with the fees to be effective January 1, 2016, based on the City's actual cost of service for the previous fiscal year; provided, however, that no increase will be effective unless and until the City provides 60 days written notice of the new Monthly Payment. If the City decides to increase the Monthly Payment, the City will prepare a cost of service report to determine its actual costs to provide fire protection services for the previous year. The City will then provide the new rates (the "Updated Rates") to the District with notice of

the date such rates will become effective, which date may not be sooner than sixty (60) days after the date the Updated Rates are provided to the District. If the District does not agree to the Updated Rates, the District shall have the right to terminate this Agreement upon thirty (30) days written notice to the City.

(c) Extraordinary Cost Changes and Termination. Notwithstanding any limitation in the preceding section, if any extraordinary event affects the City's costs to provide Fire Protection Services, the City may set a new rate effective upon sixty (60) days' notice to the District. The District shall have the right to terminate this Agreement if the District does not agree with such rate.

(d) All Monthly Payments shall be paid in advance and due on or before the last day of each month. All monthly payments shall be paid by the District to the City without notice for demand at the offices of the City located at 2110 4th Street, Rosenberg, Texas, unless the District is notified otherwise. All or part of any Monthly Payments paid by the District after the last day of the month is delinquent and shall be subject to a one-time late fee equal to ten percent (10%) of the delinquent amount.

Section 8. Fire Plan. The District represents that it has developed a Fire Plan and taken all steps, including holding an election, to have the Fire Plan become effective.

Section 9. Term and Termination. This Agreement will be in full force and effect upon the date first written above. The Agreement will continue in effect for twenty (20) years (the "Initial Term") and shall be automatically renewed thereafter for successive one-year terms. After the end of the Initial Term, either party may terminate this Agreement by giving written notice to the other at least one year prior to the date of termination, subject to the District's right to terminate as otherwise specifically provided in this Agreement.

Section 10. Default. Either party may declare a default hereunder if the other party fails, refuses, or neglects to comply with any of the terms of this Agreement. If a party declares a default of this Agreement, this Agreement shall terminate after notice and opportunity to cure as provided for herein. The party declaring a default shall notify the other party of any default in writing in the manner prescribed herein. The notice shall specify the basis for the declaration of default, and the party shall have thirty days from the receipt of such notice to cure any default, except when curing the default requires activity over a period of time in excess of 30 days, performance shall commence within 30 days after the receipt of notice, and such performance shall be diligently continued until the default is cured.

Section 11. Notice. All notices shall be in writing and given by certified mail with return receipt requested, with receipt as of the date of the signed receipt. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purpose of notice, the addresses of the parties shall, unless changed as hereinafter provided, be as follows:

If to the City: City of Rosenberg
 2110 4th Street
 Rosenberg, Texas 77471-0032
 Attn: City Manager

If to the District: Fort Bend County Municipal Utility District No. 162
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: President, Board of Directors

The parties shall have the right to change their respective addresses and each shall have the right to specify their respective new addresses by at least fifteen days written notice to the other party.

Section 12. No Additional Waiver Implied. No waiver or waivers of any breach or default or any breaches or defaults by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances. The City and the District specifically reserve all defenses, immunities and privileges accorded by law.

Section 13. Modification. This Agreement shall be subject to change or modification only with the written mutual consent of the parties hereto.

Section 14. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section or other part of this contract or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section or other part of this contract to other persons or circumstances shall not be affected thereby.

Section 15. Agreement Not for Benefit of Third Parties. This Agreement is not intended to benefit any party other than the parties to this Agreement or to impose any duty upon the City or the District toward any person or entity not a party hereto.

Section 16. Liability. The City shall not be liable to the District or any other person for its decisions in the manner or method of providing Fire Protection Services under this Agreement. This Agreement is not intended to waive or alter any defense, privilege or immunity the City or the District has under State law for claims arising from the performance of this Agreement, including the failure to provide or the method of providing Fire Protection Services under this Agreement.

Section 17. Superseding Agreement. This Agreement supersedes all prior agreements between the parties regarding the provision of fire protection services.

Section 18. Governing Law. This Agreement shall be governed by the laws of the State of Texas, and no lawsuit shall be prosecuted on this Agreement except in a court in Fort Bend County, Texas.

IN WITNESS WHEREOF, the parties have executed this Agreement in multiple copies, each of which shall be deemed an original as of the date and year first written above.

**FORT BEND COUNTY MUNICIPAL UTILITY
DISTRICT NO. 162**

By: 
Name: Gary Braxton
Title: President, Board of Directors

ATTEST:

By: 
Name: Randee Gremillion
Secretary, Board of Directors

CITY OF ROSENBERG, TEXAS



Vincent M. Morales, Jr., Mayor

ATTEST:



Linda Cernosek, City Secretary

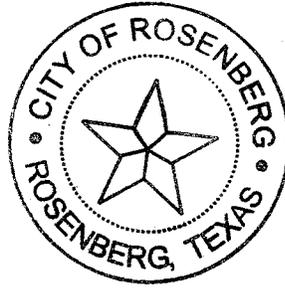
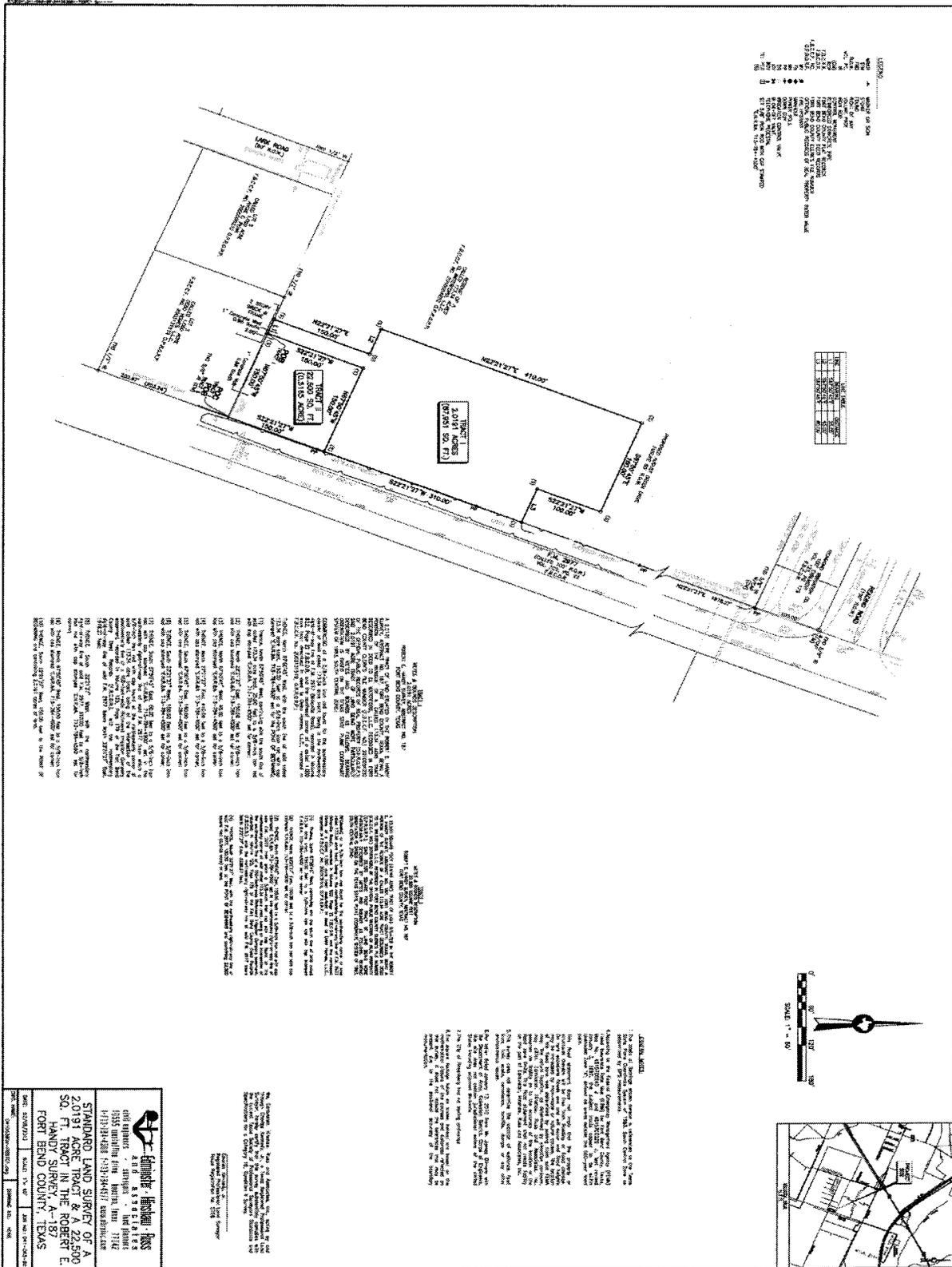


EXHIBIT A

Estimated Station Costs, including the Estimated Cost of Station Equipment/Furnishings

Design/Build Contract	\$2,100,000
Equipment/Furniture	\$200,000
Fire Pumper Truck	<u>\$550,000</u>
Total	\$2,850,000

EXHIBIT B Site for Fire Station No. 3



PAYMENT AGREEMENT (2012)

This Payment Agreement (2012) (the "Agreement") is entered into by and between the City of Rosenberg, Texas (the "City") and Fort Bend County Municipal Utility District No. 162 (the "District"), a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Texas Constitution on the 4th day of September, 2012 (the "Effective Date").

RECITALS

On September 04, 2012, the City and the District entered an Amended and Restated Fire Protection Agreement (2012) (the "FPA") under which the City is to provide the District with fire protection services on the terms described herein.

This Agreement is considered material to the FPA and is included as an exhibit thereto.

AGREEMENT

This Agreement is supported by good and valuable consideration, the receipt and sufficiency of which are acknowledged by both Parties.

1. All capitalized terms not defined herein are used as defined in the FPA.
2. This Agreement shall be effective as of the Effective Date.
3. The City agrees that the District shall pay the amounts due under the FPA on the following schedule

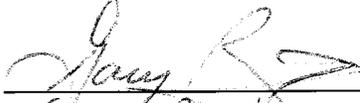
<u>Payment</u>	<u>Due Date</u>
20% Payment due under Section 6(c)	November 1, 2012
Remainder Payment under Section 6(e) is payable in two equal payments :	
First Payment	May 31, 2013
Second Payment	March 1, 2014

All othe payments will be make in accordance with the provision of the FPA.

4. Those payments due after November 1, 2012, shall incur simple interest shall accrue beginning on January 1, 2013, at a rate of interest at 3% per annum, calculated on twelve (12) months of thirty (30) days each to the date of payment. There will be no penalty for prepayment. Payments may be made by check or wire transfer.

IN WITNESS WHEREOF, the parties have executed this Payment Agreement (2012) in multiple copies, each of which shall be deemed an original as of the date and year first written above, to be effective as of the date specified above.

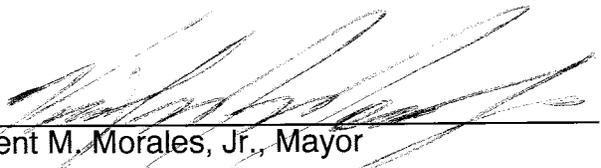
**FORT BEND COUNTY MUNICIPAL UTILITY
DISTRICT NO. 162**

By: 
Name: Gary Braxton
Title: President, Board of Directors

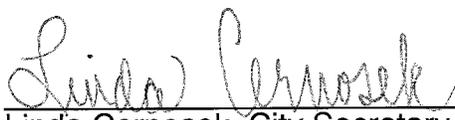
ATTEST:

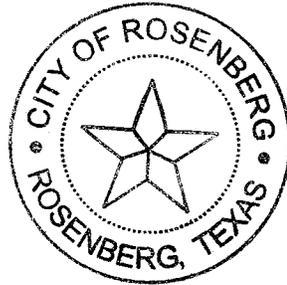
By: 
Name: Kandice Gremillion
Secretary, Board of Directors

CITY OF ROSENBERG, TEXAS


Vincent M. Morales, Jr., Mayor

ATTEST:


Linda Cernosek, City Secretary



RESOLUTION NO. R-1701

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, EXTENDING A COMPLIANCE DEADLINE OF SEPTEMBER 30, 2013, TO SEPTEMBER 30, 2016, FOR THE PROVISION OF SERVICES BY THE ROSENBERG FIRE DEPARTMENT TO CERTAIN AREAS WITHIN THE CITY'S EXTRATERRITORIAL JURISDICTION AND/OR UNINCORPORATED AREAS OF FORT BEND COUNTY.

* * * * *

WHEREAS, the City of Rosenberg (City) provides Fire and First Responder Services to certain unincorporated areas in Fort Bend County; and,

WHEREAS, the City does receive funding from Fort Bend County for said services, but the funding level does not cover the actual costs for said services; and,

WHEREAS, the Rosenberg City taxpayers subsidize the deficit with their City property taxes and other revenues; and,

WHEREAS, the expanded Fire Services Area does increase the demands on the resources of the Rosenberg Fire Department which does reduce the availability of resources to respond to calls within the Rosenberg Corporate Limits; and,

WHEREAS, the City has established a deadline of September 30, 2013, to discontinue the provision of Fire Services to said areas; and,

WHEREAS, certain areas within the expanded Fire Services Area have been unable to secure fire protection services; and,

WHEREAS, the Fort Bend County Fire Marshal's Office has requested an extension of said deadline to allow for the establishment of an Emergency Services District (ESD) to provide Fire and First Responder Services to said areas; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. City Council has determined that the Rosenberg Fire Department shall not continue Fire Services and First Responder Services to unincorporated areas unless such areas provide for the equitable share of actual costs by executed Agreement or other binding legal commitment.

Section 2. The Rosenberg Fire Department shall extend the termination date for Fire and First Responder services to unincorporated areas to September 30, 2016.

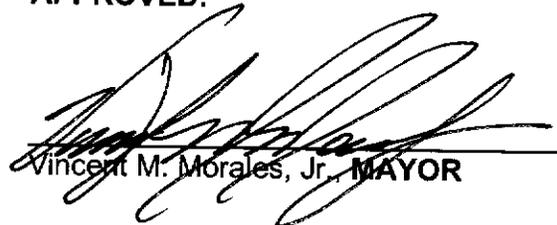
Section 3. The Interim City Manager shall notify Fort Bend County, other entities, and property owners that will be impacted of the deadline extension for the termination of Fire Services and First Responder Services by the Rosenberg Fire Department.

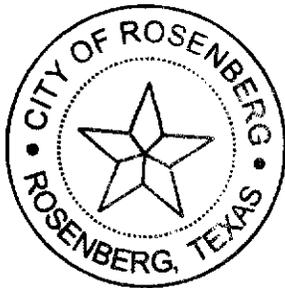
PASSED, APPROVED, AND RESOLVED this 17th day of September 2013.

ATTEST:


Linda Cernosek, CITY SECRETARY

APPROVED:


Vincent M. Morales, Jr., MAYOR



roof then it would come back to Council after the assessment. Matt Fielder will make Council aware of the findings and then Council will determine whether we go with that master plan that was presented and again Council would have to approve that.

- Councilor Bolf asked how long it will take to make that determination.
- Matt Fielder stated two to three weeks for the demolition, and then we bid the roof out and then come back with the roof. We want to check the structure before doing the roof. We will be able to come back and present Council with accurate numbers. Environmental remediation will be done and the true numbers will be available to make a decision to move forward or not.
- Councilor Bolf agreed that we need to finish some of the projects that have been started and finish all we can before we look at adding any projects.

Upon voting the motion carried by a unanimous vote of those present.

6. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1694, A RESOLUTION APPROVING THE FY2015-FY2018 CAPITAL IMPROVEMENT PLAN.**

Executive Summary: Based on City Council priorities, the deadline for compliance with the Fort Bend Subsidence District mandate, the availability of Fort Bend County Mobility Funds and other factors, staff has prepared a proposed schedule for Capital Projects in FY2015, FY2016, FY2017 and FY2018.

Staff recommends approval of Resolution No. R-1694.

Key discussion points:

- Joyce Vasut gave an overview of the item regarding Resolution No. R-1694.
- All of these projects come from the original list of items that Council voted on. If it was one the list Council voted on for three different projects staff put it somewhere on this five year plan.

Action: Councilor McConathy made a motion, seconded by Councilor Euton to approve Resolution No. R-1694, a Resolution approving the FY2015-FY2018 Capital Improvement Plan.

Questions/Comments:

- Councilor Euton asked for clarification that this does not obligate us to do these things in this order. This is a vision of what is to come.
- Joyce Vasut stated that is correct. With the County Mobility Bond Election, our upcoming bond election, and with the alternative water project there will be a lot of changes the next four years. We are also planning within the staff's strategic planning within our departments.
- Councilor Euton asked where Zone 8 Park Development is located.
- Matt Fielder stated Zone 8 Park is the regional detention facility off of Rohan Road.
- Councilor Benton asked if the Civic Center is anywhere on the list.
- Joyce Vasut stated it is on FY2018 and is a long way away. It was a project that was on the original ranking sheets.

Upon voting the motion carried by a unanimous vote.

7. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1701, A RESOLUTION EXTENDING A COMPLIANCE DEADLINE OF SEPTEMBER 30, 2013, TO SEPTEMBER 30, 2016, FOR THE PROVISION OF SERVICES BY THE ROSENBERG FIRE DEPARTMENT TO CERTAIN AREAS WITHIN THE CITY'S EXTRATERRITORIAL JURISDICTION AND/OR UNINCORPORATED AREAS OF FORT BEND COUNTY.**

Executive Summary: City Council has previously passed Resolution No. R-1307 which established a date of September 30, 2013, as a deadline for discontinuing fire service to certain areas within the City's Extraterritorial Jurisdiction (ETJ) and/or unincorporated areas of Fort Bend County. The new Fort Bend County Fire Marshal has requested an extension of the deadline to allow his office to develop a service plan for certain areas within the City's ETJ and/or unincorporated areas of Fort Bend County. A deadline extension to September 30, 2016, would allow staff to work with the County Fire Marshal's Office to develop a service plan for the areas that are affected by the deadline.

Staff recommends approval of Resolution No. R-1701.

Key discussion points:

- Wade Goates, Fire Chief gave an overview of the item regarding Resolution No. R-1701.
- In May 2011 Council passed a resolution to end fire services in unincorporated areas of the ETJ effective September 30, 2013. Since that time two things have happened. One was a measure that was put before the voters and was not successful with an ESD to the south of Rosenberg in some area that we cover. The other item is that Fort Bend County hired a new fire marshal that has been on the job about five months. During our discussions, we have determined that that area, since the ESD did not pass, does not have a current service plan. If we move forward with ending the fire protection service to that area we have no idea who will provide that protection. The request was made that we extend the deadline to September 30, 2016. That will give staff time to work with the County Fire Marshal and try to develop a fire service plan for the areas.

Action: Councilor McConathy made a motion, seconded by Councilor Benton to approve Resolution No. R-1701, a Resolution extending a compliance deadline of September 30, 2013, to September 30, 2016, for the provision of services by the Rosenberg Fire Department to certain areas within the City's Extraterritorial Jurisdiction and/or unincorporated areas of Fort Bend County.

Questions/Comments:

- Councilor McConathy referenced the Resolution and in part of that Resolution in Section 1 it says "that the City Council has determined that the Rosenberg Fire Department shall not continue fire services and first responders services to unincorporated areas unless such areas provide for the equitable share of actual cost by executing agreement or other binding legal commitment". How does delaying the cutoff change anything for folks in the ETJ that want fire service?
- Wade Goates stated he understands that three more years is to help the ETJ identify a source of funding if they choose to request our services at that time. There are a number of options they could go with for fire protection. Currently the problem is that that plan has not been addressed. South Rosenberg proposed ESD #6 and the measure failed but it was supported in our ETJ. The plan will probably come back through the County Fire Marshal's office and us.
- Lora Lenzsch, City Attorney clarified that wording was from the original resolution.
- Councilor McConathy stated out of concern for anyone that would call the County for service the County will reimburse the City or whoever performs that service. We will be covered in terms of funding for this resolution to be correct.
- Wade Goates stated yes. If we decide to extend the deadline, the County will provide us with an interlocal agreement that would determine reimbursement cost factor. That will be brought to Council.
- Councilor Benton asked to visit this historically. This led to annexation and a lot of hard feelings. Originally we discontinued service to these areas because of our cost. We told them in order to continue service we will need to annex the area.
- Wade Goates stated the discontinuation of service would not take place until September 30, 2013. When the resolution was enacted there were instructions to the City Manager's Office to provide notification and come up with other means so they could have fire service provided to them.
- Lora Lenzsch reiterated that the service was never discontinued.
- Councilor Benton stated they were told it was very costly to service these areas and we needed agreements. We either needed to annex them to provide that service or cancel them.
- Wade Goates stated there were several options. Creating an ESD, annexation in some areas that would not cause a difficulty for service, and seeking protection from another fire department. We had a section north of Rosenberg outside our ETJ we were responding to that has since been annexed into ESD #4.
- Councilor Benton asked if anyone asked the County for more supplement. Was that addressed?
- Wade Goates stated it was directed to the County Fire Marshal but he is not the decision maker for that. The Commissioner's Court is the final decision maker. Over the last decade they have been approached about funding and there have been some changes to it. One thing that remained in place was the interlocal agreement and how entities and fire departments were reimbursed.
- Councilor Benton asked if the Shady Oaks subdivision will be part of this.
- Wade Goates stated yes, we service them now and if Council decides to extend that measure we will continue to service them until another means comes into place.

- Councilor Benton asked if we will ask for more compensation in negotiations.
- Wade Goates stated we have to look at the interlocal agreement. The County Fire Marshal's budget has already been set so what is outlined in the first interlocal agreement is determined by that. The years after that could be discussed. The Fire Marshal answers to Commissioner's Court and it is up to them.
- Councilor Benton asked what compensation have we received for the last year.
- Wade Goates stated \$117,791.28.
- Councilor Benton stated that would go away if we did not renew this.
- Wade Goates stated simply yes. He has not discussed it with the Fire Marshal if we chose not to continue service. There is at least one year of back payment because of the formula used for reimbursement. History shows it has increased but it is based on the call volume we run in the County. Under the old interlocal agreement it was based on a different formula.
- Councilor Benton asked if it is a fair statement to say something that may have not seemed so attractive a year or so ago is now not so bad.
- Wade Goates stated on the tract we are on today and you broke it down using the Fire Department's budget we run about ten percent (10%) of our calls into the County. The cost using that method would run over \$300,000. We are still running about one-third of reimbursement as to projected cost.
- Councilor Euton stated she was on Council when those discussions took place and we did ask for more reimbursement. Commissioner's Court denied it. How will this affect the MUD agreements we already have?
- Wade Goates stated those were in affect before Council decided on the first resolution. That would have to be evaluated if they came to us and had any issue with us continuing on. Our service to the MUD was an independent contract well before the City had an idea of ceasing operations in the County due to cost.
- Councilor Euton asked if we decided not to do this would it go to Needville or Beasley.
- Wade Goates stated in speaking with the County Fire Marshal we don't know who it would go to. Communication would have to take place through his office.
- Councilor Pena stated he was at the last Mayor/Council Meeting at Weston Lakes. It was good to listen and he encouraged all of Council to listen to the dedication the fire department and staff have. The Commissioner, County Judge and all Mayors were present and we applaud them for what they do. The question was asked why we don't have more paramedics and ambulances. Paramedics burn out in about five to eight years. They are fire professionals and are very dedicated. We need to applaud these people and assist in any way we can. He promised his support to them in any way he can.
- Councilor Bolf referenced the ETJ and the annexed areas and asked if this is not continued does that affect the annexed areas.
- Wade Goates stated they are in the City limits. This applies to outside the City limits. If the measure was supported for an ESD again in different areas that involved our ETJ Council would have to give approval for the territory to be in the ESD.

Upon voting the motion carried by a unanimous vote of those present.

8. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1696, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE, FOR AND ON BEHALF OF THE CITY, A SECOND SUPPLEMENT TO AGREEMENTS REGARDING TERMINATION DATES OF SERVICE AGREEMENTS AND REBATES UNDER UTILITY CONTRACT, BY AND BETWEEN THE CITY AND FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 94.**

Executive Summary: In 1986, the City executed Agreements with Fort Bend County Municipal Utility District No. 94 (MUD No. 94) for water and sanitary sewer services. These Agreements contain provisions, among others, for capacities within the Southeast Trunk Sewer, the wastewater treatment plants, and the water production system and have been modified over time. The Agreements are available for review in the City Secretary's Office.

On June 17, 2008, City Council approved the Supplement to Agreements (Supplement), which clarified some of the ambiguities associated with the language in the previous Agreements and ratifies actions already taken by the City and MUD No. 94. The Supplement also clarified the number of Equivalent Single Family Connections (ESFC) and stated that should the City adopt Wastewater Impact Fees affecting MUD No. 94, that MUD No. 94 would be required to pay those fees instead of the fees established in the original Agreements for any connections requested after the adoption of the impact fees.



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
4	Resolution No. R- 1753 - Budget Amendment 14-07

ITEM/MOTION

Consideration of and action on Resolution No. R-1753, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 14-07 in the amount of \$11,469.15, for the annual Summer Park Owner's Association Assessment Fees.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds:

See attached

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1753
2. City Council Meeting Draft Minute Excerpt – 02-04-14

MUD #: N/A

APPROVALS

Submitted by:

Joyce Vasut
Executive Director of
Administrative Services

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

Budget Amendment 14-07, in the amount of \$11,469.15, is presented to allocate funding for the annual Summer Park Property Owner's Association Assessment Fees. The Summer Park Property Owner's Association Fees are fees assessed to the Fire Station No. 3 tract. The total amount of the annual assessment on this tract is \$11,469.15 (\$11,045.20 for the Land Area Assessment and \$423.95 for the Tract Use Assessment).

City Council discussed this item at the February 04, 2014, City Council Meeting and requested staff to prepare a budget adjustment as presented.

Budget Amendment 14-07 is included as Exhibit "A" to Resolution No. R-1753 to fund the annual Summer Park Property Owner's Association Assessment Fees for Fiscal Year 2014.

RESOLUTION NO. R-1753

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, BUDGET AMENDMENT 14-07 IN THE AMOUNT OF \$11,469.15, FOR THE ANNUAL SUMMER PARK PROPERTY OWNER'S ASSOCIATION ASSESSMENT FEES.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The City Council hereby authorizes Budget Amendment 14-07 (Amendment), in the amount of \$11,469.15, for the annual Summer Park Property Owner's Association Assessment Fees. A copy of such Amendment is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this ____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

**CITY OF ROSENBERG, TEXAS
REQUEST FOR BUDGET AMENDMENT**

NUMBER: 14-07

Fund 230

Departments: Fire Station No. 3 Operating Fund

Fiscal Year: 2013-14

Item [] was [X] was not included in the Department's original budget request.

Type of expenditure: () Recurring (X) Nonrecurring

Type of adjustment: () line-item transfer [] department transfer
(X) request for additional funds [] accounting correction

The budget amendment requested will require the following revisions:

<u>FUND BALANCE/RETAINED EARNINGS ACCOUNT(S):</u> <u>ACCOUNT NUMBER</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ORIGINAL BUDGET (1)</u>	<u>REQUESTED TRANSFER</u>	<u>AMENDED BUDGET</u>
230-0000-350-0000	Fund Balance	\$ 464,705.65	\$ (11,469.15)	\$ 453,236.50
	TOTAL	\$ 464,705.65	\$ (11,469.15)	\$ 453,236.50

<u>REVENUE ACCOUNT(S):</u> <u>ACCOUNT NUMBER</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ORIGINAL BUDGET (1)</u>	<u>REQUESTED TRANSFER</u>	<u>AMENDED BUDGET</u>
				\$ -
	TOTAL	\$ -	\$ -	\$ -

<u>EXPENSE ACCOUNT(S):</u> <u>ACCOUNT NUMBER</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ORIGINAL BUDGET (1)</u>	<u>REQUESTED TRANSFER</u>	<u>AMENDED BUDGET</u>
230-3100-520-4370	Association Assessment Fee	\$ -	\$ 11,469.15	\$ 11,469.15
				\$ -
				\$ -
				\$ -
	TOTAL	\$ -	\$ 11,469.15	\$ 11,469.15

(1) INCLUDES PREVIOUSLY APPROVED AMENDMENTS

Reason for Amendment: Please explain the reason(s) the amendment is requested.

This budget adjustment provides funding for the annual Summer Park Property Owner's Association Assessment Fees. These assessment fees are for the Fire Station No. 3 tract.

Gaye Jasut

Director of Finance 02/10/2014
Date

City Manager _____ Date

Mayor/City Council _____ Date

ACCOUNTING USE ONLY: DATE POSTED: _____ POSTED BY: _____

**CITY OF ROSENBERG
REGULAR COUNCIL MEETING MINUTES
DRAFT**

On this the 4th day of February, 2014, the City Council of the City of Rosenberg, Fort Bend County, Texas, met in a Regular Session, in the Rosenberg City Hall Council Chamber, located at 2110 Fourth Street, Rosenberg, Texas.

10. **REVIEW AND DISCUSS SUMMER PARK PROPERTY OWNERS' ASSOCIATION ASSESSMENT FEES, AND TAKE ACTION AS NECESSARY.**

Executive Summary: This Agenda item has been included to allow City Council to take action following Executive Session if deemed necessary.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to place a budget item on the next Council Agenda regarding Summer Park Property Owners' Association Assessment Fees. The motion carried by a unanimous vote.



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
5	Resolution No. R- 1754 – Financial Management Policies

ITEM/MOTION

Consideration of and action on Resolution No. R-1754, a Resolution regarding the Financial Management Policies of the City of Rosenberg.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1754
2. Financial Management Policies - Redlined
3. Finance/Audit Committee Meeting Draft Minute Excerpt – 01-29-14

MUD #: N/A

APPROVALS

Submitted by:

Joyce Vasut
Executive Director of
Administrative Services

Reviewed by:

- Exec. Director of Administrative Services
- Asst. City Manager for Public Services
- City Attorney
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

The City's existing Financial Management Goals and Objectives were approved by City Council in 2002. The goals and objectives state that they should be reviewed annually by the Finance/Audit Committee and any proposed changes shall be approved by City Council. Attached you will find a redlined copy of the original Financial Management Goals and Objectives as approved by the City Council in 2002.

The Finance/Audit Committee reviewed the revised policies on January 29, 2014, and recommended a few additional changes. These changes are included in the redlined copy of the policies.

Resolution No. R-1754 was prepared for City Council to consider and formally adopt the amended policies. The Finance/Audit Committee and City staff both recommend approval of Resolution No. R-1754, thereby adopting the proposed changes to the Financial Management Policies.

RESOLUTION NO. R-1754

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, REGARDING THE FINANCIAL MANAGEMENT POLICIES OF THE CITY OF ROSENBERG.

* * * * *

WHEREAS, The City of Rosenberg adopted the Financial Management Goals and Objectives (Financial Management Policies) in 2002; and,

WHEREAS, Item 1.5 states that these Financial Management Policies shall remain in effect until amended by the City Council and shall be reviewed at least annually by the Finance/Audit Committee; and,

WHEREAS, staff and the Finance/Audit Committee have suggested certain revisions to said Financial Management Policies; and,

WHEREAS, on January 29, 2014, the Finance/Audit Committee reviewed said revisions to the Financial Management Policies and recommended approval of the proposed changes; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The City of Rosenberg, Texas, deems it necessary and proper and in accordance with the City's Financial Management Policies to review said policies on an annual basis.

Section 2. That the City is hereby approving and accepting the Financial Management Policies of the City of Rosenberg with the proposed revisions. A copy of such Financial Management Policies are attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED on this _____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

CITY OF ROSENBERG

FINANCIAL MANAGEMENT POLICIES

Section 1. General Guidelines.

- 1.1 The City will establish and maintain a high standard of accounting practices. The City's accounting system shall conform to generally accepted governmental accounting principles (GAAP), as prescribed by the Governmental Accounting Standards Board (GASB) for governmental entities.
- 1.2 The City will prepare and maintain in a current status written procedures relating to each financial management area.
- 1.3 The Mayor/City Council shall appoint an Audit/Finance Committee whose members shall serve terms of one (1) year. The Committee will be responsible for recommending a certified public accounting firm, as well as monitoring the independent audit process and making suggestions regarding internal controls within the City. Members of the Committee shall be comprised of three members of the City Council. Committee staff members will be the City Manager, Finance Director, , and Budget Analyst.
- 1.4 Every three to five years, the City will issue a request for proposal to choose an auditor for a period of three years, with an optional one-time two-year extension.
- 1.5 These financial management guidelines shall remain in effect until amended by the City Council. In addition, these guidelines shall be reviewed at least annually by the Audit/Finance Committee.

Section 2. Operating Budgets.

- 2.1 Annual estimates of revenue in both the general fund and enterprise funds shall be based on historical trends and a reasonable expectation of growth. A conservative approach shall be observed in estimating revenues, so that revenue estimates will not be overstated.
- 2.2 The adoption of a balanced budget, where current resources (current revenues plus fund balances or reserves) shall be required. Current resources will equal or exceed current expenditures for each individual fund.
- 2.3 Fund balances or reserves of operating funds at the end of each fiscal year shall be at least twenty percent (20%) of the fund operating expenditures (excluding non-recurring expenditures), or seventy-two days (72) of total fund operating expenditures for the same fiscal year.
- 2.4 The City should endeavor to maintain a diversified and stable revenue base in order to prevent overall revenue shortfalls as a result of periodic fluctuations in any one revenue source. Each existing and potential revenue source will be re-examined annually.
- 2.5 The City shall use non-recurring resources (one-time revenues), including reserves and fund balances, to fund non-recurring (one-time) expenditures. Recurring (on-going) revenues shall be used to fund recurring (on-going) expenditures.

CITY OF ROSENBERG

FINANCIAL MANAGEMENT POLICIES

- 2.6 User charges, rates and fees shall be established at a level related to the cost of providing the services. These charges, rates and fees shall be reviewed annually in order to determine the appropriate level of funding anticipated to support the various related activities.
- 2.7 Rates for water and sewer enterprise activities shall be fixed and maintained at levels sufficient to ensure that annual revenues will be available to pay all direct and indirect costs of the enterprise activity, including costs of operation, capital improvements, maintenance, principal and interest requirements on outstanding debt, and interest and sinking fund and reserve fund requirements.
- 2.8 Net earnings of the enterprise funds for any fiscal period shall be at least 1.25 times the average annual principal and interest requirements of outstanding debt. Net earnings shall be defined to include non-operating revenues available for debt service, excluding depreciation and transfers to other funds.
- 2.9 Budgets of operating funds shall provide for costs of fully maintaining all City facilities.
- 2.10 The City shall follow a policy of aggressively pursuing the collection of current and delinquent ad valorem taxes, and shall strive to maintain a current ad valorem tax collection rate equal to or exceeding 95 percent (95%) of the current levy.
- 2.11 Sound appraisal procedures and practices will be monitored by the City in order to keep property values current. The City will annually review the various levels of property tax exemptions and abatements which may be optionally granted by the City.
- 2.12 Transfers from enterprise activities to the general fund for administrative services, in-lieu-of tax payments, and dividends shall not exceed the estimated costs incurred by the general fund in providing such services. The basis for each transfer shall be fully explained each year in the proposed budget.
- 2.13 A contingency budget, to be used in the case of unforeseen items of expenditures, shall be established in accordance with Section 9.14 of the Rosenberg City Charter. Provision shall be made in the annual budget and in the appropriation ordinances for a contingency appropriation of not more than three (3) percent of total General fund operating expenditures. Expenditures from this contingency appropriation shall be made only in case of established emergencies, as authorized by the City Council.
- 2.14 A proposed budget for all funds shall be submitted by the City Manager between sixty (60) and ninety (90) days prior to the beginning of the ensuing fiscal year. The proposed budget shall be filed in the Office of the City Secretary, and be available for review and inspection by interested citizens during normal business hours.
- 2.15 Annual fixed-dollar budgets are adopted for all funds except for capital project and trust funds for the period beginning October 1 and ending September 30 of the following year. Project-based budgets for capital projects are adopted on a project basis, and not on a fiscal year basis.
- 2.16 All budget appropriations (except for capital projects) lapse at year-end (September 30). Any encumbered appropriations at year-end may be re-appropriated by the City Manager in the ensuing fiscal year. Such re-appropriations shall be subsequently reported to City Council.

CITY OF ROSENBERG

FINANCIAL MANAGEMENT POLICIES

- 2.17 All budgets shall be adopted on a basis of accounting consistent with GAAP, as applied to governmental entities, with the exception of Enterprise and Internal Service funds. Revenues are budgeted when they become measurable and available. Expenditures are charged against the budget when they become measurable, or when a liability has been incurred and the liability is expected to be liquidated with available current resources. Outstanding encumbrances at year-end are re-appropriated in the budgets of the ensuing fiscal year. For Enterprise and Internal Service funds, depreciation is not budgeted, and capital improvements and debt service principal payments are budgeted as expenditures/expenses.
- 2.18 The budget shall be adopted at the legal level of control which is the department within the individual fund. Expenditures may not exceed the legal level of control at the department level within an individual fund without the approval of the City Council. The City Manager is authorized to transfer appropriations within a department in an individual fund in accordance with these policy guidelines. Except in emergency situations, and only upon prior approval by the City Council, no department shall exceed appropriations.
- 2.19 Authority to transfer appropriations within a department. The City Manager may approve transfers of unencumbered appropriations between general classifications of expenditures within a department, provided the transfer amounts do not result in a net increase in total appropriations, and further provided that no amounts shall be transferred from or to any capital outlay line-item accounts. All transfers within a department shall be reported to the City Council at the next regularly scheduled City Council meeting.
- 2.20 Authority to transfer appropriations between a fund/department. Transfer of unencumbered appropriations in general classifications of expenditures between funds or departments shall be approved only by the City Council. The City Council shall also approve any budget modification(s) resulting in a net increase in appropriations, or any proposed use of contingency funds.
- 2.21 The City will strive to receive and retain the Distinguished Budget Presentation Award presented annually by the Government Finance Officers Association (GFOA).
- 2.22 Budgets of Enterprise and Internal Service funds shall be self-supporting, i.e., current revenues (including retained earnings) will equal or exceed current expenditures (excluding depreciation).
- 2.23 Contingency reserves should be maintained at a level sufficient to provide for unanticipated expenditures of a non-recurring nature.
- 2.24 Budgets of Enterprise and Internal Service funds are prepared on a working capital basis, whereby depreciation expenses are not budgeted and capital outlay and debt service principal payments are budgeted as expenses.
- 2.25 Budgets shall integrate performance measures, goals and objectives, service levels and productivity measures where appropriate, and provide a means of measuring and monitoring performance, goals and productivity.

CITY OF ROSENBERG

FINANCIAL MANAGEMENT POLICIES

- 2.26 The proposed budget should disclose both a "current services level" and an "expanded services level" separately. Current services level is that level of funding necessary to provide the same level of services for the upcoming fiscal year that is currently being provided. Expanded services level includes funding requests associated with new or expanded service(s), additional personnel or new capital.

Section 3. Capital Improvements.

- 3.1 The City will develop and maintain a five-year plan for capital improvements. This plan shall be reviewed at least annually by the City Council. Capital improvements for planning purposes shall be considered all land, land improvements, building projects, infrastructure (i.e., streets, water and wastewater improvements) and equipment exceeding \$100,000 in cost.
- 3.2 All capital improvements should be made in accordance with the five-year plan as adopted by or presented to the City Council.
- 3.3 The City Council shall adopt an annual capital budget based on the approved five-year capital improvement plan. This capital budget shall identify the sources of funding for each capital project authorized for the ensuing fiscal year. Assessments and pro-rata charges may be applied where applicable to fund capital projects.
- 3.4 The City's capital improvement program shall be coordinated with the operating budgets. Operating costs associated with each capital improvement project will be identified in the capital budget and included in the appropriate operating budget if the project is authorized.
- 3.5 A capital project status report shall be prepared for the City Council each quarter.
- 3.6 Interest earnings on bond proceeds shall be credited to the appropriate capital project fund.

Section 4. Debt Management.

- 4.1 Long-term debt shall not be incurred to finance current operations. Long-term debt shall be defined as debt requiring more than five years to retire. Short-term or interim debt shall be defined as debt requiring five (5) years or less to retire, and may be used to fund purchases of machinery, equipment (including office equipment) and vehicles.
- 4.2 When any debt is issued to finance capital improvements, the City shall retire the debt within a period not to exceed the expected useful life of the projects or improvements being financed.
- 4.3 The average maturity of each general obligation bond issue shall not exceed twenty (20) years.
- 4.4 Total debt service requirements (principal and interest) in any fiscal year should generally not exceed twenty-five (25) percent of total expenditures/expenses.

CITY OF ROSENBERG

FINANCIAL MANAGEMENT POLICIES

- 4.5 Total direct debt shall not exceed ten (10) percent of the assessed value of taxable property.
- 4.6 The City shall maintain good communications with the major bond rating agencies concerning the City's financial condition, and shall follow a policy of full disclosure in every financial report and official bond statement. The City will maintain sound fiscal management practices to maintain and improve current bond ratings.
- 4.7 Interest and sinking fund and/or debt reserve balances shall be maintained at the minimum of the following: (a) equal to fifty (50) percent of the ensuing year's principal and interest requirements; or, (b) in accordance with the City's most restrictive bond ordinances and/or covenants.

Section 5. Financial Reporting.

- 5.1 The City will strive to receive and retain the Certificate of Achievement for Excellence in Financial Reporting awarded annually by the Government Finance Officers Association of the United States and Canada (GFOA).
- 5.2 An annual independent financial audit shall be performed by a properly licensed independent public accounting firm, and results of this audit will be presented to the City Council by March 31 of the following year in the form of a Comprehensive Annual Financial Report (CAFR), in accordance with GAAP and governmental accounting, auditing and financial reporting (GAAFR) requirements.
- 5.3 Timely interim financial reports will be produced for department managers for internal purposes. Departmental reports comparing budget to actual amounts shall be prepared by the Finance Department in a timely manner.
- 5.4 Financial statements shall be prepared on a monthly basis and made available to the City Council in a condensed format. Financial statements shall be prepared and presented to the City Council as a formal agenda item on a quarterly basis.

Section 6. Purchasing.

- 6.1 The Finance Director shall be responsible for maintaining written purchasing policies and procedures in accordance with State statutes, City ordinances and these policies.
- 6.2 Generally, purchases are authorized as follows:
 - 6.2.1 The Finance Director and the Department Head may approve purchases for \$5,000 or less.
 - 6.2.2 Purchases exceeding \$5,000 but less than \$50,000 will require detailed purchasing specifications, and must be approved by the Department Head, the Finance Director and the City Manager.
 - 6.2.3 Purchases exceeding \$50,000 will be subject to competitive bidding requirements and may be approved only by the City Council. Formal competitive bids shall be required for all purchases in excess of those limits

CITY OF ROSENBERG

FINANCIAL MANAGEMENT POLICIES

established by State statutes. Purchases below State statute limitations may be approved by the Department Head and Finance Director, and/or the City Manager in accordance with City statutes and written purchasing policies and procedures.

- 6.3 Lease purchase agreements shall only be used to finance capital items with a purchase price exceeding \$25,000 and a useful life of at least three years. All lease purchase agreements in excess of limits established by State statutes will be awarded by City Council.
- 6.4 All City purchases should be made locally, to the extent possible.
- 6.5 The City will enter into interlocal agreements, whenever practical, with entities such as the State of Texas, Houston-Galveston Area Council of Governments, or Fort Bend County in order to take advantage of purchasing contracts with favorable pricing arrangements.

Section 7. Cash and Investments.

- 7.1 The Finance Director shall be responsible for maintaining written policies and procedures for all areas of cash and investments, in accordance with State statutes, City ordinances and these policies.
- 7.2 The City will enter into a depository agreement with one or more banks for a specified period of time and specified fees for banking services. The term of each depository agreement shall not exceed five (5) years unless otherwise approved by the City Council.
- 7.3 Collection, deposit and disbursement of all funds will be scheduled to ensure maximum cash availability and investment earnings.
- 7.4 The City will obtain the best possible return on cash investments consistent with State laws and the City's investment policy.
- 7.5 The City will utilize the consolidated (pooled) cash method of accounting for cash, whereby multiple accounting funds are accounted for in one consolidated (pooled) cash bank account. Consolidated or pooled cash will enhance the City's ability to effectively manage the City's investment portfolio, through controlled receipts and disbursements functions.

Section 8. General Accounting Guidelines.

- 8.1 The City Manager is authorized to write off utility accounts less than \$1,000 which have been delinquent for more than 120 days. These accounts will be aggressively pursued for collection by any lawful and available means. Accounts which are in bankruptcy status, involving a claim of \$1,000 or less, which requires the City to make an election to the bankruptcy court, will be referred to the City Manager, with a recommendation by the City Attorney. The City Manager shall report all utility write-offs to City Council at the next regularly scheduled City Council Meeting. All accounts involving amounts greater than \$1,000 shall be referred directly to City Council for write off, or further recommended action.

CITY OF ROSENBERG, TEXAS
2013-14 BUDGET

FINANCIAL MANAGEMENT ~~GOALS AND OBJECTIVES~~ POLICIES

~~In addition to the previous provisions contained in the City's Charter, the City Council adopted the following "Financial Management Goals and Objectives" in November, 2002.~~

Section 1. General Guidelines.

- 1.1 The City will establish and maintain a high standard of accounting practices. The City's accounting system shall conform to generally accepted governmental accounting principles (GAAP), as prescribed by the Governmental Accounting Standards Board (GASB) for governmental entities.
- 1.2 The City will prepare and maintain in a current status written procedures relating to each financial management area.
- 1.3 The Mayor/City Council shall appoint an Audit/Finance Committee whose members shall serve terms of one (1) year. The Committee will be responsible for recommending a certified public accounting firm, as well as monitoring the independent audit process and making suggestions regarding internal controls within the City. Members of the Committee shall be comprised of three members of the City Council. Committee staff members will be the City Manager, Finance Director, ~~Assistant Finance Director~~, and Budget Analyst.
- 1.4 Every three to five years, the City will issue a request for proposal to choose an auditor for a period of three years, with an optional one-time two-year extension.~~option.~~
- 1.5 These financial management guidelines shall remain in effect until amended by the City Council. In addition, these guidelines shall be reviewed at least annually by the Audit/Finance Committee.

Section 2. Operating Budgets.

- 2.1 Annual estimates of revenue in both the general fund and enterprise funds shall be based on historical trends and a reasonable expectation of growth. A conservative approach shall be observed in estimating revenues, so that revenue estimates will not be overstated.
- 2.2 The adoption of a balanced budget, where current resources (current revenues plus fund balances or reserves) shall be required. Current resources will equal or exceed current expenditures for each individual fund.
- 2.3 Fund balances or reserves of operating funds at the end of each fiscal year shall be at least twenty percent (20%) of the fund operating expenditures (excluding non-recurring expenditures), or ~~seventy-~~two days (72) of total fund operating expenditures for the same fiscal year.
- 2.4 The City should endeavor to maintain a diversified and stable revenue base in order to prevent overall revenue shortfalls as a result of periodic fluctuations in any one revenue source. Each existing and potential revenue source will be re-examined annually.

CITY OF ROSENBERG, TEXAS
2013-14 BUDGET

FINANCIAL MANAGEMENT GOALS AND OBJECTIVES POLICIES

- 2.5 The City shall use non-recurring resources (one-time revenues), including reserves and fund balances, to fund non-recurring (one-time) expenditures. Recurring (on-going) revenues shall be used to fund recurring (on-going) expenditures.
- 2.6 User charges, rates and fees shall be established at a level related to the cost of providing the services. These charges, rates and fees shall be reviewed annually in order to determine the appropriate level of funding anticipated to support the various related activities.
- 2.7 Rates for water and sewer enterprise activities shall be fixed and maintained at levels sufficient to ensure that annual revenues will be available to pay all direct and indirect costs of the enterprise activity, including costs of operation, capital improvements, maintenance, principal and interest requirements on outstanding debt, and interest and sinking fund and reserve fund requirements.
- 2.8 Net earnings of the enterprise funds for any fiscal period shall be at least 1.25 times the average annual principal and interest requirements of outstanding debt. Net earnings shall be defined to include non-operating revenues available for debt service, excluding depreciation and transfers to other funds.
- 2.9 Budgets of operating funds shall provide for costs of fully maintaining all City facilities.
- 2.10 The City shall follow a policy of aggressively pursuing the collection of current and delinquent ad valorem taxes, and shall strive to maintain a current ad valorem tax collection rate equal to or exceeding 95 percent (95%) of the current levy.
- 2.11 Sound appraisal procedures and practices will be monitored by the City in order to keep property values current. The City will annually review the various levels of property tax exemptions and abatements which may be optionally granted by the City.
- 2.12 Transfers from enterprise activities to the general fund for administrative services, in-lieu-of tax payments, and dividends shall not exceed the estimated costs incurred by the general fund in providing such services. The basis for each transfer shall be fully explained each year in the proposed budget.
- 2.13 A contingency budget, to be used in the case of unforeseen items of expenditures, shall be established in accordance with Section 9.14 of the Rosenberg City Charter. Provision shall be made in the annual budget and in the appropriation ordinances for a contingency appropriation of not more than three (3) percent of total General fund operating expenditures. Expenditures from this contingency appropriation shall be made only in case of established emergencies, as authorized by the City Council.
- 2.14 A proposed budget for all funds shall be submitted by the City Manager between sixty (60) and ninety (90) days prior to the beginning of the ensuing fiscal year. The proposed budget shall be filed in the Office of the City Secretary, and be available for review and inspection by interested citizens during normal business hours.
- 2.15 Annual fixed-dollar budgets are adopted for all funds except for capital project and trust funds for the period beginning October 1 and ending September 30 of the following year. Project-based budgets for capital projects are adopted on a project basis, and not on a fiscal year basis.

CITY OF ROSENBERG, TEXAS
2013-14 BUDGET

FINANCIAL MANAGEMENT GOALS AND OBJECTIVES POLICIES

- 2.16 All budget appropriations (except for capital projects) lapse at year-end (September 30). Any encumbered appropriations at year-end may be re-appropriated by the City Manager in the ensuing fiscal year. Such re-appropriations shall be subsequently reported to City Council.
- 2.17 All budgets shall be adopted on a basis of accounting consistent with GAAP, as applied to governmental entities, with the exception of Enterprise and Internal Service funds. Revenues are budgeted when they become measurable and available. Expenditures are charged against the budget when they become measurable, or when a liability has been incurred and the liability is expected to be liquidated with available current resources. Outstanding encumbrances at year-end are re-appropriated in the budgets of the ensuing fiscal year. For Enterprise and Internal Service funds, depreciation is not budgeted, and capital improvements and debt service principal payments are budgeted as expenditures/expenses.
- 2.18 The budget shall be adopted at the legal level of control which is the department within the individual fund. Expenditures may not exceed the legal level of control at the department level within an individual fund without the approval of the City Council. The City Manager is authorized to transfer appropriations within a department in an individual fund in accordance with these policy guidelines. Except in emergency situations, and only upon prior approval by the City Council, no department shall exceed appropriations.
- 2.19 Authority to transfer appropriations within a fund/department. The City Manager may approve transfers of unencumbered appropriations between general classifications of expenditures within a department, provided the transfer amounts do not result in a net increase in total appropriations, and further provided that no amounts shall be transferred from or to any capital outlay line-item accounts. All transfers within a department shall be reported to the City Council at the next regularly scheduled City Council meeting.
- 2.20 Authority to transfer appropriations between a fund/department. Transfer of unencumbered appropriations in general classifications of expenditures between funds or departments shall be approved only by the City Council. The City Council shall also approve any budget modification(s) resulting in a net increase in appropriations, or any proposed use of contingency funds.
- 2.21 The City will strive to receive and retain the Distinguished Budget Presentation Award presented annually by the Government Finance Officers Association (GFOA).
- 2.22 Budgets of Enterprise and Internal Service funds shall be self-supporting, i.e., current revenues (including retained earnings) will equal or exceed current expenditures (excluding depreciation).
- 2.23 Contingency reserves should be maintained at a level sufficient to provide for unanticipated expenditures of a non-recurring nature.
- 2.24 Budgets of Enterprise and Internal Service funds are prepared on a working capital basis, whereby depreciation expenses are not budgeted and capital outlay and debt service principal payments are budgeted as expenses.

CITY OF ROSENBERG, TEXAS
2013-14 BUDGET

FINANCIAL MANAGEMENT ~~GOALS AND OBJECTIVES~~ POLICIES

- 2.25 Budgets shall integrate performance measures, goals and objectives, service levels and productivity measures where appropriate, and provide a means of measuring and monitoring performance, goals and productivity.
- 2.26 The proposed budget should disclose both a "current services level" and an "expanded services level" separately. Current services level is that level of funding necessary to provide the same level of services for the upcoming fiscal year that is currently being provided. Expanded services level includes funding requests associated with new or expanded service(s), additional personnel or new capital.

Section 3. Capital Improvements.

- 3.1 The City will develop and maintain a five-year plan for capital improvements. This plan shall be reviewed at least annually by the City Council. Capital improvements for planning purposes shall be considered all land, land improvements, building projects, infrastructure (i.e., streets, water and wastewater improvements) and equipment exceeding \$100,000 in cost.
- 3.2 All capital improvements should be made in accordance with the five-year plan as adopted by or presented to the City Council.
- 3.3 The City Council shall adopt an annual capital budget based on the approved five-year capital improvement plan. This capital budget shall identify the sources of funding for each capital project authorized for the ensuing fiscal year. Assessments and pro-rata charges may be applied where applicable to fund capital projects.
- 3.4 The City's capital improvement program shall be coordinated with the operating budgets. Operating costs associated with each capital improvement project will be identified in the capital budget and included in the appropriate operating budget if the project is authorized.
- 3.5 A capital project status report shall be prepared for the City Council each ~~month~~quarter.
- 3.6 Interest earnings on bond proceeds shall be credited to the appropriate capital project fund.

Section 4. Debt Management.

- 4.1 Long-term debt shall not be incurred to finance current operations. Long-term debt shall be defined as debt requiring more than five years to retire. Short-term or interim debt shall be defined as debt requiring five (5) years or less to retire, and may be used to fund purchases of machinery, equipment (including office equipment) and vehicles.
- 4.2 When any debt is issued to finance capital improvements, the City shall retire the debt within a period not to exceed the expected useful life of the projects or improvements being financed.
- 4.3 The average maturity of each general obligation bond issue shall not exceed twenty (20) years.

CITY OF ROSENBERG, TEXAS
2013-14 BUDGET

FINANCIAL MANAGEMENT ~~GOALS AND OBJECTIVES~~ POLICIES

- 4.4 Total debt service requirements (principal and interest) in any fiscal year should generally not exceed twenty-five (25) percent of total expenditures/expenses.
- 4.5 Total direct debt shall not exceed ten (10) percent of the assessed value of taxable property.
- 4.6 The City shall maintain good communications with the major bond rating agencies concerning the City's financial condition, and shall follow a policy of full disclosure in every financial report and official bond statement. The City will maintain sound fiscal management practices to maintain and improve current bond ratings.
- 4.7 Interest and sinking fund and/or debt reserve balances shall be maintained at the minimum of the following: (a) equal to fifty (50) percent of the ensuing year's principal and interest requirements; or, (b) in accordance with the City's most restrictive bond ordinances and/or covenants.

Section 5. Financial Reporting.

- 5.1 The City will strive to receive and retain the Certificate of Achievement for Excellence in Financial Reporting awarded annually by the Government Finance Officers Association of the United States and Canada (GFOA).
- 5.2 An annual independent financial audit shall be performed by a properly licenses independent public accounting firm, and results of this audit will be presented to the City Council by ~~January–March~~ 31 of the following year in the form of a Comprehensive Annual Financial Report (CAFR), in accordance with GAAP and governmental accounting, auditing and financial reporting (GAAFR) requirements.
- 5.3 Timely interim financial reports will be produced for department managers for internal purposes. Departmental reports comparing budget to actual amounts shall be prepared by the Finance Department in a timely manner.
- 5.4 Financial statements shall be prepared on a monthly basis and made available to the City Council in a condensed format. Financial statements shall be prepared and presented to the City Council as a formal agenda item ~~by the Audit/Finance Committee~~ on a quarterly basis.

Section 6. Purchasing.

- 6.1 The Finance Director shall be responsible for maintaining written purchasing policies and procedures in accordance with State statutes, City ordinances and these policies.
- 6.2 Generally, purchases are authorized as follows:
 - 6.2.1 The Finance Director and the Department Head may approve purchases for \$5,000 or less.

CITY OF ROSENBERG, TEXAS
2013-14 BUDGET

FINANCIAL MANAGEMENT ~~GOALS AND OBJECTIVES~~ POLICIES

- 6.2.2 Purchases exceeding \$5,000 but less than \$~~2550~~,000 will require detailed purchasing specifications, and must be approved by the Department Head, the Finance Director and the City Manager.
- 6.2.3 Purchases exceeding \$~~2550~~,000 will be subject to competitive bidding requirements and may be approved only by the City Council. Formal competitive bids shall be required for all purchases in excess of those limits established by State statutes. Purchases below State statute limitations may be approved by the Department Head and Finance Director, and/or the City Manager in accordance with City statutes and written purchasing policies and procedures.
- 6.3 Lease purchase agreements shall only be used to finance capital items with a purchase price exceeding \$25,000 and a useful life of at least three years. All lease purchase agreements in excess of limits established by State statutes will be awarded by City Council.
- 6.4 All City purchases should be made locally, to the extent possible.
- 6.5 The City will enter into interlocal agreements, whenever practical, with entities such as the State of Texas, Houston-Galveston Area Council of Governments, or Fort Bend County in order to take advantage of purchasing contracts with favorable pricing arrangements.

Section 7. Cash and Investments.

- 7.1 The Finance Director shall be responsible for maintaining written policies and procedures for all areas of cash and investments, in accordance with State statutes, City ordinances and these policies.
- 7.2 The City will enter into a depository agreement with one or more banks for a specified period of time and specified fees for banking services. The term of each depository agreement shall not exceed ~~two (2)~~five (5) years unless otherwise approved by the City Council.
- 7.3 Collection, deposit and disbursement of all funds will be scheduled to ensure maximum cash availability and investment earnings.
- 7.4 The City will obtain the best possible return on cash investments consistent with State laws and the City's investment policy.
- 7.5 The City will utilize the consolidated (pooled) cash method of accounting for cash, whereby multiple accounting funds are accounted for in one consolidated (pooled) cash bank account. Consolidated or pooled cash will enhance the City's ability to effectively manage the City's investment portfolio, through controlled receipts and disbursements functions.

Section 8. General Accounting Guidelines.

- 8.1 The City Manager is authorized to write off utility accounts less than \$1,000 which have been delinquent for more than 120 days. These accounts will be aggressively

CITY OF ROSENBERG, TEXAS
2013-14 BUDGET

FINANCIAL MANAGEMENT ~~GOALS AND OBJECTIVES~~ POLICIES

pursued for collection by any lawful and available means. Accounts which are in bankruptcy status, involving a claim of \$1,000 or less, which requires the City to make an election to the bankruptcy court, will be referred to the City Manager, with a recommendation by the City Attorney. The City Manager shall report all utility write-offs to City Council at the next regularly scheduled City Council Meeting. All accounts involving amounts greater than \$1,000 shall be referred directly to City Council for write off, or further recommended action.

February 5, 2013 by Resolution No. R-1613.

- Joyce Vasut stated that the Committee may take action to move forward with the idea that the RDC will provide advance funding for the City and the City will reduce RDC's debt service requirements by the amount estimated in the property taxes.

Action: Councilor McConathy made a motion, seconded by Councilor Euton to move forward with the funding for the Rosenberg Business Park with the proposal that the Rosenberg Development Corporation (RDC) will provide advance funding for the City and the City will reduce the RDC's debt service requirements by the amount estimated in the property taxes. The motion carried by a unanimous vote.

3. **REVIEW AND DISCUSS FINANCIAL MANAGEMENT POLICIES, AND TAKE ACTION AS NECESSARY.**

Executive Summary: The City's existing Financial Management Goals and Objectives were approved by City Council in 2002. The goals and objectives state that they should be reviewed and approved annually by City Council. Attached you will find a copy of the original Financial Management Goals and Objectives as approved by the City Council in 2002, as well as a redlined copy with recommended changes.

Staff presented the recommended changes to the Committee and addressed any questions that the Committee members may have.

Key discussion points:

- Joyce Vasut said the Financial Management Goals and Objectives were not brought to the Finance Audit Committee every year, but were included in the budget. In the future, she plans to bring to both the Committee and the Council on an annual basis for review.
- Joyce Vasut pointed out the changes she made to the Financial Management Goals and Objectives and is renaming them Financial Management Policies. Many of the changes were wording changes. Some of the changes were made because processes had changed and the policy needed to be updated. A change was recommended to be made in Section 3.5 to read "quarterly", instead of "monthly".

Action: Councilor Benton made a motion, seconded by Councilor McConathy to accept the changes to the Financial Management Policies as discussed and presented. The motion carried by a unanimous vote.

4. **REVIEW AND DISCUSS CITY OF ROSENBERG ORGANIZATION CHART, AND TAKE ACTION AS NECESSARY.**

Executive Summary: City Manager Robert Gracia will present the City of Rosenberg Organization Chart and discuss proposed changes.

Key discussion points:

- Robert Gracia handed out an Organization Chart with proposed revisions.
- **City Manager** (Robert Gracia) will supervise the following: City Secretary, Communications Director, Economic Development Director, City Attorney, Assistant City Manager – Public Services, Police Chief (Police Operations; Emergency Management; Animal Control; School Officers & Crossing Guards), Fire Chief (Fire Operations and Fire Marshal), Executive Director of Administrative Services, Executive Director of Community Development and Executive Director of Support Services.
- Titles have been revised as follows: **Executive Director of Support Services** (Jeff Trinker) will supervise Parks & Recreation (Civic Center); Contract Administration/Purchasing; Fleet Maintenance; and Facilities Maintenance; **Executive Director of Community Development** (Travis Tanner) will supervise Planning (GIS); Building Official (Code Enforcement and Health); and Cemetery; **Executive Director of Administrative Services** (Joyce Vasut) will supervise Finance (Customer Service and Municipal Court); and Human Resources; and **Assistant City Manager Public Services** (John Maresh) will supervise the Public Works Director, the Utility Director; Project Director; and City Engineer.
- A 2006 study recommended the Public Works be separated into two divisions: Utilities and Public Works. The Public Works Director Karl Zwahr will take the new



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
6	Resolution No. R- 1755 – Rosenberg Business Park Funding

ITEM/MOTION

Consideration of and action on Resolution No. R-1755, a Resolution regarding a funding arrangement by and between the City of Rosenberg and the Rosenberg Development Corporation for the infrastructure improvements to serve the Rosenberg Business Park.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1755
2. Rosenberg Business Park Financial Analysis
3. Resolution No. R-1613 – 02-05-13
4. City Council Meeting Minute Excerpt – 02-05-13
5. Rosenberg Development Corporation Meeting Minute Excerpt – 11-14-13
6. Finance/Audit Committee Meeting Draft Minute Excerpt – 01-29-14

MUD #: N/A

APPROVALS

Submitted by:

Joyce Vasut
Executive Director of
Administrative Services

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney *LJL/rl*
- City Engineer
- Interim Economic Development Director *RK/rl*

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

On February 05, 2013, the Rosenberg City Council approved Resolution No. R-1613, authorizing the City Manager to negotiate and execute a Development Agreement (Agreement), by and among the City, Rosenberg Development Corporation (RDC) and Rosenberg Business Park, Ltd., for the development of the Rosenberg Business Park.

Per this Agreement, the City and RDC will construct the public improvements which include the water distribution system, sanitary sewer, storm sewer drainage, paving improvements, installation of natural gas lines and electrical services. These improvements have been divided into two (2) phases, with Phase I estimated at \$3,478,300 and Phase II estimated at \$1,700,000. The City and RDC will each fund fifty percent (50%) of the improvements. The RDC had agreed to advance their funding and has also agreed to advance the City's portion.

At the November 14, 2013 RDC Board meeting, the Board agreed to propose a request to City Council to lower the debt the RDC owes the City in return for funding the City's portion of the Rosenberg Business Park. This option was presented to the Finance /Audit Committee on January 29, 2014. The RDC's Debt Schedule is proposed to be decreased each year based on the anticipated new property taxes created by the Rosenberg

Business Park until the City's portion of the advance funding is repaid. The attached Rosenberg Business Park Financial Analysis summarizes the estimated amount of property taxes to be collected based on building projections.

The Finance/Audit Committee reviewed the funding option as presented and recommends approval of this option. The RDC will consider a Resolution regarding same at the regularly scheduled RDC meeting on February 13, 2014. The Finance/Audit Committee and City staff recommend approval of Resolution No. R-1755.

RESOLUTION NO. R-1755

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, REGARDING A FUNDING ARRANGEMENT BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND THE ROSENBERG DEVELOPMENT CORPORATION FOR THE INFRASTRUCTURE IMPROVEMENTS TO SERVE THE ROSENBERG BUSINESS PARK.

* * * * *

WHEREAS, The Rosenberg Development Corporation (“RDC”) Strategic Plan, adopted in 2008, established as a priority the development of a business park in the City of Rosenberg (“City”); and,

WHEREAS, the RDC and City staff worked with a developer who purchased a 184-acre tract in order to develop a business park within the corporate limits of the City; and,

WHEREAS, on February 05, 2013, the Rosenberg City Council approved Resolution No. R-1613, a Resolution authorizing the City Manager to negotiate and execute, for an on behalf of the City, a Development Agreement (“Agreement”), by and among the City, RDC, and Rosenberg Business Park, Ltd., for the development of the Rosenberg Business Park; and,

WHEREAS, on February 14, 2013, the RDC Board of Directors authorized the Executive Director to negotiate and execute, for and on behalf of the RDC, a Development Agreement, by and among the RDC, the City, and Rosenberg Business Park, Ltd., for the development of the Rosenberg Business Park; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. Pursuant to Section 3 of said Development Agreement (Agreement), the City will construct the infrastructure improvements (“improvements”) which include the water distribution system, sanitary sewer, storm sewer drainage,

paving improvements, installation of natural gas lines, and electrical services in two (2) phases. The cost of Phase I is estimated to be \$3,478,300 and Phase II is estimated to be \$1,700,000.

Section 2. The City and RDC will each fund fifty percent (50%) of said improvements pursuant to Section 3(c) of said Agreement.

Section 3. On November 14, 2013, the RDC Board agreed to propose a request to the City that the RDC's debt be lowered in return for the RDC's advance funding of approximately fifty percent (50%) of the City's portion of the Rosenberg Business Park Phase I improvements.

Section 4. On January 29, 2014, the Rosenberg Finance/Audit Committee recommended approval to City Council of the RDC's proposed request to reduce the amount of RDC debt owed to the City by approximately \$1,700,000.

Section 5. That the City agrees to the reduction in RDC debt each year until the total amount of \$1,700,000 is reduced from RDC's debt, and agrees to approve the new RDC debt schedule with the stated reductions as summarized therein, attached hereto as Exhibit "A", and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED on this _____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

Rosenberg Development Corporation

Outstanding Debt Service

Fiscal Year	Principal Due	Total Interest	Total Principal & Interest	Adjustment for Business Park	Adjusted Principal & Interest
2013-14	779,700	219,694	999,394		999,394
2014-15	802,235	197,708	999,943	35,000	964,943
2015-16	652,770	177,221	829,991	35,000	794,991
2016-17	657,305	160,476	817,781	113,000	704,781
2017-18	672,840	147,957	820,797	113,000	707,797
2018-19	687,875	126,890	814,765	113,000	701,765
2019-20	703,410	104,444	807,854	113,000	694,854
2020-21	382,980	85,627	468,607	191,000	277,607
2021-22	387,515	71,341	458,856	191,000	267,856
2022-23	284,800	59,162	343,962	270,000	73,962
2023-24	297,835	48,994	346,829	270,000	76,829
2024-25	228,190	39,216	267,406	256,000	11,406
2025-26	236,225	29,874	266,099		266,099
2026-27	247,295	19,974	267,269		267,269
2027-28	255,330	9,557	264,887		264,887
2028-29	71,400	2,621	74,021		74,021
2029-30	23,005	489	23,494		23,494
Total	\$7,370,710	\$1,501,245	\$8,871,955	1,700,000	\$7,171,955

Rosenberg Business Park Financial Analysis

Project Year	Calendar Year	New Construction	Cumulative Valuation	Annual Taxes Collected	Cumulative Taxes Collected
1	2013	\$0	\$0	\$0	\$0
2	2014	\$6,822,759	\$6,822,759	\$34,796	\$34,796
3	2015	\$0	\$6,822,759	\$34,796	\$69,592
4	2016	\$15,276,492	\$22,099,251	\$112,706	\$182,298
5	2017	\$0	\$22,099,251	\$112,706	\$295,005
6	2018	\$0	\$22,099,251	\$112,706	\$407,711
7	2019	\$0	\$22,099,251	\$112,706	\$520,417
8	2020	\$15,436,575	\$37,535,826	\$191,433	\$711,850
9	2021	\$0	\$37,535,826	\$191,433	\$903,282
10	2022	\$15,436,575	\$52,972,401	\$270,159	\$1,173,442
11	2023	\$0	\$52,972,401	\$270,159	\$1,443,601
12	2024	\$15,436,575	\$68,408,976	\$348,886	\$1,792,487
13	2025	\$0	\$68,408,976	\$348,886	\$2,141,372
14	2026	\$15,436,575	\$83,845,551	\$427,612	\$2,568,985
15	2027	\$0	\$83,845,551	\$427,612	\$2,996,597
16	2028	\$15,436,575	\$99,282,126	\$506,339	\$3,502,936
17	2029	\$0	\$99,282,126	\$506,339	\$4,009,275
18	2030	\$15,436,575	\$114,718,701	\$585,065	\$4,594,340
19	2031	\$0	\$114,718,701	\$585,065	\$5,179,405
20	2032	\$15,436,575	\$130,155,276	\$663,792	\$5,843,197
21	2033	\$0	\$130,155,276	\$663,792	\$6,506,989
22	2034	\$15,436,575	\$145,591,851	\$742,518	\$7,249,508
23	2035	\$0	\$145,591,851	\$742,518	\$7,992,026
24	2036	\$15,436,575	\$161,028,426	\$821,245	\$8,813,271
25	2037	\$0	\$161,028,426	\$821,245	\$9,634,516
26	2038	\$12,987,305	\$174,015,731	\$887,480	\$10,521,996
27	2039	\$0	\$174,015,731	\$887,480	\$11,409,476
28	2040	\$0	\$174,015,731	\$887,480	\$12,296,957
29	2041	\$0	\$174,015,731	\$887,480	\$13,184,437
30	2042	\$0	\$174,015,731	\$887,480	\$14,071,917

RESOLUTION NO. R-1613

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A DEVELOPMENT AGREEMENT, BY AND AMONG THE CITY OF ROSENBERG, TEXAS, THE ROSENBERG DEVELOPMENT CORPORATION AND ROSENBERG BUSINESS PARK, LTD., FOR THE DEVELOPMENT OF THE ROSENBERG BUSINESS PARK.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The City Manager is hereby authorized to execute a Development Agreement, by and among the City of Rosenberg, Texas, the Rosenberg Development Corporation, and Rosenberg Business Park, Ltd., for the development of the Rosenberg Business Park.

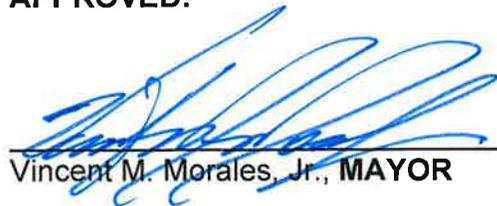
Section 2. A copy of such Development Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this 5th day of February, 2013.

ATTEST:


Linda Cernosek, CITY SECRETARY

APPROVED:


Vincent M. Morales, Jr., MAYOR



**ROSENBERG BUSINESS PARK
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT by and among THE CITY OF ROSENBERG, TEXAS, a Texas home-rule municipal corporation ("City"), the ROSENBERG DEVELOPMENT CORPORATION, a Type B economic development corporation (the "RDC"); and ROSENBERG BUSINESS PARK, LTD., a Texas limited partnership (referred to as the "Developer"), entered into on this ____ day of _____, 2013 for the purpose of developing the Rosenberg Business Park, an industrial and distribution business park.

WHEREAS, Developer is the owner of approximately 184 acres of land in the corporate limits of the City of Rosenberg, Texas, more fully described by legal instrument marked as Exhibit "A," attached hereto and incorporated herein for all purposes ("Property");

WHEREAS, in accordance with Article III, Section 52-a, Texas Constitution, and Chapter 380, Texas Local Gov't Code, the City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality;

WHEREAS, the City has agreed to construct certain drainage, utilities, and roads and cause the installation of natural gas and electrical service for the Property to encourage and promote the development of an industrial and distribution business park on the Property, thereby enhancing and stimulating business and commercial activity in the City;

WHEREAS, pursuant to the Development Corporation Act, Chapters 501 and 505, Texas Local Gov't Code, the City has created the RDC in order to assist with the development or operation of an economic development program;

WHEREAS, the RDC has agreed to provide financial assistance for certain infrastructure improvements including streets and roads, water and sewer utilities, drainage, and related public improvements on the Property, necessary to promote or develop new or expanded business enterprises, all in accordance with Section 501.103, Texas Local Gov't Code;

WHEREAS, the Developer has agreed, in exchange and as consideration for funding of the construction of certain infrastructure improvements to satisfy and comply with certain terms and conditions; and

WHEREAS, the City, the RDC, and the Developer agree that the provisions of this Agreement substantially advance a legitimate interest of the City and the RDC by expanding the tax base of the City, increasing employment and promoting economic development.

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the City, the RDC, and Developer hereby agree as follows:

1. **Dissolution of District.** The Property is currently located wholly within the boundaries of Fort Bend County Municipal Utility District No. 150 (the "District"). The parties agree that the District is no longer beneficial to the Property or necessary in order to provide utilities to the Property. The Developer will submit to the City for approval by July 1, 2013, a plan to settle all reimbursements and other financial obligations owed by the District so that the District will no longer have outstanding debts or liabilities at the time of dissolution of the District by the City. The dissolution plan may include exclusion of land from the District, annexation of land into another district, and/or releases of claims for payment from the District. As part of the dissolution plan, the Developer will (i) pay any administrative costs associated with such dissolution, including the District's outstanding legal fees, (ii) convey to the City for its ownership, operation and maintenance a drainage ditch on the northern boundary of the District as shown on the survey attached as **Exhibit "D"** (the "Ditch") free and clear of all liens and encumbrances. The dissolution plan shall not require the City to incur any costs. The City agrees to assist and cooperate with the Developer in the dissolution of the District upon approval of the dissolution plan, including all actions necessary to annex any District land, not including the Property, into another special district in the City. However, the City will not dissolve the District if dissolution would result in the assumption of any outstanding debts or liabilities of the District by the City. If the Developer and City are unable to agree upon a dissolution plan of the District, the Developer may terminate this Development Agreement without penalty and with no further obligations hereunder.
2. **The Project; Deed Restrictions.** The Developer intends to construct (or cause to be constructed) an industrial and distribution business park to be known as the Rosenberg Business Park (the "Project"). Developer will submit to the City for approval draft deed restrictions for the Property. Among other issues, the deed restrictions will restrict the 184 acres to an industrial and distribution business park, along with retail sales associated with industrial and distribution uses and will provide

other standards that address the quality of development in the business park. No residential or other retail uses will be allowed in the business park. The McCombs property (approximately 15.07 acres located on FM 2218) will not be included in the Project. The Developer agrees to create a mandatory property owners association ("POA") to maintain the common areas and enforce the restrictions. The City's approval and the subsequent recordation of the deed restrictions is a condition precedent to the City's construction of any Public Improvements, as described herein. The City must approve in writing any changes to the deed restrictions that affect the land uses allowed on the Property prior to recordation for such changes to be effective. The Developer is not liable to the City for any subsequent changes in deed restrictions that are made after the Developer no longer owns a majority interest in the Property.

3. **Public Improvements.** The City agrees to fund, design and construct the Public Improvements in accordance with this Agreement, which include the water distribution, sanitary sewer, storm water drainage, and paving improvements set forth in **Exhibit "B"** attached hereto as well as the installation natural gas lines and electrical service in the sizes and volts as set out on **Exhibit "E"** attached hereto. The Public Improvements do not include any private internal facilities to serve specific tracts within the Property. Costs of the Public Improvements to be funded by the City include the costs of design and construction of the Public Improvements as well as all costs incurred in connection with obtaining governmental approvals, certificates, and permits required in connection with the construction of the Public Improvements. The installation of natural gas and electrical service to the end users will occur contemporaneously with the construction of each phase of the Public Improvements as described herein. The Public Improvements depicted in purple on **Exhibit "B"** estimated in the amount of approximately \$3,478,300 are referred to herein as the "Phase I Improvements." The Public Improvements depicted in blue estimated in the approximate amount of \$1.7 million are referred to herein as the "Future Improvements."
 - a. **Phase I Improvements.** The City will commence design of the Phase I Improvements when all the following have been accomplished:
 - i. The Developer has recorded approved deed restrictions (described in Section 2 above) as a covenant running with the land that binds all future owners of the Property;
 - ii. The Developer provides the City with a recorded plat for the portion of the Property to be served by the Phase I Improvements that includes all right-of-way needed for the Phase I Improvements;
 - iii. The Ditch has been conveyed to the City; and

- iv. The District has been dissolved.

The City agrees use its best efforts to complete the construction of the Phase I Improvements within eighteen (18) months of commencement of the design of the Phase I Improvements. The parties acknowledge that completion may be affected by construction delays beyond the control of the City or by events of force majeure.

- b. City Construction of Future Improvements. The City will be obligated to design and construct the Future Improvements in accordance with this Section. The City will be obligated to begin design of the Future Improvements when either (i) the Developer has sold or entered into a long-term lease with an end user or builder/developer (not investor) of at least fifty percent (50%) of the Property served by the Phase I Improvements or (ii) the Developer has sold or entered into a long-term lease with an end user or builder/developer (not investor) for at least fifty percent (50%) of the Property which requires the Future Improvements (“Property Sale Threshold”). The purpose of the Property Sale Threshold is to assure that the City is not obligated to undertake Future Improvements until they are needed to serve an end user or builder/developer so that they will not be constructed but then remain unused for a significant period of time. Future Improvements will be constructed as needed and may be constructed in phases. The Developer must notify the City in writing of the Property Sale Threshold to trigger the City’s obligation to construct any Future Improvements. If the Developer does not meet the Property Sale Threshold and the City is not required to construct the Future Improvements pursuant to this Section within ten (10) years of the completion of the construction of the Phase I Improvements, the City will have the right to terminate this Development Agreement and have no further obligation to construct the Future Improvements.
- c. Funding of Public Improvements. The City will construct the Public Improvements in accordance with all regulatory requirements. The City and the RDC will each fund fifty percent (50%) of the design, testing, and construction of the Project Improvements (the “Project Costs”) from legally available funds. The RDC agrees to advance its share of the costs of the Public Improvements as the phases are designed and constructed. The City may make one or more requests for funds per phase, and the RDC agrees to advance such funds to the City within sixty (60) days of receipt of request.
- d. Developer Construction of Future Phases. Prior to meeting the Property Sale Threshold described in subsection (b)(i) and (ii) above, the Developer has the right to fund and construct the Future

Improvements as more particularly described in Exhibit "B". Once the Developer meets the Property Sale Threshold and provides the City with an accounting of the actual costs of the Future Improvements, the City and the RDC will reimburse the Developer the Project Costs for the Future Improvements within sixty (60) days of submittal from the Developer. The RDC agrees to pay its share of such costs to the City within sixty (60) days of request by the City to allow the City to reimburse the Developer.

4. **Water, Wastewater and Drainage Service for the Project.**

- a. **General.** Upon completion of the infrastructure for water and wastewater service to the Project by the City, the City shall provide water and wastewater service to the Project and major outfall drainage service for the Project. Equivalent single family connection or ESFC means the daily measure of water and wastewater that is attributed to one single-family home as determined by the City. The City will provide up to 693 ESFC of water and wastewater service to the Property. Such water, wastewater and drainage service shall be provided by the City in accordance with the same policies and ordinances for similarly classified City water and wastewater customers, as may be amended from time to time.
- b. **Impact Fees.** The City will charge impact fees to the new development for the Project pursuant to its impact fee ordinances as amended from time to time, provided that no impact fees will be charged to the Property for the costs of the Public Improvements.

5. **Conveyance of Easements for Utilities and Public Roads.** The Developer shall timely convey and donate to the City all easements for the construction of the Public Improvements. Such easements shall be in form and content reasonably acceptable to the City and shall either (i) be reflected on a plat filed with the City, or (ii) evidenced by separate instrument from the Developer to the City. Additionally, the Developer agrees to convey and donate to the City the land described on the attached Exhibit "C" for the realignment of Bryan Road and the widening of FM 2218 within one hundred eighty (180) days of receipt of written notice from the City.

6. **Additional Developer Obligations.**

- a. **Promotion of Business Park.** In order to promote the Project, the Developer agrees to erect a sign promoting the business park on FM 2218. In order to maintain an attractive appearance to the Project, the Developer agrees to landscape the entrance to the Project and cause

the POA to maintain the entrance to the Project, the highway right of way on FM 2218 adjacent to the Project, and common areas in the Project.

- b. Performance Requirements. The parties agree that this Section 6(b) constitutes the requirements of a performance agreement under Section 501.158, Texas Local Government Code. In consideration of an expenditure made on behalf of the RDC, the Developer will:
- i. commence construction of a building of a minimum of 25,000 square feet in the Project within twenty-four (24) months of completion of the Phase I Improvements;
 - ii. Assure the creation of at least five (5) new jobs in the Project and provide to the City access to any documentation to allow the City to determine compliance with this Section 6.B.;
 - iii. convey the Ditch to the City and forego any rights to reimbursement; and
 - iv. convey right of way necessary for emergency access to the Property as described in Section 6 (c) below; and

If performance requirements of this Development Agreement are not met in accordance with Section 501.158(b)(2), Texas Local Government Code, the Developer shall reimburse all amounts advanced by the City and the RDC for the Public Improvements (the "Reimbursement Amount"). The City agrees to credit against the Reimbursement Amount the costs of the Ditch and the value of the right of way donated to the City; and the City agrees that the value of the Ditch and right of way is greater than or equal to the City's portion of the Reimbursement Amount and no further funds shall be due the City. Payment of the RDC's portion of the Reimbursement Amount shall be effected as follows. The Developer shall immediately remove any special appraisals of the Property applied for under Chapter 23 of the Texas Tax Code and going forward make payments of taxes on the land at market value. The City shall pay to the RDC all tax revenues attributable to the removal of the special appraisal until the full amount of the RDC's participation is repaid. The City and the RDC shall also have the right to terminate the Development Agreement and shall have no obligation to build the Future Improvements.

- c. Alternate Emergency Access. The Developer agrees to donate and convey to the City its Property for right-of-way for alternate emergency access to the Property. Once the City has determined a

viable route for such alternate emergency access into the Project, the Developer agrees to dedicate necessary right-of-way on Property owned by the Developer within sixty (60) days of written notification from the City. The Developer shall have no obligation to provide right-of-way on land outside the Property for such access. If the Developer fails to provide the right-of-way for the alternate emergency access from Property owned by the Developer within one hundred eighty (180) days of receipt of written request by the City, the City's sole remedy is to not construct the Public Improvements and to terminate the Agreement.

- d. Removal of Special Appraisal. The Developer agrees to remove from the Property all special appraisals for agricultural use, open space, or any other special appraisals applied for under Chapter 23 the Texas Tax Code within five (5) years of the completion of the construction of the Phase I Improvements. If after such time, the Developer is still claiming any agricultural, open space, or other special appraisal under Chapter 23 of the Texas Tax Code on any of the 184 acres of the Property, the Developer agrees to pay the City annually a payment in lieu of taxes in the amount of taxes that would have been paid to the City as if the land subject to the special appraisal had been taxed at market value. Such payment shall be due and payable to the City at the same time as City property taxes are due, and delinquencies shall accrue penalty and interest at the same rate and in the same manner as delinquent City property taxes. Payment shall be made by the Developer without the need for an invoice from the City and shall provide appropriate verifiable documentation from the Fort Bend Appraisal District as to the market value.
7. Default of this Agreement. An "Event of Default" under this Agreement shall occur upon the failure of either party hereto to timely and fully perform or comply with any of the terms and conditions of this Agreement. However, with respect to any breach of this Agreement, which may be cured by the payment of money, an Event of Default shall not occur (a) until the defaulting party has received written notice of such default and has not completely and fully cured such default within ten (10) working days after receipt of such written notice from any source, and (b) with respect to any other breach of this Agreement, an Event of Default shall not occur until the defaulting party has received written notice of such default and has not cured such default within thirty (30) calendar days (or, if such default is not susceptible of being cured within such thirty (30) day period, such additional period of time as may be reasonable to cure such default, provided that the defaulting party initiates the cure of such default in such thirty (30) calendar day

period and thereafter continuously and diligently, by using its commercially reasonable efforts, prosecutes the cure of such default to completion). If an Event of Default occurs, the non-defaulting party shall be entitled to pursue any and all remedies available at law or in equity, which remedies shall be cumulative and not exclusive. Failure to meet Property Thresholds under Section 3(b) or the failure to meet additional Developer obligations under Sections 6(b) (c) and (d) do not constitute an Event of Default, and the City's sole remedies under Section 3(b), and Sections 6(b), (c) and (d) being the remedies specified in each respective section.

8. **Separate Status.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

9. **Construction and Interpretation.**

a. Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific terms, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

b. The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

c. This Agreement may be executed in several counterparts; each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

10. **INDEMNIFICATION AND HOLD HARMLESS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, DEVELOPER OBLIGATES ITSELF**

TO THE CITY AND THE RDC TO FULLY AND UNCONDITIONALLY PROTECT, INDEMNIFY AND DEFEND THE CITY OF ROSENBERG AND THE ROSENBERG DEVELOPMENT CORPORATION, THEIR OFFICERS, AGENTS AND EMPLOYEES, AND HOLD THEM HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITY FOR INJURIES TO PROPERTY, INJURIES TO PERSONS (INCLUDING DEVELOPER'S EMPLOYEES), INCLUDING DEATH, AND FROM ANY OTHER COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITIES OF ANY AND EVERY NATURE WHATSOEVER ARISING IN ANY MANNER, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF THE CITY, THE RDC OR THEIR OFFICERS, AGENTS OR EMPLOYEES. THIS INDEMNIFICATION AND SAVE HARMLESS SHALL APPLY TO ANY IMPUTED OR ACTUAL JOINT ENTERPRISE LIABILITY.

11. **Insurance.** The City agrees to require any contractor who constructs any phase of the Project Improvements to maintain insurance policies, with the minimum limits of insurance coverage, consistent with the City's general requirements for construction activities of comparable value to the particular phase of the Project Improvements that may be under construction. All insurance policies carried by such contractors shall name the Developer as additional insured (with respect to liability arising out of work performed by the contractors or subcontractors, as applicable) and shall contain a waiver of subrogation in favor of the Developer.
12. **Miscellaneous Provisions.**
 - a. **Actions Performable.** The City, the RDC, and the Developer agree that all actions to be performed under this Agreement are performable solely in Fort Bend County, Texas.
 - b. **Assignability.** Performance by Developer under the terms and conditions of this agreement are deemed personal and, as such, any attempt to convey, assign or transfer those duties and obligations without the prior written approval and consent by City are void; provided, however, Developer shall be authorized to assign or transfer its rights, duties and obligations under this Agreement to an affiliate of Developer under common ownership and control. Developer may assign its right to receive any payments under this Agreement, but not its duties or obligations, to Developer's financial

lenders of this Project without the consent of the City and the City agrees to execute estoppel certificates (in a form reasonably acceptable to the City) reasonably required by such financial lenders regarding the status of this Agreement.

- c. Severability. If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.
- d. Complete Agreement. This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all parties hereto or permitted or approved assignees.
- e. Exhibits. All exhibits attached to this Agreement are incorporated herein reference and expressly made part of this Agreement as if copied verbatim.
- f. Notice. Any notice or demand which either the City, the RDC, or the Developer is required to or may desire to serve upon the other, must be in writing, and shall be sufficiently served if (i) personally delivered, (ii) sent by facsimile, (iii) sent by registered or certified mail, postage prepaid, or (iv) sent by commercial overnight carrier, and addressed to:

If to the City:

City of Rosenberg, Texas
P.O. Box 32
2110 4th Street
Rosenberg, Texas 77471
Attention: City Manager
Telephone: (832) 595-3310
Fax: (832) 595-3311

or any other address or addresses which the Developer may be notified of in writing by the City;

If to the RDC:

Rosenberg Development Corporation
2110 4th Street

Rosenberg, Texas 77471
Attention: Matt Fielder
Telephone: (832) 595-3330
Fax: (832) 595-3331

or any other address or addresses which the City or the Developer may be notified of in writing by the RDC;

If to the Developer:

Rosenberg Business Park, Ltd.
1800 Augusta, 4th Floor
Houston, Texas 77056
Telephone: (713) 850-8400
Fax: (713) 850-8405

Attn: William G. Smith, Jr.

or such other address or addresses which the City or RDC may be notified in writing by the Developer.

Such notice shall be deemed to have been served (a) four (4) business days after the date such notice is deposited and stamped by the U. S. Postal Service, except when lost, destroyed, improperly addressed or delayed by the U.S. Postal Service, or (b) upon receipt in the event of personal service or (c) the first business day after the date of deposit with an overnight courier, except when lost, destroyed, improperly addressed or delayed by the courier, or (d) the date of receipt by facsimile (as reflected by electronic confirmation); provided, however, that should such notice pertain to the change of address to either of the parties hereto, such notice shall be deemed to have been served upon receipt thereof by the party to whom such notice is given.

- g. Force Majeure. Any delay or failure in the performance by a party under this Agreement shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure means acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction,

blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity. Any party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other parties were timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

- h. **Forum Selection.** This Agreement and the relationship between the City, the RDC, and Developer shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Venue for any suit arising out of any relationship between the City, the RDC, and Developer shall exclusively be the appropriate court in Fort Bend County, Texas. Developer specifically consents to and waives any objections to, in personam jurisdiction in Fort Bend County, Texas.
 - i. **Appointment of Representatives.** To further the commitment of the parties to cooperate in the implementation of this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representative for the City (the "City Representative") shall be Matt Fielder or his designee; the initial representative for the RDC shall be Matt Fielder; and the initial representative for Developer shall be William G. Smith, Jr. (the "Developer Representative"). The representatives shall be available at all reasonable times and places to discuss and review the performance of the parties to this Agreement and the development of the Property.
13. **Preamble.** The findings of fact, recitations and provisions set forth in the preamble to this Development Agreement are true and are adopted and made a part of the body of this agreement, binding the parties hereto, as if the same were fully set forth herein.
14. **Representation of Authority.** The City represents and warrants to the Developer that the City is duly authorized and empowered to enter into this Agreement and has the legal authority to reimburse the Developer as provided in this Agreement. The RDC represents and warrants to the Developer and the City that the RDC is duly authorized and empowered to enter into this Agreement and has the legal authority to reimburse the Developer as provided in this Agreement. The Developer represents and warrants to the City and the RDC that it has the requisite authority to enter into this Agreement and is a proper party to this Agreement.

15. **Signature Warranty Clause.** The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the City, the RDC and Developer, respectively.
16. **Performance Agreement.** This Agreement constitutes a performance agreement under Section 501.158, Texas Local Gov't Code. The RDC finds that the creation and/or retainage of jobs and the capital investment made by the Developer, the conveyance of the drainage ditch and right-of-way for access to the Project are sufficient consideration for the expenditures made by the Corporation under this Agreement.
17. **Economic Incentives Constitute a Program.** This Agreement constitutes an economic development program to promote state or local economic development and to stimulate business and commercial activity in the City pursuant to Article III, Sec. 52-a, Texas Constitution, and Chapter 380, Texas Local Gov't Code.
18. **Employment of Undocumented Workers.** During the term of this Agreement the Developer agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a(1), the Developer shall repay any other funds received by the Developer from the City or the RDC under this Agreement, plus interest at the annual interest rate of six percent (6%) from the date of violation until paid. The Developer shall have the right to appeal any such violation through all available legal recourses and will repay any funds only when all appeals have been exhausted. The Developer is not liable for a violation of this section by a subsidiary, affiliate, or franchise of the Developer or by a person with whom the Developer contracts.
19. **Good Faith Representations.** The parties agree that they have entered into this Agreement in good faith, intend to deal with each other in good faith, and intend for this Development Agreement to be enforceable as to its terms under Texas law.
20. **Term.** This Agreement will remain in force and effect for a term of twenty-five (25) years or until earlier terminated by the City pursuant to Sections 3(b), 6(b) and/or 6(c) of this Agreement, or terminated by the Developer pursuant to Section 1 of this Agreement.

List of Exhibits

Exhibit "A": Description of Property

Exhibit "B": Description of the Public Improvements

Exhibit "C": Description of Land Dedication for Widening of Bryan Rd. and FM 2218

Exhibit "D": Survey of Property depicting Drainage Ditch

Exhibit "E": Natural Gas and Electric Service

CITY:

**CITY OF ROSENBERG, a Texas
home-rule municipal corporation**

By: _____

Name: _____

Title: _____

Approved:

City Attorney

Date: _____

DEVELOPER:

ROSENBERG BUSINESS PARK, LTD.

By its general partner, Rosenberg
Business Park GP, LLC.

By: _____

Name: William G. Smith

Title: President

ROSENBERG DEVELOPMENT
CORPORATION

By: _____

Name: _____

Title: _____

Exhibit A

**METES AND BOUNDS DESCRIPTION
OF 183.7 ACRES OF LAND
IN THE S.B. PENTECOST SURVEY, A-378
AND THE S.B. PENTECOST SURVEY, A-362
FORT BEND COUNTY, TEXAS**

All that certain 184.4 acres of land, being a portion of the 158.5 acre tract described in the deed from 2218 Rosenberg, L.P. to Windmeadows Investors, Ltd., recorded under File No. 2005-095386, in the Official Public Records of Fort Bend County, Texas, the 7.2649 acre tract and the 7.2717 acre tract described as Tract II, the 28.06 acre tract described as Tract III, and 35.95 acre tract described as Tract I, in the deed from Rio Mortgage Company to Windmeadows Investors, Ltd., recorded under File No. 2009-00812, in the Official Public Records of Real Property of Fort Bend County, Texas, and the 11.37 acre tract described in the deed from WM Commercial, L.P. to Windmeadows Investors, Ltd., recorded under File No. 2008-108814, in the Official Public Records of Real Property of Fort Bend County, Texas, in the S.B. Pentecost Survey, A-378 and the S.B. Pentecost Survey, A-362, Fort Bend County, Texas, and more particularly described by metes and bounds as follows: (All bearings based on the record bearings of the east line of said 158.5 acre tract, as monumented.)

BEGINNING at a 5/8 inch iron rod found for the east corner of said 158.5 acre tract, common to the south corner of the 17.0 acre tract described in the deed from William Arnold Bryan to Betty Bryan Cruikchank, recorded under File No. 2000-079844, in the Official Public Records of Fort Bend County, Texas, common to the most southerly east corner of the herein described tract, in the northwest line of the 335.34 acre tract described in the deed from Amtex Properties to Amtex Properties, Ltd., recorded under File No. 2002-100334, in the Official Public Records of Real Property of Fort Bend County, Texas;

THENCE South 45° 00' 00" West - 1533.19 feet, along the southeast line of said 158.5 acre tract, common to the northwest line of said 335.34 acre tract, to a 1/2 inch iron rod found for the east corner of the 7.802 acre tract described in the deed from Colletta Ray McMillian, et al. to Lane Aviation, Inc., recorded under File No. 97-09631, in the Official Public Records of Real Property of Fort Bend County, Texas, common to the south corner of said 158.5 acre tract;

THENCE North 45° 03' 23" West – 4823.44 feet, along the northeast line of said 7.802 acre tract, common to the southwest line of said 158.5 acre tract, the southwest line of aforesaid 35.95 acre tract, the southwest line of aforesaid 28.06 acre tract, and the southwest line of aforesaid 11.37 acre tract, to a 5/8 inch iron rod found for the west corner of said 11.37 acre tract, common to the north corner of said 7.802 acre tract, and the west corner of the herein described tract, in the southeast right-of-way line of F.M. 2218 (100' R.O.W.);

THENCE North 44° 43' 46" East – 1532.10 feet, along the northwest line of said 11.37 acre tract, common to said southeast right-of-way line, to a 5/8 inch iron rod found for the north corner of

PAGE 2 – 183.7 ACRES

said 11.37 acre tract, common to an angle corner of the herein described tract;

THENCE South 45° 04' 10" East – 339.74 feet, along the northeast line of said 11.37 acre tract, to an angle corner of the herein described tract, in the northeast line of aforesaid 28.06 acre tract, common to the west corner of aforesaid 7.2649 acre tract, from which a found 1 inch iron pipe, bears North 38° 47' 40" East – 0.40 feet;

THENCE North 44° 33' 55" East - 1083.82 feet, along the southeast line of the 3.879 acre tract described in the deed from Peggy Geiselman Rice, et al. to PEGMO, L.L.C., recorded under File No. 2003-107704, in the Official Public Records of Real Property of Fort Bend County, Texas, the southeast line of RSC SUBDIVISION, according to the plat thereof recorded under Film Code No. 2007-0058, in the Plat Records of Fort Bend County, Texas, and the southeast line of the 1.9442 acre tract described in the deed from Elnora Barcak to SAAF Real Estate, LLC., recorded under File No. 2006-081965, in the Official Public Records of Real Property of Fort Bend County, Texas (at 1053.82 feet passing a 1 inch iron rod found for the east corner of said 1.9442 acre tract, in the southwest right-of-way line of Bryan Road (60' R.O.W.)) to the north corner of the herein described tract;

THENCE South 65° 26' 05" East - 357.20 feet, with said Bryan Road, to the east corner of aforesaid 7.2717 acre tract, common to the most northerly east corner of the herein described tract;

THENCE South 25° 47' 19" West - 1278.81 feet, along the southeast line of said 7.2717 acre tract, (at 28.20' passing a found 5/8 inch iron rod in the southwest right-of-way line of said Bryan Road) to the south corner of aforesaid 7.2717 acre tract, common to an angle corner of the herein described tract, in the northeast line of aforesaid 28.06 acre tract, from which a found 1 inch iron pipe, bears North 33° 04' 20" East – 0.30 feet;

THENCE South 45° 04' 10" East - 3743.63 feet along the northeast line of said 28.06 acre tract, the northeast line of aforesaid 35.95 acre tract, and the northeast line of aforesaid 158.5 acre tract, to the **POINT OF BEGINNING** of the herein described tract and containing 184.4 acres of land.

SAVE AND EXCEPT - "DIRECTOR'S LOTS 1-5" - 0.7310 ACRE

All that certain 0.7310 acre of land, known as Fort Bend County Municipal Utility District No. 150 Director's Lots, 1 thru 5, recorded respectively under File Nos. 2006-124336, 2009-110293, 2009-110294, 2010-055401, and 2010-055402, in the Official Public Records of Fort Bend County, Texas, the S.B. Pentecost Survey, A-378, Fort Bend County, Texas, and more particularly described by metes and bounds as follows: (All bearings based on the record bearings of the east line of said 158.5 acre tract, as monumented.)

PAGE 3 – 183.7 ACRES

COMMENCING at a 1/2 inch iron rod found for the south corner of said 158.5 acre tract, common to the east corner of said 7.802 acre tract;

THENCE North 45° 03' 23" West – 215.17 feet, along the northeast line of said 7.802 acre tract, common to the southwest line of said 158.5 acre tract, to the south corner of said Director's Lot 5, common to the **POINT OF BEGINNING** of the herein described tract;

THENCE North 45° 03' 23" West – 265.35 feet, to the west corner of said Director's Lot 1;

THENCE North 44° 56' 37" East – 120.00 feet, along the northwest line of said Director's Lot 1, to the north corner of aforesaid Director's Lot 1;

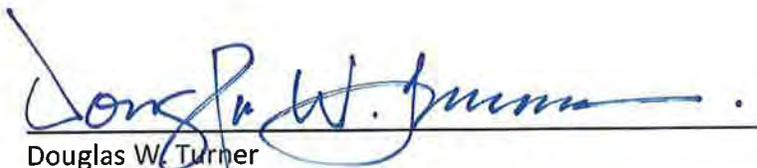
THENCE South 45° 03' 23" East – 265.35 feet, to the east corner of said Director's Lot 5;

THENCE South 44° 56' 37" West – 120.00 feet, along the southeast line of said Director's Lot 5, to the **POINT OF BEGINNING** of the herein described tract and containing 0.7310 acre of land.

**184.4 Acres (GROSS), SAVE AND EXCEPT 0.7310 ACRE
FOR A NET AREA OF 183.7 ACRES**

Prepared by:
IDS Engineering Group
Job No. 1880-001-00-530

Certified: August 22, 2012
Issued: October 16, 2012



Douglas W. Turner
Registered Professional Land Surveyor
Texas Registration Number 3988



THIS LEGAL DESCRIPTION IS ISSUED AS "PART TWO", IN CONJUNCTION WITH THE LAND TITLE SURVEY BY IDS ENGINEERING GROUP LAST CERTIFIED AUGUST 22, 2012. REFERENCE IS HEREBY MADE TO THE SURVEY AS "PART ONE".

PATE ENGINEERS

TBPE F-002726

ROSENBERG BUSINESS PARK (184.4 ACRES) PHASE 1 INFRASTRUCTURE

SUMMARY OF CONCEPTUAL CONSTRUCTION COST ESTIMATE FOR WATER DISTRIBUTION, SANITARY SEWER, DRAINAGE AND PAVING FACILITIES

April 23, 2012

	Phase 1 Total Cost	
Water Distribution System	\$181,400	
Sanitary Sewer Collection System	\$170,700	
Sanitary Sewer Lift Station & Force Main	\$550,900	
Storm Sewer System	\$1,036,100	
Stormwater Drainage & Detention (See Note 5)	\$0	
Paving	\$775,500	
SWPPP, Erosion Control, and Pollution Prevention	\$35,000	
SUBTOTAL CONSTRUCTION ITEMS	\$2,749,600	
CONTINGENCIES	10%	\$275,000
ENGINEERING, SURVEYING, TESTING, ETC.	15%	\$453,700
TOTAL ESTIMATED CONSTRUCTION COSTS	\$3,478,300	

Notes:

- (1) Cost estimates were prepared on the basis of experience and judgment, utilizing historical bid costs for similar work if available. Actual bids and ultimate construction costs may vary based on market conditions, inflation, and unforeseen field conditions. The final determination of construction cost is made through the bidding process with contractor(s).
- (2) This estimate is based on conceptual land plan dated April 11, 2012, prepared by Pate Engineers, Inc.
- (3) This estimate assumes all excess dirt will be placed onsite with no hauling of excess dirt to offsite location.
- (4) This estimate includes only site grading costs associated with grading of the Right-of-Way
- (5) This estimate does not include any costs for stormwater detention facilities. Detention capacity is assumed to be provided in the existing basin at the site or in a regional detention basin located offsite.
- (6) This estimate assumes a single drainage outfall for the site, based on the current land plan and phasing.
- (7) This estimate does not include any costs related to the Bryan Road Bypass project

PATE ENGINEERS

TBPE F-002726

ROSENBERG BUSINESS PARK (184.4 ACRES) PHASE 1 INFRASTRUCTURE

CONCEPTUAL CONSTRUCTION COST ESTIMATE FOR WATER DISTRIBUTION, SANITARY SEWER, DRAINAGE AND PAVING FACILITIES

April 23, 2012

Item:	Quantity	Unit	Unit Cost	Total
<u>Water Distribution System</u>				
12-inch PVC Water Line	3,000	LF	\$32	\$96,000
12-inch PVC Water Line, Steel Cased under FM 2218	100	LF	\$125	\$12,500
Fire Hydrant	13	EA	\$3,000	\$39,000
8-inch Gate Valve	1	EA	\$1,100	\$1,100
12-inch Gate Valve	3	EA	\$1,900	\$5,700
12-inch x 12-inch Tapping Sleeve and Valve	1	EA	\$5,000	\$5,000
Appurtenances, Staking, Bonds, etc.	15%			\$22,125
<i>Water Distribution Total</i>				<i>\$181,400</i>
<u>Sanitary Sewer Collection System</u>				
8-Inch PVC Sanitary Sewer, All Depths	1,400	LF	\$27	\$37,800
10-Inch PVC Sanitary Sewer, All Depths	2,100	LF	\$33	\$69,300
Sanitary Sewer Manholes	8	EA	\$2,600	\$20,800
Service Leads	300	LF	\$35	\$10,500
Allowance for Wet Sand	1	LS	\$10,000	\$10,000
Appurtenances, Staking, Bonds, etc.	15%			\$22,260
<i>Sanitary Sewer Collection System Total</i>				<i>\$170,700</i>
<u>Sanitary Sewer Lift Station & Force Main</u>				
Lift Station	1	LS	\$375,000	\$375,000
8-Inch PVC Force Main	2,800	LF	\$30	\$84,000
8-Inch PVC Force Main, Steel Cased under FM 2218	100	LF	\$100	\$10,000
Air Release Manhole	2	EA	\$5,000	\$10,000
Appurtenances, Staking, Bonds, etc.	15%			\$71,850
<i>Sanitary Sewer Lift Station & Force Main Total</i>				<i>\$550,900</i>

PATE ENGINEERS

TBPE F-002726

ROSENBERG BUSINESS PARK (184.4 ACRES) PHASE 1 INFRASTRUCTURE

CONCEPTUAL CONSTRUCTION COST ESTIMATE FOR WATER DISTRIBUTION, SANITARY SEWER, DRAINAGE AND PAVING FACILITIES

April 23, 2012

Item:	Quantity	Unit	Unit Cost	Total
<u>Storm Sewer System</u>				
24-Inch RCP Leads	400	LF	\$50	\$20,000
36-Inch RCP Storm Sewer	600	LF	\$85	\$51,000
60-inch RCP Storm Sewer	400	LF	\$205	\$82,000
66-inch RCP Storm Sewer	400	LF	\$235	\$94,000
72-inch RCP Storm Sewer	400	LF	\$250	\$100,000
6-foot x 6-foot RCB Storm Sewer	400	LF	\$260	\$104,000
7-foot x 7-foot RCB Storm Sewer	400	LF	\$270	\$108,000
8-foot x 8-foot RCB Storm Sewer	800	LF	\$280	\$224,000
120-inch Polymer-Coated CMP Storm Sewer	100	LF	\$350	\$35,000
Inlets	18	EA	\$1,500	\$27,000
Storm Sewer Manholes, 24"-42"	2	EA	\$1,500	\$3,000
Storm Sewer Manholes, 48"-72"	3	EA	\$2,100	\$6,300
Storm Sewer Manholes, on RCB	5	EA	\$1,800	\$9,000
Storm Sewer Junction Box	1	EA	\$6,000	\$6,000
Sheet Flow Swale Paving	500	SY	\$45	\$22,500
Slope Paving	140	SY	\$65	\$9,100
Appurtenances, Staking, Bonds, etc.	15%			\$135,135
<i>Storm Sewer System Total</i>				<i>\$1,036,100</i>
<u>Paving</u>				
7-Inch Conc. Pavement, Subgrade, Curbs, etc. (40' B-B)	16,300	SY	\$45	\$733,500
Site Grading	1	LS	\$5,000	\$5,000
Appurtenances, Staking, Bonds, etc.	5%			\$36,925
<i>Paving Total</i>				<i>\$775,500</i>
<u>SWPPP, Erosion Control, and Pollution Prevention</u>				
SWPPP, Erosion Control, and Pollution Prevention	1	LS	\$35,000	\$35,000
<i>SWPPP, Erosion Control, and Pollution Prevention Total</i>				<i>\$35,000</i>

PATE ENGINEERS

TBPE F-002726

ROSENBERG BUSINESS PARK (184.4 ACRES) FUTURE INFRASTRUCTURE (AS NEEDED)

SUMMARY OF CONCEPTUAL CONSTRUCTION COST ESTIMATE FOR WATER DISTRIBUTION, SANITARY SEWER, DRAINAGE AND PAVING FACILITIES

April 23, 2012

	Future Total Cost	
Water Distribution System	\$144,000	
Sanitary Sewer Collection System	\$140,300	
Storm Sewer System	\$371,100	
Stormwater Drainage & Detention (See Note 5)	\$0	
Paving	\$657,300	
SWPPP, Erosion Control, and Pollution Prevention	\$35,000	
SUBTOTAL CONSTRUCTION ITEMS	\$1,347,700	
CONTINGENCIES	10%	\$134,800
ENGINEERING, SURVEYING, TESTING, ETC.	15%	\$222,400
TOTAL ESTIMATED CONSTRUCTION COSTS	\$1,704,900	

Notes:

- (1) Cost estimates were prepared on the basis of experience and judgment, utilizing historical bid costs for similar work if available. Actual bids and ultimate construction costs may vary based on market conditions, inflation, and unforeseen field conditions. The final determination of construction cost is made through the bidding process with contractor(s).
- (2) This estimate is based on conceptual land plan dated April 11, 2012, prepared by Pate Engineers, Inc.
- (3) This estimate assumes all excess dirt will be placed onsite with no hauling of excess dirt to offsite location.
- (4) This estimate includes only site grading costs associated with grading of the Right-of-Way
- (5) This estimate does not include any costs for stormwater detention facilities. Detention capacity is assumed to be provided in the existing basin at the site or in a regional detention basin located offsite.
- (6) This estimate assumes a single drainage outfall for the site, based on the current land plan and phasing.
- (7) This estimate does not include any costs related to the Bryan Road Bypass project

PATE ENGINEERS

TBPE F-002726

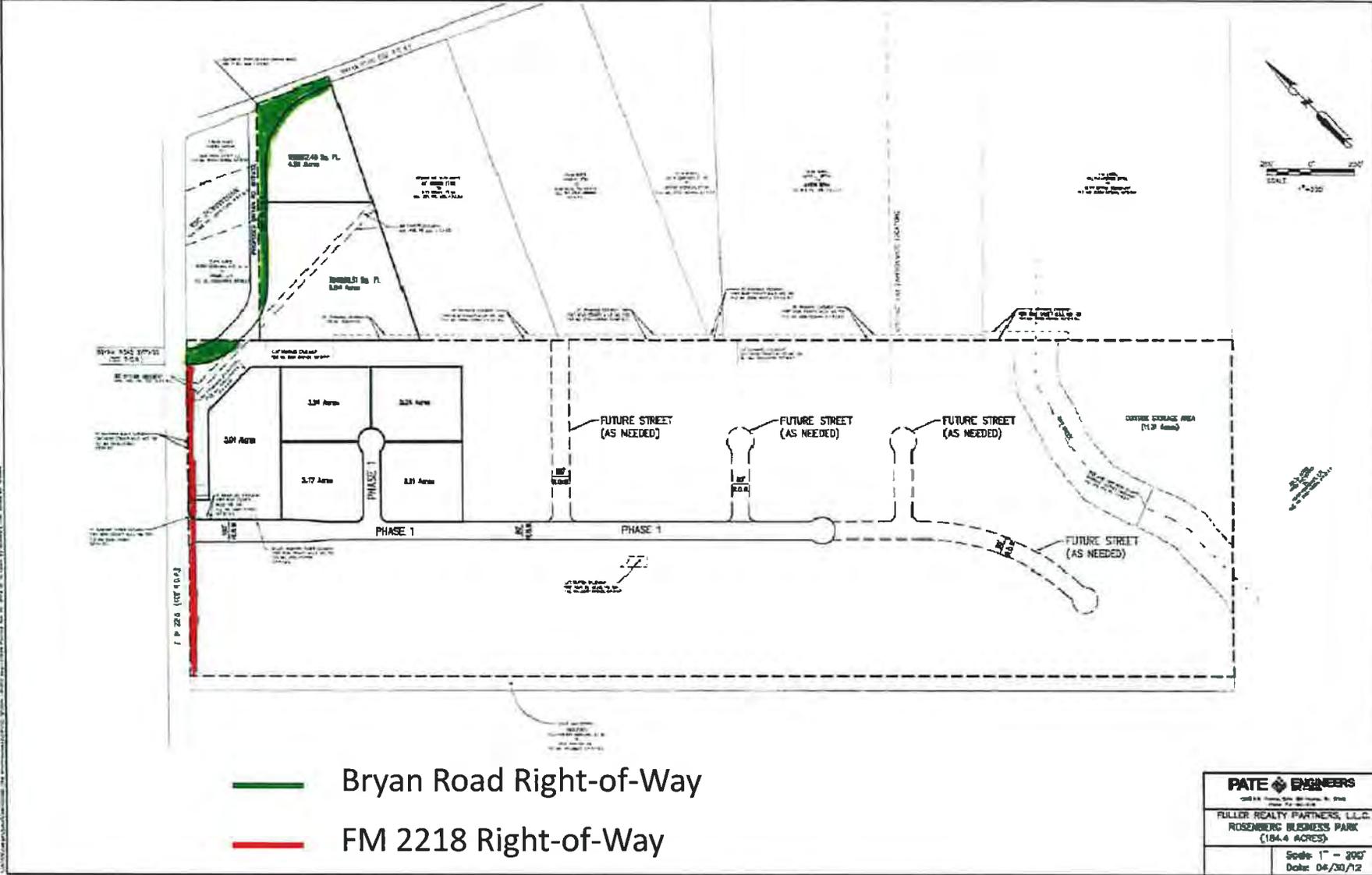
ROSENBERG BUSINESS PARK (184.4 ACRES) FUTURE INFRASTRUCTURE (AS NEEDED)

CONCEPTUAL CONSTRUCTION COST ESTIMATE FOR WATER DISTRIBUTION, SANITARY SEWER, DRAINAGE AND PAVING FACILITIES

April 23, 2012

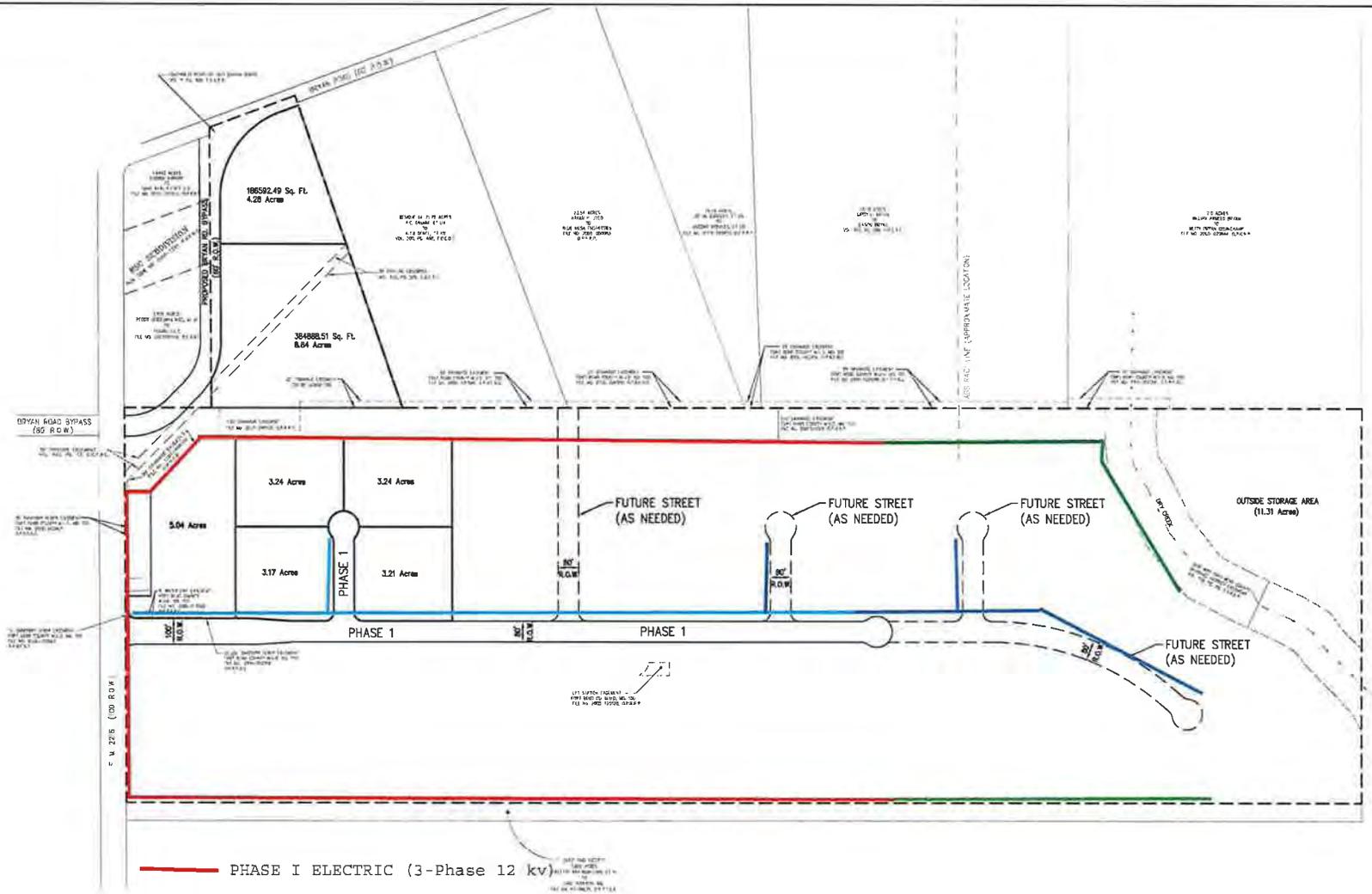
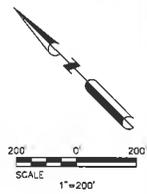
Item:	Quantity	Unit	Unit Cost	Total
<u>Water Distribution System</u>				
8-inch PVC Water Line	2,800	LF	\$22	\$61,600
12-inch PVC Water Line	500	LF	\$32	\$16,000
Fire Hydrant	10	EA	\$3,000	\$30,000
8-inch Gate Valve	3	EA	\$1,100	\$3,300
12-inch Gate Valve	2	EA	\$1,900	\$3,800
12-inch x 8-inch Tapping Sleeve and Valve	3	EA	\$3,500	\$10,500
Appurtenances, Staking, Bonds, etc.	15%			\$18,780
<i>Water Distribution Total</i>				<i>\$144,000</i>
<u>Sanitary Sewer Collection System</u>				
8-Inch PVC Sanitary Sewer, All Depths	2,500	LF	\$27	\$67,500
10-Inch PVC Sanitary Sewer, All Depths	400	LF	\$33	\$13,200
Sanitary Sewer Manholes	8	EA	\$2,600	\$20,800
Service Leads	300	LF	\$35	\$10,500
Allowance for Wet Sand	1	LS	\$10,000	\$10,000
Appurtenances, Staking, Bonds, etc.	15%			\$18,300
<i>Sanitary Sewer Collection System Total</i>				<i>\$140,300</i>
<u>Storm Sewer System</u>				
24-Inch RCP Leads	500	LF	\$50	\$25,000
30-Inch RCP Storm Sewer	1,300	LF	\$60	\$78,000
36-Inch RCP Storm Sewer	400	LF	\$85	\$34,000
42-inch RCP Storm Sewer	500	LF	\$105	\$52,500
54-inch RCP Storm Sewer	500	LF	\$180	\$90,000
Inlets	12	EA	\$1,500	\$18,000
Storm Sewer Manholes, 24"-42"	5	EA	\$1,500	\$7,500
Storm Sewer Manholes, 48"-72"	2	EA	\$2,100	\$4,200
Appurtenances, Staking, Bonds, etc.	20%			\$61,840
<i>Storm Sewer System Total</i>				<i>\$371,100</i>
<u>Paving</u>				
7-Inch Conc. Pavement, Subgrade, Curbs, etc. (40' B-B)	13,800	SY	\$45	\$621,000
Site Grading	1	LS	\$5,000	\$5,000
Appurtenances, Staking, Bonds, etc.	5%			\$31,300
<i>Paving Total</i>				<i>\$657,300</i>
<u>SWPPP, Erosion Control, and Pollution Prevention</u>				
SWPPP, Erosion Control, and Pollution Prevention	1	LS	\$35,000	\$35,000
<i>SWPPP, Erosion Control, and Pollution Prevention Total</i>				<i>\$35,000</i>

Exhibit C



- Bryan Road Right-of-Way
- FM 2218 Right-of-Way

PATE ENGINEERS	
<small>1000 E. 10th Street, Suite 200, Irving, TX 75039 Phone: 972-261-1111</small>	
FULLER REALTY PARTNERS, L.L.C. ROSENBERG BUSINESS PARK (184.4 ACRES)	
Scale: 1" = 200'	Date: 04/30/12



- PHASE I ELECTRIC (3-Phase 12 kv)
- PHASE II ELECTRIC (3-Phase 12 kv)
- PHASE I GAS (4-INCH)
- PHASE II GAS (4-INCH)

PATE ENGINEERS	
13333 N.W. Fremont, Suite 200, Beaverton, OR 97006 Phone: 503-682-3700	
FULLER REALTY PARTNERS, L.L.C. ROSENBERG BUSINESS PARK (184.4 ACRES)	
Scale: 1" = 200'	Date: 04/30/12

PATE ENGINEERS
 13333 N.W. Fremont, Suite 200, Beaverton, OR 97006
 Phone: 503-682-3700
 Fax: 503-682-3701
 www.pateengineers.com

CONSENT AGENDA

1. REVIEW OF CONSENT AGENDA.

All Consent Agenda items listed are considered to be routine by the City Council and may be enacted by one (1) motion. There will be no separate discussion of Consent Agenda items unless a City Council Member has requested that the item be discussed, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Regular Agenda.

A. CONSIDERATION OF AND ACTION ON REGULAR MEETING MINUTES FOR JANUARY 15, 2013.

B. CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1613, A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY, A DEVELOPMENT AGREEMENT, BY AND AMONG THE CITY, ROSENBERG DEVELOPMENT CORPORATION AND ROSENBERG BUSINESS PARK, LTD., FOR THE DEVELOPMENT OF THE ROSENBERG BUSINESS PARK.

Executive Summary: The Rosenberg Development Corporation (RDC) Strategic Plan, adopted in 2008, established as a priority the development of a deed-restricted business park to the City of Rosenberg. Staff has been working with a Houston-area developer with experience in developing business parks. They have secured a partnership with the owner of the 184-acre tract previously known as the Wind Meadows Subdivision, which was to include six hundred and ninety-three (693) residential lots that are forty-five feet (45') wide. The Agreement to construct a deed-restricted business park will supersede the Development Agreement for Wind Meadows.

The concept for the proposed Rosenberg Business Park was presented to City Council at the October 23, 2012 Workshop, and to the Planning Commission at the December 19, 2012 meeting.

Staff recommends approval of Resolution No. R-1613 authorizing the City Manager to negotiate and execute a Development Agreement by and among the City, Rosenberg Development Corporation, and Rosenberg Business Park, Ltd., for the development of the Rosenberg Business Park. The Development Agreement for Rosenberg Business Park was attached as Exhibit "A" to Resolution No. R-1613.

C. CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1606, A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY, A CONTRACT FOR A WATER/WASTEWATER RATE STUDY, BY AND BETWEEN THE CITY AND RIMROCK CONSULTING COMPANY, IN THE AMOUNT OF \$35,000.00.

Executive Summary: Concurrent with the water/wastewater impact fee update process, a water/wastewater utility rate study is also needed to determine the efficacy of the current rate structures. The conversion to an alternate source of water to comply with the Fort Bend Subsidence District mandated thirty percent (30%) Groundwater Reduction Plan (GRP) will require the construction of several capital improvement projects. Treatment and delivery of the alternative water supply will also have an impact on the operations and maintenance (O&M) costs which are included as a component of the utility rates. The rate study will provide for a comprehensive review of the current rate structures and cost components used to establish said rates. The rate classes and tiers, such as residential and commercial will also be reviewed to determine if the costs are spread equally. The study will also provide rate projections utilizing the estimated O&M expenses associated with implementation of the GRP. The projections will be an important tool to help ensure the future rates will be sufficient to fully cover the operating expenses. A copy of the proposal for this rate study is attached for City Council review.

Resolution No. R-1606 authorizes the City Manager to negotiate and execute a Contract for a Water/Wastewater Impact Fee Rate Study, by and between the City and Rimrock Consulting Company, in the amount of \$35,000.00. A copy of the Contract was included as Exhibit "A" to Resolution No. R-1606.

D. CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1605, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY,

additional one-year terms at the sole discretion of the City. The initial Contract term will begin on March 01, 2013, and end on February 28, 2014. Bio Landscape & Maintenance, Inc., has provided the mowing services under this Contract for the past two (2) years. Their work has been acceptable and staff is not aware of any outstanding issues or concerns with this contractor.

Staff recommends approval of Resolution No. R-1614, awarding Bid No. 2013-01 to Bio Landscape & Maintenance, Inc., in the amount of \$113,949.66 for the Right-of-Way Rough Cut, Right-of-Way Finish Cut, Open Acreage Mowing, and Wastewater Treatment Plant Mowing and authorizing the City Manager to negotiate and execute a General Services Contract related thereto, and/or all necessary documentation regarding same. Should City Council award this bid to Bio Landscape & Maintenance, Inc., the proposal will be added to Resolution No. R-1614 to serve as Exhibit "A".

G. CONSIDERATION OF AND ACTION ON THE SHORT FORM FINAL PLAT, GOLDSHIRE CENTER REPLAT OF COMMERCIAL RESERVE "A", A SUBDIVISION OF 6.1979 ACRES OR 269,980 SQUARE FEET OF LAND BEING A REPLAT OF COMMERCIAL RESERVE "A" OF GOLDSHIRE CENTER, RECORDED UNDER FORT BEND COUNTY CLERK'S FILE NO. 20070008, IN THE JAMES LOWERY SURVEY, ABSTRACT NO. 275, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS; 1 BLOCK; 2 RESERVES.

Executive Summary: This is a Short Form Final Replat of Commercial Reserve "A" of Goldshire Center. The subject property is located at the intersection, specifically the southeast corner, of FM 1640 and Reading Road and in Fort Bend County Municipal Utility District No. 94 (MUD No. 94). This is a subdivision of 6.2 acres (one existing commercial reserve) into two (2) commercial reserves.

The purpose of the proposed replat, per the applicant, is to develop a convenience store with gasoline sales on Reserve "A-1." The site will have shared access with proposed Reserve "A-2." Three (3) easements (two for reciprocal access and one for drainage) will be dedicated by separate instrument prior to recordation of this plat.

The proposed Short Form Final Replat complies with all applicable regulations. A public hearing was conducted by the Planning Commission on December 19, 2012, as required by the City's Code of Ordinances and Chapter 212 of the Local Government Code. The Planning Commission has recommended approval of the Short Form Final Plat of Goldshire Center Replat of Commercial Reserve "A".

Mayor Morales stated a memorandum noting one change in the minutes from the January 15, 2013 Council meeting was provided to Council.

Action: Councilor McConathy made a motion, seconded by Councilor Benton to approve the Consent Agenda including the change in the minutes.

Questions/Comments:

- Councilor McConathy referenced Item C, page 10, describing deliverables. The next to last bullet point "when meeting with City Council sub-committee to preview rate study".
- Jack Hamlett, City Manager stated that was put in for the Finance Audit Committee to meet before they present anything to Council.
- Councilor McConathy referenced "Standard Rate Schedule and Terms". The second sentence "labor cost associated with litigation and expert witness testimony are \$250.00 an hour". Are we anticipating litigation?
- Jack Hamlett stated no. But, anytime there is a rate case they can appeal that to the TCEQ. There is a provision that someone could appeal to TCEQ. We would have to go through a formal hearing. That is a standard item.
- Councilor McConathy asked if there is a target date for the delivery or a predetermined time frame for accomplishing this project.
- Jack Hamlett stated the target date for the first rate study is to bring it back to Council in June when we look at utility rates for the next year.
- Councilor McConathy referenced D, Page 14, Section 29-274 regarding "suspension of fee collection". The way she reads it the City will not collect an impact fee for any new development that has submitted a final plat for as much as up to a year, is that correct?
- John Maresh, Assistant City Manager stated that is correct. This goes back to the

ordinance approved in 2008. Basically there is a one year grandfather period at that time.

- Jack Hamlett stated it is saying that as a result of increased fees, the increased fees would not apply to someone who submits their plat before the adoption of this. They have a one-year grace period.
- John Maresh stated that is something we would have to look at to see whether the current rates would still apply or a change to the effective when it is setup.
- Jack Hamlett stated since there is an impact fee in place anything coming will be subject to whatever was in effect at the time they submit their plat.
- Councilor Grigar referenced Item F, Page 37 – Open Acreage Mowing – Seabourne Creek farm land of 156 acres. We are doing some hay production on there. Does that include that or is that left out?
- John Maresh stated this is the remaining part. It does not include the acreage in the hay lease.
- Councilor Grigar asked if the list includes the newly annexed areas. John Maresh stated the areas that are in the City limits at this time are included.
- Councilor Grigar referenced Item G – there is a fifteen foot drainage easement that goes from Reserve 1A to the southwest corner. Is that solely for drainage of Reserve 1A without detention and how does the detention work for this whole area? How does it determine what capacity is in the line for release of storm water?
- John Maresh stated yes it is for Reserve 1A.
- Charles Kalkomey, City Engineer stated it started with the original platting of that version of Town Center. There was a certain CFS allowed for that entire reserve. When the original division of that reserve was done the detention pond was dug. There was a maximum release weight figured for the entire tract. That storm sewer easement will have a line that will come and connect to the storm sewer before the choke and restrictor to the main storm sewer. It backs up and connects to the detention basin in the other reserve. The detention basin is to the east and it is meant to serve A1. We thought A1 would always connect going eastward into the basin but for some reason they have chosen to go that way.

Upon voting the motion carried by a unanimous vote.

REGULAR AGENDA

2. REVIEW AND DISCUSS AN INDEPENDENT ANALYSIS REPORT OF CONTACT DATA COLLECTED BY THE POLICE DEPARTMENT FOR CALENDAR YEAR 2012, AND TAKE ACTION AS NECESSARY.

Executive Summary: In accordance with Senate Bill 1074, more commonly known as the "Texas Racial Profiling Data Collection Law", all state law enforcement agencies are required to submit a report to their governing body – whether a county or municipality. The report must contain totals on racial profiling data, as well as analysis of the prevalence of racial profiling. The report has been provided to City Council under separate cover and will be available for public review in the City Secretary's office.

Dr. Alex del Carmen will be present at the meeting to discuss his independent assessment of the data collected.

Key discussion points:

- Dr. Alex del Carmen, Del Carmen Consulting presented an independent analysis report of contact data collected by the Police Department for calendar year 2012.
- A complete copy of the report was provided to Council.

Questions/Comments:

- Mayor Morales thanked Dr. del Carmen and all of the command staff and patrol officers for their work and the good racial profiling report.
- Councilor Benton asked if this annual report is required by the State. Dr. del Carmen stated this is the law in the State of Texas and the regulating body in TCLOSE in Texas. There are serious penalties for non-compliance with the law.
- Councilor Segura thanked Dr. del Carmen for the report.
- No action was required on the item.

AMOUNT OF \$12,500 FOR A STANDARD SERVICES CONTRACT FOR MEMBERSHIP IN THE CENTRAL FORT BEND CHAMBER ALLIANCE FOR 2014.

Action: Director Garcia made a motion, seconded by Director Grigar, to approve Consent Agenda Items A-F. The motion passed unanimously by those present.

AGENDA

- 1. REVIEW AND DISCUSS ROSENBERG DEVELOPMENT CORPORATION FUNDING FOR THE ROSENBERG BUSINESS PARK, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

Key discussion points:

- After a lengthy discussion, the Board agreed to request City Council lower the debt RDC owes the City in return for funding the Rosenberg Business Park.
- Staff will provide the Board draft deed restrictions for review and consideration at the next meeting.

- 2. CONSIDERATION OF AND ACTION ON A CHANGE ORDER FOR THE STATE HIGHWAY 36 DRAINAGE PROJECT.**

Action: Director Morales made a motion, seconded by Director Cook, to approve the Change Order for the State Highway 36 Drainage Project. The motion passed unanimously by those present.

- 3. REVIEW AND DISCUSS THE SELECTION OF A CONSULTANT TO UPDATE THE ROSENBERG DEVELOPMENT CORPORATION STRATEGIC PLAN AND ESTABLISH A DATE, TIME AND LOCATION FOR A PLANNING MEETING.**

Action: Director Cook made a motion, seconded by Director Garcia, to select Lauren Edwards as the consultant and schedule the planning meeting one (1) Saturday in January 2014. The motion passed unanimously by those present.

Key discussion points:

- Staff will contact the Board members to schedule the meeting.

- 4. CONSIDER MOTION TO ADJOURN FOR EXECUTIVE SESSION.**

Action: Director Cook made a motion, seconded by Director Grigar, to adjourn for Executive Session. The motion passed unanimously by those present.

- 5. HOLD EXECUTIVE SESSION FOR DELIBERATIONS REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS AS AUTHORIZED BY SECTION 551.087 OF THE TEXAS GOVERNMENT CODE AND TO DELIBERATE THE POTENTIAL PURCHASE, EXCHANGE, LEASE, OR VALUE OF REAL PROPERTY PURSUANT TO SECTION 551.072 OF THE TEXAS GOVERNMENT CODE.**

- 6. ADJOURN EXECUTIVE SESSION, RECONVENE INTO REGULAR SESSION, AND TAKE ACTION AS NECESSARY AS A RESULT OF EXECUTIVE SESSION.**

President Knesek reconvened Regular Session. No action taken.

- 7. CONSIDERATION OF AND ACTION ON A REPORT FROM THE ECONOMIC DEVELOPMENT DIRECTOR REGARDING THE PREVIOUS MONTH'S ECONOMIC DEVELOPMENT ACTIVITIES AND CONTACTS.**

Key discussion points:

- Matt Fielder provided an overview of the monthly report.

- 8. CONSIDERATION OF AND ACTION ON REQUESTS FOR FUTURE AGENDA ITEMS.**

- Mons Street Sidewalk Project.

CITY OF ROSENBERG
FINANCE AUDIT COMMITTEE MEETING MINUTES
*****DRAFT*****

On this 29th day of January, 2014, the Finance Audit Committee met in a regular session held at the Rosenberg City Hall Council Office, located at 2110 4th Street, Rosenberg, Texas 77471.

PRESENT:

William Benton	Councilor At Large, Position 1
Cynthia McConathy	Councilor At Large, Position 2
Susan Euton	Councilor, District 1
Robert Gracia	City Manager
Linda Cernosek	City Secretary
Joyce Vasut	Finance Director
Maritza Salazar	Budget Analyst
Luis Garza	Payroll Clerk
Jeff Trinker	Assistant to the City Manager
John Maresh	Assistant City Manager

Call to Order:

Joyce Vasut, Finance Director called the meeting to order at 12:10 p.m.

1. **CONSIDERATION OF AND ACTION ON FINANCE/AUDIT COMMITTEE MEETING MINUTES FOR NOVEMBER 18, 2013.**

Councilor McConathy made a motion, seconded by Councilor Euton to approve the Finance/Audit Committee Meeting minutes for the November 18, 2013 meeting. The motion carried by a unanimous vote.

2. **REVIEW AND DISCUSS FUNDING FOR THE ROSENBERG BUSINESS PARK, AND TAKE ACTION AS NECESSARY.**

Executive Summary: The Rosenberg Development Corporation (RDC) Strategic Plan, adopted in 2008, established as a priority the development of a deed-restricted business park in the City of Rosenberg. Staff worked with a Houston-area developer with experience in developing business parks who later purchased a 184-acre tract. On February 05, 2013, the Rosenberg City Council approved Resolution No. R-1613, a Resolution authorizing the City Manager to negotiate and execute, for and on behalf of the City, a Development Agreement, by and among the City, Rosenberg Development Corporation and Rosenberg Business Park, Ltd., for the development of the Rosenberg Business Park.

Per this agreement, the City will construct the public improvements which include the water distribution system, sanitary sewer, storm sewer drainage, paving improvements, installation of natural gas lines and electrical services. These improvements have been divided into two phases, with Phase I estimated at \$3,478,300 and Phase II estimated at \$1,700,000. The City and RDC will each fund fifty percent (50%) of the improvements. RDC had agreed to advance their funding and has also agreed to advance the City's portion.

At the November 14, 2013 RDC Board meeting, the Board agreed to request City Council lower the debt RDC owes the City in return for funding the City's portion of the Rosenberg Business Park. This option is presented as an adjustment to RDC's Debt Schedule. Another option would be for the City to rebate the new property taxes created by the Business Park to the RDC each year until the City's portion of the advance funding is repaid. The Rosenberg Business Park Financial Analysis summarizes the estimated amount of property taxes to be collected based on building projections.

Staff will present the information included in the packet and answer any question the committee members may have.

Key discussion points:

- Joyce Vasut, Finance Director gave the history and explained the information presented in the executive summary.
- Joyce Vasut highlighted the Public Improvements and the Funding of the Public Improvements in the agreement that she is discussing. Joyce Vasut provided the estimate of the timeframe when the new development would take place and calculations of the amount of proposed property taxes that the City should receive off of the new development.
- The other schedules reviewed were the Rosenberg Development Corporation Status of Outstanding Debt Service. Since RDC had committed to advance funding this project, the RDC would fund the City portion, which is \$1.7M and the City would reduce the debt payments that the RDC owes the City by the estimated amount of property taxes generated from the new development. So, it will be a wash to the City's general fund. The City will receive tax money to pay a portion of RDC's debt up to the \$1.7M amount. The last schedule showed the adjustments for the business park, based on the estimates and the balances that the RDC will pay the City each year. The RDC board asked that we bring this to the City Council since the City does not have \$1.7M to spend at this time. RDC will pay for the construction cost for Phase 1. Phase 2 is not being considered at this time.
- Councilor Euton commented that this is a very creative way of financing this project, and she feels it is an excellent idea.
- Joyce Vasut said if everything goes as planned the property tax on the new developments will pay for the infrastructure improvements in eleven (11) years, based on the estimates and the current property tax rate.
- Councilor McConathy had several questions on the agreement, as follows:
- 1) Page 3 (last sentence before the box) which reads: "*The Developer is not liable to the City for any subsequent changes in deed restrictions that are made after the Developer no longer owns a majority interest in the Property.*" She stated that this sentence seems to conflict with 3.a.i.: "*The Developer has recorded approved deed restrictions (described in Section 2 above) as a covenant running with the land that binds all future owners of the Property;*". Her question is: we want to hold the land in some type of obligation to the deed restriction. From a legal perspective can we hold the current as well as future owners to the deeds?
- 2) Top of page 4; the word "to" needs to be inserted in the first sentence: "The City agrees to use".
- 3) Page 5, Item 4.b., I understand we are going to continue to charge impact fees, are we waiving any other fees required on this construction project?
- 4) Page 6, b. Performance Requirements, iii. "convey the Ditch to the City and forego any rights to reimbursement; and"... This seems to conflict with the sixth sentence under b.iv. "The City agrees to credit against the Reimbursement Amount the costs of the Ditch and the value of the right of way donated to the City," it seems like the word "monetary" should be inserted before the word reimbursement under b.iii. to read: iii. "Convey the Ditch to the City and forego any rights to monetary reimbursement; and"
- 5) Page 7, d. Removal of Special Appraisal. For record keeping, how is the City going to track if this particular circumstance should occur with the removal from the Property all special appraisals for agricultural use, open space, etc...It says the City will not be required to invoice the developer.
- 6) Page 9, under 11. Insurance. Will the City or the Developer administer the bid process and the selection of the design and contractors? John Maresh answered the City has hired IDS to follow the City's obligations.
- 7) Page 12, under i. has Matt Fielder's name. Should the name be changed?
- 8) Page 13, under Item 17. What abatements, if any, did we agree to? Jeff Trinker stated no abatements. The abatements may come into play with the actual relocation of businesses. Jeff Trinker stated that Matt Fielder would usually put in infrastructure as an incentive, especially if that would benefit other businesses or future businesses in the area.
- 9) Page 13, under Item 20. Is a twenty-five (25) year term standard?
- Joyce Vasut stated she would take these comments back to Lora Lenzsch, City Attorney for review, but this agreement was previously approved by the City on

February 5, 2013 by Resolution No. R-1613.

- Joyce Vasut stated that the Committee may take action to move forward with the idea that the RDC will provide advance funding for the City and the City will reduce RDC's debt service requirements by the amount estimated in the property taxes.

Action: Councilor McConathy made a motion, seconded by Councilor Euton to move forward with the funding for the Rosenberg Business Park with the proposal that the Rosenberg Development Corporation (RDC) will provide advance funding for the City and the City will reduce the RDC's debt service requirements by the amount estimated in the property taxes. The motion carried by a unanimous vote.

3. **REVIEW AND DISCUSS FINANCIAL MANAGEMENT POLICIES, AND TAKE ACTION AS NECESSARY.**

Executive Summary: The City's existing Financial Management Goals and Objectives were approved by City Council in 2002. The goals and objectives state that they should be reviewed and approved annually by City Council. Attached you will find a copy of the original Financial Management Goals and Objectives as approved by the City Council in 2002, as well as a redlined copy with recommended changes.

Staff presented the recommended changes to the Committee and addressed any questions that the Committee members may have.

Key discussion points:

- Joyce Vasut said the Financial Management Goals and Objectives were not brought to the Finance Audit Committee every year, but were included in the budget. In the future, she plans to bring to both the Committee and the Council on an annual basis for review.
- Joyce Vasut pointed out the changes she made to the Financial Management Goals and Objectives and is renaming them Financial Management Policies. Many of the changes were wording changes. Some of the changes were made because processes had changed and the policy needed to be updated. A change was recommended to be made in Section 3.5 to read "quarterly", instead of "monthly".

Action: Councilor Benton made a motion, seconded by Councilor McConathy to accept the changes to the Financial Management Policies as discussed and presented. The motion carried by a unanimous vote.

4. **REVIEW AND DISCUSS CITY OF ROSENBERG ORGANIZATION CHART, AND TAKE ACTION AS NECESSARY.**

Executive Summary: City Manager Robert Gracia will present the City of Rosenberg Organization Chart and discuss proposed changes.

Key discussion points:

- Robert Gracia handed out an Organization Chart with proposed revisions.
- **City Manager** (Robert Gracia) will supervise the following: City Secretary, Communications Director, Economic Development Director, City Attorney, Assistant City Manager – Public Services, Police Chief (Police Operations; Emergency Management; Animal Control; School Officers & Crossing Guards), Fire Chief (Fire Operations and Fire Marshal), Executive Director of Administrative Services, Executive Director of Community Development and Executive Director of Support Services.
- Titles have been revised as follows: **Executive Director of Support Services** (Jeff Trinker) will supervise Parks & Recreation (Civic Center); Contract Administration/Purchasing; Fleet Maintenance; and Facilities Maintenance; **Executive Director of Community Development** (Travis Tanner) will supervise Planning (GIS); Building Official (Code Enforcement and Health); and Cemetery; **Executive Director of Administrative Services** (Joyce Vasut) will supervise Finance (Customer Service and Municipal Court); and Human Resources; and **Assistant City Manager Public Services** (John Maresh) will supervise the Public Works Director, the Utility Director; Project Director; and City Engineer.
- A 2006 study recommended the Public Works be separated into two divisions: Utilities and Public Works. The Public Works Director Karl Zwahr will take the new



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
7	Resolution No. R- 1756 - Budget Amendment 14-08

ITEM/MOTION

Consideration of and action on Resolution No. R-1756, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 14-08 in the amount of \$44,538.81, to fund a change order as approved by the Rosenberg Development Corporation for the Seatex/State Highway 36 Drainage Project.

FINANCIAL SUMMARY

ELECTION DISTRICT

Annualized Dollars:

One-time
 Recurring
 N/A

Budgeted:

Yes No N/A

Source of Funds:

See attached

District 1
 District 2
 District 3
 District 4
 City-wide
 N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1756
2. Rosenberg Development Corporation Meeting Minute Excerpt – 11-14-13

MUD #: N/A

APPROVALS

Submitted by:

Joyce Vasut
 Executive Director of
 Administrative Services

Reviewed by:

Exec. Dir. of Administrative Services
 Asst. City Manager for Public Services
 City Attorney
 City Engineer
 (Other)

Approved for Submittal to City Council:

Robert Gracia
 City Manager

EXECUTIVE SUMMARY

At the November 14, 2013 Rosenberg Development Corporation (RDC) meeting, a change order for the Seatex/State Highway 36 Drainage Project was considered by the Board. The purpose of the change order is to fund additional work to hand-dig a section around a previously unknown telecommunications cable in the project area. The change order was approved by the RDC.

Budget Amendment 14-08, in the amount of \$44,538.81, is presented to allow for the transfer of \$44,538.81 from the Rosenberg Development Corporation (RDC) Fund Balance to the RDC Projects Fund to provide funding for the change order for the Seatex/State Highway 36 Drainage Project.

Based on governmental accounting standards, the \$44,538.81 is included twice in the total budget adjustment amount since it is considered both a transfer expense to the RDC Fund and a capital expense to the RDC Projects Fund.

Budget Amendment 14-08 is included as Exhibit "A" to Resolution No. R-1756. Staff recommends approval of Resolution No. R-1756 as presented.

RESOLUTION NO. R-1756

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, BUDGET AMENDMENT 14-08 IN THE AMOUNT OF \$44,538.81, TO FUND A CHANGE ORDER AS APPROVED BY THE ROSENBERG DEVELOPMENT CORPORATION FOR THE SEATEX/STATE HIGHWAY 36 DRAINAGE PROJECT.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The City Council hereby authorizes Budget Amendment 14-08 (Amendment), in the amount of \$44,538.81, for the transfer of Rosenberg Development Corporation funds for a change order for the Seatex/State Highway 36 Drainage Project. A copy of such Amendment is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this ____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

**CITY OF ROSENBERG, TEXAS
REQUEST FOR BUDGET AMENDMENT**

NUMBER: 14-08

Fund 219 & 225 Departments: RDC & RDC Projects Fund Fiscal Year: 2013-14

Item [] was [X] was not included in the Department's original budget request.

Type of expenditure: () Recurring (X) Nonrecurring

Type of adjustment: () line-item transfer [] department transfer
(X) request for additional funds [] accounting correction

The budget amendment requested will require the following revisions:

FUND BALANCE/RETAINED EARNINGS ACCOUNT(S):		ORIGINAL	REQUESTED	AMENDED
ACCOUNT NUMBER	ACCOUNT DESCRIPTION	BUDGET (1)	TRANSFER	BUDGET
<u>219-0000-350-0000</u>	<u>Fund Balance</u>	\$ <u>5,042,489.00</u>	\$ <u>44,538.81</u>	\$ <u>5,087,027.81</u>
				-
	TOTAL	\$ <u>5,042,489.00</u>	\$ <u>44,538.81</u>	\$ <u>5,087,027.81</u>

REVENUE ACCOUNT(S):		ORIGINAL	REQUESTED	AMENDED
ACCOUNT NUMBER	ACCOUNT DESCRIPTION	BUDGET (1)	TRANSFER	BUDGET
<u>225-0000-481-3000</u>	<u>Transfer from RDC Fund</u>	\$ <u>2,914,000.00</u>	\$ <u>44,538.81</u>	\$ <u>2,958,538.81</u>
				-
	TOTAL	\$ <u>2,914,000.00</u>	\$ <u>44,538.81</u>	\$ <u>2,958,538.81</u>

EXPENSE ACCOUNT(S):		ORIGINAL	REQUESTED	AMENDED
ACCOUNT NUMBER	ACCOUNT DESCRIPTION	BUDGET (1)	TRANSFER	BUDGET
<u>219-7000-540-9225</u>	<u>Transfer to RDC Projects Fund</u>	\$ <u>2,914,000.00</u>	\$ <u>44,538.81</u>	\$ <u>2,958,538.81</u>
<u>225-7000-540-7030 (CP1207)</u>	<u>Improvements O/T Building - Seatex Project</u>	\$ <u>3,313,390.49</u>	\$ <u>44,538.81</u>	<u>3,357,929.30</u>
				-
				-
	TOTAL	\$ <u>6,227,390.49</u>	\$ <u>89,077.62</u>	\$ <u>6,316,468.11</u>

(1) INCLUDES PREVIOUSLY APPROVED AMENDMENTS

Reason for Amendment: Please explain the reason(s) the amendment is requested.

This budget adjustment will transfer funds from RDC Fund to the RDC Projects Fund for the change order approved for the State Highway 36 Drainage Project.

Joyce Vasut

Director of Finance 02/10/2014 Date City Manager _____ Date

Mayor/City Council _____ Date

ACCOUNTING USE ONLY: DATE POSTED: _____ POSTED BY: _____

AMOUNT OF \$12,500 FOR A STANDARD SERVICES CONTRACT FOR MEMBERSHIP IN THE CENTRAL FORT BEND CHAMBER ALLIANCE FOR 2014.

Action: Director Garcia made a motion, seconded by Director Grigar, to approve Consent Agenda Items A-F. The motion passed unanimously by those present.

AGENDA

1. **REVIEW AND DISCUSS ROSENBERG DEVELOPMENT CORPORATION FUNDING FOR THE ROSENBERG BUSINESS PARK, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

Key discussion points:

- After a lengthy discussion, the Board agreed to request City Council lower the debt RDC owes the City in return for funding the Rosenberg Business Park.
- Staff will provide the Board draft deed restrictions for review and consideration at the next meeting.

2. **CONSIDERATION OF AND ACTION ON A CHANGE ORDER FOR THE STATE HIGHWAY 36 DRAINAGE PROJECT.**

Action: Director Morales made a motion, seconded by Director Cook, to approve the Change Order for the State Highway 36 Drainage Project. The motion passed unanimously by those present.

3. **REVIEW AND DISCUSS THE SELECTION OF A CONSULTANT TO UPDATE THE ROSENBERG DEVELOPMENT CORPORATION STRATEGIC PLAN AND ESTABLISH A DATE, TIME AND LOCATION FOR A PLANNING MEETING.**

Action: Director Cook made a motion, seconded by Director Garcia, to select Lauren Edwards as the consultant and schedule the planning meeting one (1) Saturday in January 2014. The motion passed unanimously by those present.

Key discussion points:

- Staff will contact the Board members to schedule the meeting.

4. **CONSIDER MOTION TO ADJOURN FOR EXECUTIVE SESSION.**

Action: Director Cook made a motion, seconded by Director Grigar, to adjourn for Executive Session. The motion passed unanimously by those present.

5. **HOLD EXECUTIVE SESSION FOR DELIBERATIONS REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS AS AUTHORIZED BY SECTION 551.087 OF THE TEXAS GOVERNMENT CODE AND TO DELIBERATE THE POTENTIAL PURCHASE, EXCHANGE, LEASE, OR VALUE OF REAL PROPERTY PURSUANT TO SECTION 551.072 OF THE TEXAS GOVERNMENT CODE.**

6. **ADJOURN EXECUTIVE SESSION, RECONVENE INTO REGULAR SESSION, AND TAKE ACTION AS NECESSARY AS A RESULT OF EXECUTIVE SESSION.**

President Knesek reconvened Regular Session. No action taken.

7. **CONSIDERATION OF AND ACTION ON A REPORT FROM THE ECONOMIC DEVELOPMENT DIRECTOR REGARDING THE PREVIOUS MONTH'S ECONOMIC DEVELOPMENT ACTIVITIES AND CONTACTS.**

Key discussion points:

- Matt Fielder provided an overview of the monthly report.

8. **CONSIDERATION OF AND ACTION ON REQUESTS FOR FUTURE AGENDA ITEMS.**

- Mons Street Sidewalk Project.



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
8	Resolution No. R-1758 – Awarding Bid for 2014 Family 4th Celebration Fireworks Display

ITEM/MOTION

Consideration of and action on Resolution No. R-1758, a Resolution awarding a bid for the July 04, 2014, Family 4th Celebration fireworks display; and, authorizing the City Manager to negotiate and execute, for and on behalf of the City, an Agreement, and/or all necessary documentation regarding same.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds:

212-1900-540-5315

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

1. Bid Summary Form
2. Proposal – Pyro Shows of Texas, Inc.
3. Acosta Memorandum- 02-06-14
4. Resolution No. R-1758

MUD #: N/A

APPROVALS

Submitted by:


 Lydia Acosta
 Recreation Programs
 Coordinator

Reviewed by:

- Exec. Dir. of Administrative Services *gf*
- Asst. City Manager for Public Services
- City Attorney
- City Engineer
- Parks and Recreation Director *ST*
- Exec. Dir. of Support Services *ST*

Approved for Submittal to City Council:


 Robert Gracia
 City Manager

EXECUTIVE SUMMARY

A Request for Written Quotations was posted to state-licensed pyrotechnic companies on January 10, 2014, and distributed to sixteen (16) pyrotechnics providers. Potential providers were asked to submit pricing for one (1) year along with two (2) optional one-year extensions, should the City decide to use the same company for consecutive years. Staff received five (5) written quotations and five (5) no-bids. The proposals received are summarized in the attached bid summary form.

Staff has reviewed the proposals and bidder qualifications and recommends acceptance of the bid from the Texas-based company providing the best show for the value over three (3) years, Pyro Shows of Texas, Inc. (Pyro Shows). Pyro Show's quote for the first year and the two (2) optional one-year extensions is \$30,000 per year, representing a cumulative three-year total of \$90,000. Although Pyro Show's cost in the first year is \$1,552 higher than the lowest bid, the company's pre-bid site visit, combined with a substantial shell count and higher numbers of medium and large shells, represents the high-quality fireworks show that the community has come to expect. Evaluating the cost over three (3) years, Pyro Show's cumulative total would be within the City's budget for a pyrotechnic display.

Pyro Shows offered eight (8) municipal and civic organizations as references. Of the agencies contacted, all reported multiple years using the company, quality pyrotechnic shows and professional customer service.

Staff recommends approval of Resolution No. R-1758, a Resolution awarding a bid for the July 04, 2014, Family 4th Celebration fireworks display; and, authorizing the City Manager to negotiate and execute, for and on behalf of the City, an Agreement, and/or all necessary documentation regarding same. Should City Council award the bid as recommended, the proposal will serve as Exhibit "A" to Resolution No. R-1758.

BID SUMMARY
2014 FAMILY 4TH FIREWORKS DISPLAY

<u>BID #</u>	<u>COMPANY</u>	<u>LIABILITY COVERAGE</u>	<u>NO. OF SHELLS</u>	<u>SHELL SIZES</u>	<u>LENGTH OF SHOW</u>	<u>TOTAL BIDS</u>			<u>3 YR. TOTAL</u>
						<i>(Year 1)</i>	<i>(Year 2)</i>	<i>(Year 3)</i>	
1	Pyro Shows of Texas	\$3,000,000	1428	3"-10"	20 mins	\$30,000	\$30,000	\$30,000	\$90,000
2	Magic in the Sky	\$5,000,000	1930-2509	3"-10"	20 mins	\$28,448	\$29,108	\$29,784	\$87,340
3	Zambelli	\$2,000,000	1726	3"-10"	19-21 mins	\$28,500	\$29,000	\$30,000	\$87,500
4	Bay Fireworks	\$2,000,000	1022 ea. yr.	3"-8"	20 mins	\$30,000	\$30,000	\$31,000	\$91,000
5	Celestial Displays, LLC	\$2,000,000	819-1102 ea. yr.	3"-10"	20-22 mins	\$30,000	\$30,000	\$30,000	\$90,000
6	Fireworks Artistry	<i>No Bid</i>							
7	G. W. Kovar Co.	<i>No Bid</i>							
8	Illumination Fireworks, LLC	<i>No Bid</i>							
9	Melrose Pyrotechnics, Inc.	<i>No Bid</i>							
10	Pyrotex, Inc.	<i>No Bid</i>							



Pyro Shows of Texas, Inc.

6601 Nine Mile Azle Road

Fort Worth, Texas 76135

Phone: (817) 237-3371

January 8, 2014

Ms. Lydia Acosta
City of Rosenberg
P. O. Box 32
Rosenberg, TX 77471

Re: Request for Written Quotations
July 4th Fireworks Display
Due: January 10, 2014

Dear Ms. Acosta:

We are pleased to present you with our Proposal for the Fireworks Display as requested in your Request for Written Quotations for your July 4th Fireworks Display. We understand that the City of Rosenberg is interested in a high quality production with creativity and variety of design for maximum family enjoyment. That is precisely the kind of display that Pyro Shows has delivered to its clients for over 35 years.

With Pyro Shows, safety is our first priority. We follow all the requirements of NFPA 1123, Code for Display Fireworks and usually recommend using a greater margin of safety. Our company and personnel are fully licensed and training takes place annually for our operators. We also carry the broadest insurance coverage available in the industry.

Our company history of client satisfaction, years of operator experience, most technologically advanced equipment, and the quality of our products ensure that we provide the highest level of quality on our shows. Our display will contain a powerful Introduction Opening Barrage, a unique, creative design for the Main Program and a truly spectacular Finale. We also offer the widest array of services to our clients. We can provide the best fireworks displays available, as well as flame effects, cryo-jets, lasers, smoke effects, sound lighting and video.

We envision your show to include 3 distinct launching positions a center position with the 8" and 10" shells as well as some of the smaller size shells and a stage left position and stage right position to spread out the design in the sky and give the entire show more breadth. You should also note in the shell numbers we have weighted the show with more of the middle sized shells that the small size, so that your overall bulk of the shells perform at a higher elevation. Our entire staff caters to the specific needs of each client. Every production is unique and is designed to fit the location, scope and theme of the audience and the event. We deliver a turn-key, custom performance every time.

January 8, 2014
Ms. Lydia Acosta
City of Rosenberg
Re: Request for Proposal Fireworks Display
Due: January 10, 2014
Page 2

The following individuals are authorized to make representations for our firm, Pyro Shows of Texas, Inc.:

Mike Walden, President	Steve Frantz, Vice President
6601 Nine Mile Azle Road	6601 Nine Mile Azle Road
Fort Worth, TX 76135	Fort Worth, TX 76135
Tel # (817) 237-3371	Tel # (817) 237-3371
mike@pyroshows.com	sfrantz@pyroshows.com

We have read your Request and agree to the enclosed terms and conditions. We have reviewed the site map and have included a typical site map as we would prepare it for the State of Texas Fireworks Display Permit for 8 inch shells and an additional map for 10 inch shells.

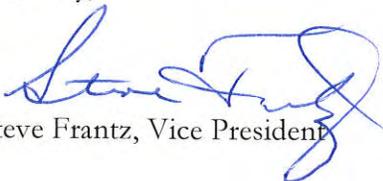
We have enclosed the Quote Worksheet describing the length of the display, total shell count, range of shell sizes in inches and cost of display. We have also included the cost for two additional one-year term extensions with a guarantee of no increase in cost to you. These two additional extensions will include the same shell selections as shown in the detailed shell descriptions included in this proposal.

We have completed and enclosed the requested attachments with this proposal. We will be able to comply with items #1 through #3 of the Vendor Requirements, which require submission by May 4, 2014 and we will be able to comply with the additional requirements of Items #1 through #7 of the additional vendor requirements. Our proposal includes a display of at least 20 minutes in length, choreographed to patriotic music with predominately aerial shells from 3" to 10". We actually expect the display to be between 20 and 21 minutes.

Pyro Shows of Texas, Inc. has been in the fireworks business since 1969 and has become the most premier of the fireworks display companies in the US. We are most widely known for our display for our Nations Independence Day Celebration in Washington, DC. We are proud of our history of satisfied customers and encourage you to contact our references for a complete discussion of the quality of our services.

We would be honored to be selected to provide you with your Fireworks Display for your annual Independence Day, Family 4th Celebration. It is our commitment to you and your Family 4th guests to deliver a first-class fireworks show to your 2014 event by providing the finest pyrotechnic artistry and professionalism to your Celebration. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Steve Frantz, Vice President

Custom Proposal: #0018
Rosenberg, City of
July 4, 2014 - \$30,000
Wednesday, January 8, 2014

CUSTOM PROPOSAL
14 TX 07-04 CUST 30000-0018
Wednesday, January 8, 2014

PRESENTED TO:

City of Rosenberg
P.O. Box 32
Rosenberg, TX 77471-0032

for

Choreographed Fireworks Display
July 4, 2014
\$30,000.00

by

PYRO SHOWS
Fort Worth, Texas
1-800-488-7976

SHOW OVERVIEW: Rosenberg, Texas

PROGRAM COST: \$30,000.00

PROGRAM DATE: July 4, 2014

Included Services:

INSURANCE LIABILITY

COVERAGES:

General Liability	\$5,000,000.00
Automobile Liability	\$5,000,000.00

INSURANCE AGENCY:

Britton-Gallagher and Associates
1375 E. 9th Street, 30th Floor
Cleveland, OH 44114

WORKERS COMPENSATION:

Full coverage as required by state and federal law, including United States Longshoreman and Harbormaster coverage.

COMPLIANCE:

Pyro Shows adheres to the following regulatory requirements:

- BATFE - Bureau Alcohol, Tobacco, Firearms & Explosives
- FAA - Federal Aviation Administration
- NFPA 1123, 1124
- U.S. Coast Guard



PYRO SHOWS

Pyroshows.com

(800)488-7976

OPENING BARRAGE

AERIAL SHELLS

- 38 3" ELECTRIC THUNDER SALUTES.** These are real sky shakers. These are American made cylindrical bombs that contain the maximum amount of high powered flash powder and titanium that provide a blast of sound and flash of light to resemble the crash of thunder and lightning at an altitude of over 300' in the air.
- 53 4" FANCY COLORED SHELLS -** These specially selected aerial shells are composed of cylindrical and ball shells to give you a combination of superior quantity and quality in a wide variety of effects. Some of the combinations and effects include Red, Silver, Blue, Purple, Green, Yellow, and Gold. Special pattern shells are also included in this group such as Rings, Hearts, and Stars.
- 30 5" EXTRA FANCY SHELLS -** These more intricate multiple effect and precision shells are composed of many of the very best imported shells in France, Germany, Spain, China, Taiwan, & the USA, made throughout the world. The variety includes The Golden Butterfly, Blue Bees, Silver Palm Tree w/Green Tips, Color Chrysanthemum w/Color Changing Pistil and Jetting Flowers, Atomic Rings, Saturn Rings, Saturn Rings, Dragon Eggs, Thousand Oriental Flowers, Flying Meteor, Precious Pearls, and more.
- 18 6" SUPER DELUXE -** These shells also come in cylinder and sphere shapes, and they are made exclusively in the U.S. All shell colors are magnesium compounds to provide the brightest and most vivid colors available. These very powerful shells often break with the size, pattern, and density of shells twice their size. Colors include Glittering Tiger Tail to Purple Willow, Golden Dahlia to Emerald Star, Rainbow Magnesium, Orange and Silver Flitter, Weeping Cascade, Crimson Sky Amber Sun, and Golden Brocade Kamuro with Twinkling Tips.
- 2 8" SPECIAL EFFECT/ MULTIPLE BREAK SHELLS -** This class includes the ultimate in the art and science of pyrotechnology. It includes such favorites as Fish & Whistles, Serpents & Stars, Whistles and Color, Silver or Gold Glitter Crossettes, Artillery, Battle in the Clouds, Machine Gun, Tourbillion, and Double-Bubble. Please note when we say multiple break, we are saying two or more shells of the same size stacked on top of each other attached to be fired at the same time.

MAIN BODY

3" DIAMETER AERIAL SHELLS

- 21 ELECTRIC THUNDER SALUTES.** These are real sky shakers. These are American made cylindrical bombs that contain the maximum amount of high powered flash powder and titanium that provide a blast of sound and flash of light to resemble the crash of thunder and lightning at an altitude of over 300' in the air.
- 74 FANCY COLORED SHELLS** - These specially selected aerial shells are composed of cylindrical and ball shells to give you a combination of superior quantity and quality in a wide variety of effects. Some of the combinations and effects include Red, Silver, Blue, Purple, Green, Yellow, and Gold. Special pattern shells are also included in this group such as Rings, Hearts, and Stars. Optional shells available upon request are a wide variety of parachutes and duration to include: Grand Imperial Lantern, Silver Floating Caterpillar, Double Happy, Moon Warrior, Cluster of Stars and Splendid Flowers.
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MAIN BODY

4" DIAMETER AERIAL SHELLS

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MAIN BODY

5" DIAMETER AERIAL SHELLS

- 68 FANCY COLORED SHELLS** - These specially selected aerial shells are composed of cylindrical and ball shells to give you a combination of superior quantity and quality in a wide variety of effects. Some of the combinations and effects include Red, Silver, Blue, Purple, Green, Yellow, and Gold. Special pattern shells are also included in this group such as Rings, Hearts, and Stars. Optional shells available upon request are a wide variety of parachutes and duration to include: Grand Imperial Lantern, Silver Floating Caterpillar, Double Happy, Moon Warrior, Cluster of Stars and Splendid Flowers.
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- 17 SUPER DELUXE** - These shells also come in cylinder and sphere shapes, and they are made exclusively in the U.S.A. All shell colors are magnesium compounds to provide the brightest and most vivid colors available. These very powerful shells often break with the size, pattern, and density of shells twice their size. Colors include Glittering Tiger Tail to Purple Willow, Golden Dahlia to Emerald Star, Rainbow Magnesium, Orange and Silver Flutter, Weeping Cascade, Crimson Sky Amber Sun, and Golden Brocade Kamuro with Twinkling Tips.
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MAIN BODY

6" DIAMETER AERIAL SHELLS

- 41 FANCY COLORED SHELLS** - These specially selected aerial shells are composed of cylindrical and ball shells to give you a combination of superior quantity and quality in a wide variety of effects. Some of the combinations and effects include Red, Silver, Blue, Purple, Green, Yellow, and Gold. Special pattern shells are also included in this group such as Rings, Hearts, and Stars. Optional shells available upon request are a wide variety of parachutes and duration to include: Grand Imperial Lantern, Silver Floating Caterpillar, Double Happy, Moon Warrior, Cluster of Stars and Splendid Flowers.
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MAIN BODY

8" DIAMETER AERIAL SHELLS

- 14 **SKY BUSTERS** - Only for the Hearty Soul. Specially designed shells each with special effects. These include Jetting Flowers, Double Tails, or Reports such as Draw Out Chrysanthemum w/5 Timed Titanium Reports, Red & Glittering Silver Chrysanthemum w/Rising Reports On Upward Trajectory, and more.

10" DIAMETER AERIAL SHELLS

- 6 **SPARKLING STAR SHELLS** - Used in the biggest shows around the world. Climbing to altitudes of 1000' and breaking into an awesome symmetrical break that will leave your crowd spellbound. Includes Thrice-Color Changing Chrysanthemums with Jetting Flowers and Rising Tails, Tropical Green Leaves w/Golden Tail, Butterfly w/Golden Tail, Silver Wave & Gold Chrysanthemums, and more.

GRAND FINALE

The sweetest taste of the night is supplied by your splendid GRAND FINALE. The selection of shells will provide a sparkling and dynamic ending to your show. It will include a variety of highest-quality color shells, reports, and comets. Light 'er up and let 'er rip!

Your specially selected **GRAND FINALE** is:

240 3" Colors, Palm Trees, and Salutes

100 4" Zippers, Comets, Colors, and Noise

80 5" Bees, Flowers, Bombettes, and Stars

60 6" Chrysanthemums w/Tails, Dahlias, and Peonies

4 8" Color Changing Shells w/Pistils

2 10" Triple Color Changing Mums & Multi Effect Shells

**City of Rosenberg
Friday, July 4, 2014**

\$30,000.00

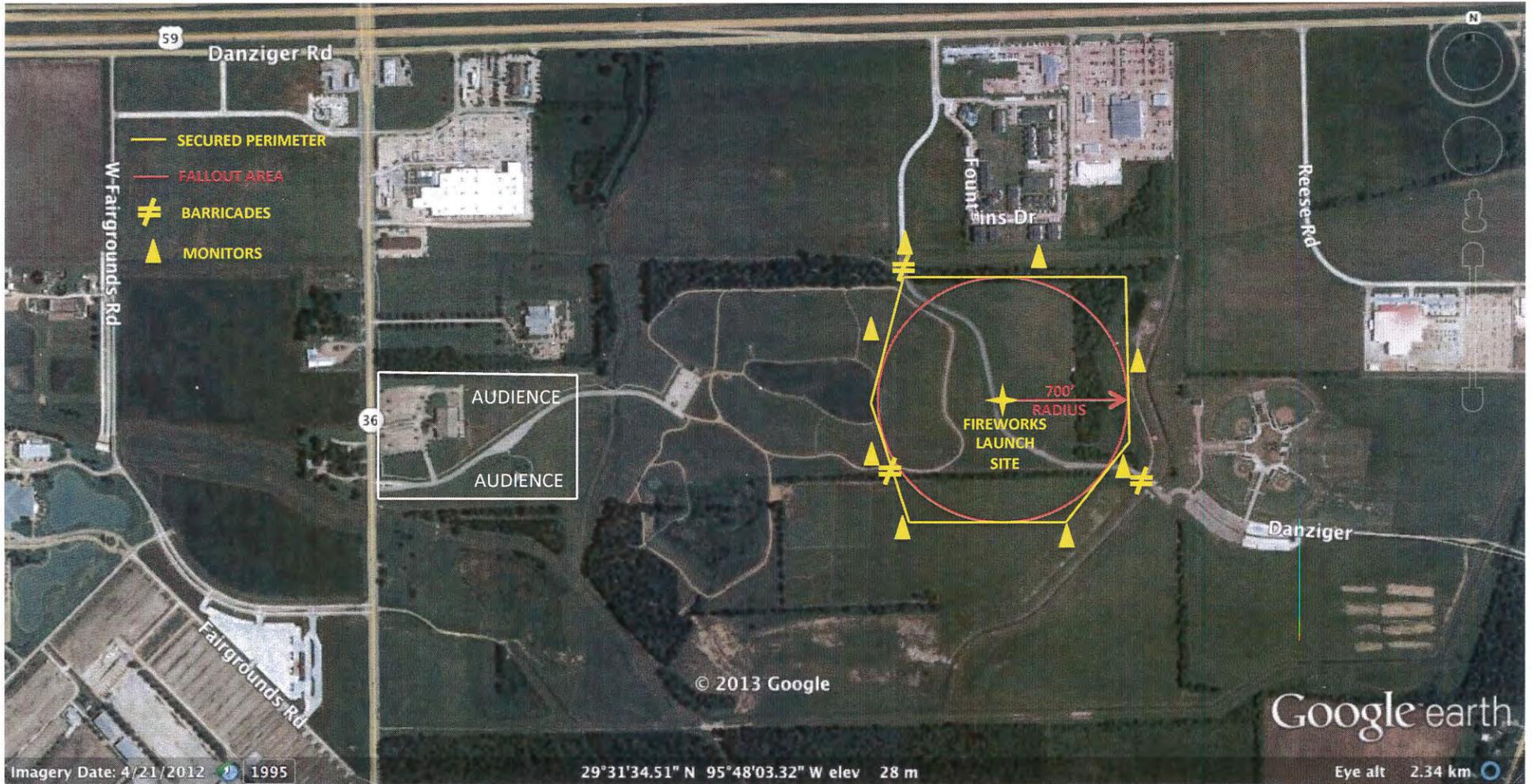
SHELL SUMMARY

<u>SHELL SIZE</u>	<u>OPENING BARRAGE</u>	<u>MAIN BODY</u>	<u>FINALE</u>	<u>TOTAL</u>
3"	38	212	240	490
4"	53	297	100	450
5"	30	170	80	280
6"	18	102	60	180
8"	2	14	4	20
10"		6	2	8

TOTAL SHELL COUNT 1,428

Fireworks 1.3 G Display
Largest Shell 10"
Safety Radius 700'
Musically Accompanied

CITY OF ROSENBERG
SEABORNE CREEK NATURE PARK
FIREWORKS SITE MAP – 10" SHELL SIZE
JULY 4, 2014



CITY OF ROSENBERG IS RESPONSIBLE FOR FIREWORKS PERIMETER SECURITY

QUOTE WORKSHEET
July 4, 2014 Firework Display

Completed quotes must be received by 5:00 p.m. on Friday, January 10, 2014.

Lydia Acosta
City of Rosenberg
P.O. Box 32
3825 State Highway 36 South (Rosenberg Civic Center)
Rosenberg, TX 77471-0032
Fax: 832-595-3521
Email: lydiaa@ci.rosenberg.tx.us

The contractor may submit in person, by mail, fax, or email for consideration. The proposal must include all forms referenced in bid specification. No quotes will be considered without all completed documents.

The City reserves the right to request additional information or to meet with representatives from proposing organizations or individuals to discuss points in the proposal before and after submission, any and all of which may be used in forming a recommendation.

Quote consists of turnkey, pyrotechnic display for July 4, 2014 event	2014	2015 <i>(optional one year extension)</i>	2016 <i>(optional one year extension)</i>
Length of Display in total minutes	20 MIN	20 MIN	20 MIN
Total number of shells in Display			
Range of shell sizes <i>(quantity should be listed separately)</i>	3"-10"	3"-10"	3"-10"
LUMP SUM TOTALS	\$ 30,000	\$ 30,000	\$ 30,000

ACCEPTANCE OF WRITTEN QUOTES:

It is understood by the undersigned that City reserves the right to reject any or all written quotes for this service.

DATE: 1-8-14

BIDDER: Pyro Shows of Texas, Inc.
 Company's Name

ATTEST/SEAL (if a corporation)
 WITNESS (if not a corporation)

BY: [Signature]
 NAME: STEVE FRANTZ

TITLE: VICE PRESIDENT

BY: Dana Lynn Stuck
 Signature

Dana Lynn Stuck
 Printed or Typed Name

6601 Nine Mile Azle Road
 Street Address

Fort Worth, TX 76135
 City, State & Zip Code

817-237-3371
 Area Code & Phone



BIDDER CERTIFICATION
July 4, 2014 Firework Display

By signature affixed, the bidder certifies that neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the anti-trust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

Bidder has examined the specifications and has fully informed themselves as to all terms and conditions. Any discrepancies or omissions from the specifications or other documents have been clarified with City representatives and noted on the bid proposal submitted.

Bidder guarantees product offered will meet or exceed specifications identified in this bid invitation. Bidders agree that the bids submitted shall remain firm for ninety (90) days following the date specified for the opening of bids.

BIDDER MUST COMPLETE AND SIGN

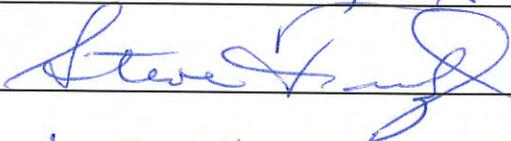
NAME OF FIRM/COMPANY: PYRO SHOWS OF TEXAS, INC.

AGENTS NAME: STEVE FRANZ

AGENTS TITLE: VICE PRESIDENT

MAILING ADDRESS: 6601 NINE MILE AZLE ROAD

CITY, STATE, ZIP: FORT WORTH, TX 76135

AUTHORIZED SIGNATURE: 

DATE OF BID: 1-8-14

BIDDER INFORMATION
July 4, 2014 Firework Display

FULL LEGAL FIRM/COMPANY NAME: Pyro Shows of Texas, Inc.
BUSINESS STREET ADDRESS: 6601 NINE MILE AZLE ROAD
BUSINESS MAILING ADDRESS: SAME
BUSINESS TELEPHONE NUMBER: 817-237-3371
BUSINESS FAX NUMBER: 817-237-3374
COUNTY: TARRANT MINORITY OWNED: No NO. OF EMPLOYEES: 8

CORPORATION: PARTNERSHIP: PROPRIETORSHIP: L.L.C. L.L.P.
YEAR EST: 2013 NO. OF YEARS IN BUSINESS: 1 FEDERAL ID NO: _____

NATURE OF BUSINESS: OUTDOOR FIREWORKS DISPLAY COMPANY
SISTER COMPANY TO PYRO SHOWS, INC ESTABLISHED 1969

PRINCIPALS

NAME: MIKE WALDEN TITLE/POSITION: PRESIDENT
NAME: STEVE FRANZ TITLE/POSITION: VICE PRESIDENT
NAME: DANA STUCK TITLE/POSITION: TREASURER

BANK REFERENCE: STAR BANK OF TEXAS

NAME OF BANK OFFICER: BILL DAVENTPORT

ADDRESS/CITY/STATE/ZIP: 3930 BOAT CLUB RD
FORT WORTH, TX 76135

PHONE NO: 817-238-7827

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person who has a business relationship with local governmental entity.

PYRO SHOWS OF TEXAS, INC.
STEVE FRANTZ

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

NONE

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Steve Frantz
Signature of person doing business with the governmental entity

1-8-14
Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/8/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Britton Gallagher One Cleveland Center, Floor 30 1375 East 9th Street Cleveland OH 44114	CONTACT NAME: PHONE (A/C, No, Ext): 216-658-7100	FAX (A/C, No): 216-658-7101	
	E-MAIL ADDRESS:		
INSURED Pyro Shows of Texas Inc. PO Box 1776 115 North 1st Street La Follette TN 37766	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Everest National Insurance Company		26743
	INSURER B : Maxum Indemnity Company		
	INSURER C : Texas Mutual Insurance Company		
	INSURER D : Everest Indemnity Insurance Co.		
	INSURER E :		
INSURER F :			

COVERAGES **CERTIFICATE NUMBER:** 1952867327 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
D	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC			S18GL00230-131	10/1/2013	10/1/2014	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$3,000,000 GENERAL AGGREGATE \$3,000,000 PRODUCTS - COMP/OP AGG \$3,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			S18CA00004-131	10/1/2013	10/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			EXC6020208-1	10/1/2013	10/1/2014	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	STA000125903020130930	9/30/2013	9/30/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

"SPECIMEN"

CERTIFICATE HOLDER

CANCELLATION

City of Rosenberg
 Attn: Lydia Acosta
 P. O. Box 32
 Rosenberg TX 77471

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

References for Pyro Shows of Texas, Inc.
Formerly Atlas Enterprises, Inc.
Client Reference List

Town of Addison P. O. Box 9010 Addison, Texas 75001-9010 bkovacevich@ci.addison.tx.us	Barbara Kovacevich 972-450-6221 July 3 rd
Farmers Branch 13000 William Dodson Parkway Farmers Branch, Texas 75234 meredith.dowdy@farmersbranch.info	Meredith Dowdy 972-919-8766 July 3 rd
Fort Worth Symphony Maddox-Muse Administration Bldg. 330 East Fourth Street #200 Fort Worth, Texas 76102-4019 cmunoz@fwsymphony.org	Chris Munoz 817-665-6500 x 115 Various – Concerts in the Gardens
City of Plano P. O. Box 860358 Plano, Texas 75086-0358 karenw@plano.gov	Karen Williams 972-941-7288 July 4 th
City of South Padre Island 4601 Padre Blvd. South Padre Island, Texas 78597 Lacey@sopadre.com	Lacey Ekberg 956-761-3000 Various
San Antonio Chamber of Commerce 602 E. Commerce San Antonio, Texas 78205 wgarrett@sachamber.org	Will Garrett 210-229-2163 July 4 th
The Woodlands Township 2801 Technology Forest Boulevard The Woodlands, Texas 77361 mlichenstein@thewoodlandstowship-tx.gov	Megan Lichenstein 281-210-3478 July 4 th
Tulsa River Parks 717 S. Houston Ave., Suite 510 Tulsa, OK 74127 tpitzer@riverparks.org	Tonja Pitzer 918-596-2008 July 4 th



Memo

To: Darren McCarthy

From: Lydia Acosta

Date: February 6, 2014

Re: 2014 Fireworks Display – Bid Summary/Company Recommendation

Below are my recommendations for top three companies for 2014 July 4th fireworks display:

#1 PYRO SHOWS OF TEXAS

Pros:

- Made pre-bid site visit to see event/shoot site and terrain
- Will use multiple, safe launch sites to maximize audience view and show effects
- Will provide the most 10" shells of top three bidders (8)
- More 4" and 5" shells than other bids
- Not using any cakes/barrages
- National company with Texas-based branch

Cons:

- Highest of the three low bidders
- Lowest total shell count of the three low bidders (1428)

(Company indicated that shell count should roughly equal number of seconds in show; CofR show is 1200 seconds long)

#2 MAGIC IN THE SKY

Pros:

- Highest in overall shell count (1930 or 2509 depending on option)
- Will provide 10" shells (4)
- Lowest bidder of top three low bids
- Texas-based company

Cons:

- No pre-bid site visit
- Using cakes/barrages
- Using twice or three times as many 3" shells versus 4" or 5" shells

#3 ZAMBELLI

Pros:

- Second in overall shell count (1726)
- Will provide 10" shells (3)
- Second lowest bidder of top three low bids

Cons:

- No pre-bid site visit
- Using cakes/barrages
- Using four times as many 3" shells versus 4" or 5" shells
- East Coast based

RESOLUTION NO. R-1758

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AWARDED A BID FOR THE JULY 04, 2014, FAMILY 4th CELEBRATION FIREWORKS DISPLAY; AND, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, AN AGREEMENT, AND/OR ALL NECESSARY DOCUMENTATION REGARDING SAME.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The approval and award of a bid to _____ in the amount of \$_____ for the July 04, 2014, Family 4th Celebration fireworks display in the City of Rosenberg, Texas.

Section 2. The City Manager is hereby authorized to negotiate and execute any documentation necessary to facilitate said project.

Section 3. A copy of the Proposal is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this _____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
9	Rosenberg Special Events Committee Recommendation

ITEM/MOTION

Consideration of and action on a proposal to combine the Special Events Committee and Parks and Recreation Board.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:**MUD #:** N/A

- McCarthy Memorandum – 12-13-13
- Parks and Recreation Board Meeting Draft Minute Excerpt – 01-23-14

APPROVALS

Submitted by:

Darren McCarthy
Parks and Recreation
Director

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney
- City Engineer
- Exec. Dir. of Support Services *ST*

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

To eliminate redundancies, staff presented to the Parks and Recreation Board (Board) a proposal to combine the Rosenberg Special Events Committee with the Board. This would eliminate the Rosenberg Special Events Committee. After reviewing the proposal, the Board unanimously approved the proposal.

Per Ordinance, the Board can have as few as seven (7) members and as many as thirteen (13) members. The proposed combination would create a Board of ten (10) members. If the proposal is approved, staff anticipates combining the Special Events Committee with the Board for the regularly scheduled Parks and Recreation Board meeting on March 27, 2014.

Staff recommends combining the Rosenberg Special Events Committee with the Parks and Recreation Board and eliminating the Rosenberg Special Events Committee.



From the desk of



Darren McCarthy, CPRP
Parks and Recreation Director

Memo

To: Mr. Robert Gracia, City Manager

Date: December 13, 2013

Re: Rosenberg Special Events Committee Recommendation

On December 12th the Rosenberg Special Events Committee had a scheduled meeting for 6:00 pm at the Rosenberg Civic Center. It was the second consecutive meeting where the Committee did not have a quorum. The last meeting that had a quorum was on October 10th.

To eliminate redundancies, staff is proposing combining the Special Events Committee with the Parks Board. This would eliminate the need for the Special Events Committee.

Currently, there is a significant overlap of members on both the Committee and the Board. Additionally, the Council liaison is the same for both the Committee and the Board. Should you and Council consider this proposal, the new Parks Board would consist of the following members:

Teresa Bailey
Laurie Cook
Melissa Dixon
Rufus Guebarra III
Rudy Guerrero
Bertha Nell Kelm
Ray Kueck
Stanley Kucherka
Eric Ramirez
George Zepeda

Council Representative: Amanda Bolf

John Dorman and Curtis Matheaus have notified the City in writing that they will no longer be able to participate in either meeting due to time and date changes. Melissa Dixon has also indicated that she may not be able to participate regularly due to the time and date changes. Per Ordinance, the Parks Board can consist of as few as seven (7) and as many as thirteen (13) members. The combination of the Committee and Board above would consist of ten (10) members.

With your permission, we would like to review this proposal with the Parks Board at their regularly scheduled meeting on January 23, 2014. Should the Parks Board recommend this proposal, we would bring it to City Council for consideration on February 18, 2014.

Please let me know if you need any additional information.

Cc: Matt Fielder, Economic Development Director
Lydia Acosta, Recreation Programs Coordinator

DRAFT

CITY OF ROSENBERG PARKS AND RECREATION BOARD MEETING MINUTES

*** DRAFT ***

On this the 23rd day of January 2014, the Parks and Recreation Board of the City of Rosenberg, Fort Bend County, Texas, met in a Regular Session at Rosenberg Civic Center located at 3825 Hwy. 36 South, Rosenberg, Texas.

MEMBERS PRESENT

Teresa Bailey	Parks and Recreation Board Chairman
Stanley Kucherka	Parks and Recreation Board Vice Chairman
Bertha Nell Kelm	Parks and Recreation Board Secretary
Laurie Cook	Parks and Recreation Board Member
Eric Ramirez	Parks and Recreation Board Member
George Zepeda	Parks and Recreation Board Member
Amanda Bolf	Council Liaison

MEMBERS ABSENT

Rufus Guebara	Parks and Recreation Board Member
Ray Kueck	Parks and Recreation Board Member

STAFF PRESENT

Jeff Trinker	Assistant to the City Manager
Darren McCarthy	Parks and Recreation Director
Lydia Acosta	Recreation Programs Coordinator

GUESTS PRESENT

Rick Adams	Coastal Prairie Chapter of Texas Master Naturalists
Joshua Hicks	Boy Scout Troop 1656

AGENDA

CONSIDERATION OF AND ACTION ON COMBINING PARKS AND RECREATION BOARD AND SPECIAL EVENTS COMMITTEE.

Key Discussion: Darren McCarthy, Parks and Recreation Director, explained to the Board that now that the Parks Department was in charge of the two large special events in town (Christmas in Rosenberg and Family 4th), he noticed that many of the members of the Special Events Committee were the same citizens who serve on the Parks and Recreation Board. He also noted that Councilor Bolf served as liaison to both groups. Therefore, he asked Members to consider making a recommendation to merge the two committees into one, thereby reducing redundancy and streamlining the responsibilities of both groups' members, as well as staff. Laurie Cook asked what the Special Committee does. Teresa Bailey – a Member of both groups – noted that the Special Events Committee served as an advisory committee for Christmas in Rosenberg and Family 4th and nothing more. By combining the groups, Darren explained that with City Council's approval, Special Event Committee members Rudy Guerrero and Melissa Dixon would be added to the Parks and Recreation Board, noting that Curtis Matheaus had formally resigned. Darren added that the Parks and Recreation Board would continue to meet on the fourth Thursday of the month at 6:00 pm.

ACTION: Eric Ramirez made a motion, seconded by Stanley Kucherka, to combine the members of the Special Events committee with the Parks and Recreation Board. The motion passed by a unanimous vote of those present.



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
10	Ordinance No. 2014-10 - Flood Prevention and Control

ITEM/MOTION

Consideration of and action on Ordinance No. 2014-10, an Ordinance amending the Code of Ordinances by deleting Articles I, II, and III of Chapter 12 and substituting therefor new Articles I, II, and III of Chapter 12 thereof; providing for general definitions and guidelines for flood prevention and control, administrative procedures, and provisions for flood hazard reduction; providing a penalty not to exceed \$500 for violation of any provision hereof; and providing for severability.

FINANCIAL SUMMARY

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

ELECTION DISTRICT

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

MUD #: N/A

SUPPORTING DOCUMENTS:

1. Ordinance No. 2014-10 – Redline
2. Ordinance No. 2014-10

APPROVALS

Submitted by:Charles A. Kalkomey, P.E.
City Engineer**Reviewed by:**

- Executive Director of Administrative Services
- Asst. City Manager for Public Services
- City Attorney *LJL/rl*
- City Engineer
- (Other)

Approved for Submittal to City Council:Robert Gracia
City Manager

EXECUTIVE SUMMARY

The Flood Insurance Rate Maps (FIRMs) for Fort Bend County and all incorporated areas within the County has been updated and reissued by the Federal Emergency Management Agency (FEMA). The primary changes in the maps were based on modifications to the Brazos River flows and improved terrain mapping with LiDAR elevations. This resulted in an increase in the Base Flood Elevations (BFEs) along the Brazos River, generally increasing the width of the floodplain along the Brazos River. Within the City, the improved terrain mapping resulted in removal of a large portion of Cambridge Village from the floodplain.

These new FIRMs have an effective date of April 04, 2014. Therefore, Chapter 12 of the Code of Ordinances needs to be updated to adopt these new maps.

In addition, Chapter 12 has been amended to be in agreement with our design standards which require that structures in a regulatory floodplain be elevated to twelve (12) inches above the BFE. There are additional “housekeeping” revisions to Chapter 12 within the Texas Water Development Board sample ordinance that are included in this amended Ordinance such as updated and additional definitions.

Staff recommends approval of Ordinance No. 2014-10 as presented.

ORDINANCE NO. 2014-10

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, BY DELETING ARTICLES I, II, AND III OF CHAPTER 12 AND SUBSTITUTING THEREFOR NEW ARTICLES I, II, AND III OF CHAPTER 12 THEREOF; PROVIDING FOR GENERAL DEFINITIONS AND GUIDELINES FOR FLOOD PREVENTION AND CONTROL, ADMINISTRATIVE PROCEDURES, AND PROVISIONS FOR FLOOD HAZARD REDUCTION; PROVIDING A PENALTY NOT TO EXCEED \$500 FOR VIOLATION OF ANY PROVISION HEREOF; AND PROVIDING FOR SEVERABILITY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The Code of Ordinances of the City of Rosenberg, Texas, is hereby amended by deleting Article I of Chapter 12 and substituting therefor a new Article I of Chapter 12 thereof, to provide as follows:

**“Chapter 12 - FLOOD PREVENTION AND PROTECTION
ARTICLE I. IN GENERAL**

Sec. 12-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant structure means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of future conditions flood hazard means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

Area of shallow flooding means a designated AO, AH, or VO Zone on a community's flood insurance rate map (FIRM) with a one (1) percent chance or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

~~*Area of special flood hazard* is the land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year. The area may be designated as Zone A on the flood hazard boundary map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.~~

Area of special flood hazard means the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

Base flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means a nonbasement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3(e)(5) of the National Flood Insurance Program Regulations.

Existing construction means for the purpose of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood insurance rate map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the

areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of flooding).

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway (regulatory floodway) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair

facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the department of interior) or preliminarily determined by the secretary of the interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary of interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the secretary of the interior or;
 - b. Directly by the secretary of the interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built

so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program Regulations.

Manufactured home means a structure transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

~~*Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.*~~

Mean sea level means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

New construction means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Recreational vehicle means a vehicle which is (i) built on a single chassis; (ii) four hundred (400) square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Start of construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

~~Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.~~

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or (2) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Variance is a grant of relief to a person from the requirement of this chapter when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program Regulations.)

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

~~*Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.*~~

Sec. 12-2. Findings of fact.

- (a) The flood hazard areas of the City of Rosenberg, Texas are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- (b) Flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

Sec. 12-3. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;

- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (7) Insure that potential buyers are notified that property is in a flood area.

Sec. 12-4. Methods of reducing flood losses.

In order to accomplish its purposes, this chapter and its several sections use the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sec. 12-5. Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazard within the city.

Sec. 12-6. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Fort Bend County, Texas and Incorporated Areas," dated April 4, 2014, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) dated April 4, 2014, and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter.

~~The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for the City of Rosenberg," dated January 3, 1997, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter.~~

Sec. 12-7. Development permit required.

A development permit shall be required to ensure conformance with the provisions of this chapter.

Sec. 12-8. Compliance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this chapter and other applicable regulations.

Sec. 12-9. Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance or chapter of the Code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Sec. 12-10. Interpretation.

In the interpretation and application of this chapter, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under state law.

Sec. 12-11. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city or any official or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

Secs. 12-12—12-30. Reserved.”

Section 2. The Code of Ordinances of the City of Rosenberg, Texas, is hereby further amended by deleting Article II of Chapter 12 and substituting therefor a new Article II of Chapter 12 thereof, to provide as follows:

**“Chapter 12 - FLOOD PREVENTION AND PROTECTION
ARTICLE II. ADMINISTRATION**

Sec. 12-31. Designation of the floodplain administrator.

The city engineer or his designee is hereby appointed as the floodplain administrator and is directed to implement the provisions of this chapter and other appropriate sections of Title 44 of the United States Code of Federal Regulations (The National Flood Insurance Program Regulations) pertaining to floodplain management.

Sec. 12-32. Duties and responsibilities of the floodplain administrator.

The duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:

- (1) Maintain and hold for public inspection all records pertaining to the provisions of this chapter.
- (2) Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
- (3) Review, approve or deny all applications for development permits required by adoption of this chapter.

- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, state or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the floodplain administrator shall make the necessary interpretation.
- (6) Notify, in riverine situations, adjacent communities and the state coordinating agency which is the Texas ~~Natural Resource Conservation Commission~~ Water Development Board (TWDB) and also the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (8) When base flood elevation data has not been provided in accordance with ~~a~~Article I, section 12-6, the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of Article III.
- (9) When a regulatory floodway has not been designated, the floodplain administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the city's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the municipal limits of the city.
- (10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one (1) foot, provided that the community first ~~applies for a conditional FIRM revision through FEMA~~ completes all of the provisions required by Section 65.12.

Sec. 12-33. Permit procedures.

(a) Application for a development permit shall be presented to the floodplain administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. In addition, the following information is required:

- (1) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
- (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Article III, section 12-52(2);
- (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
- (5) Maintain a record of all such information in accordance with Article II, section 12-32(1).

(b) Approval or denial of a development permit by the floodplain administrator shall be based on all of the provisions of this chapter and the following relevant factors:

- (1) The danger to life and property due to flooding or erosion damage;
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (3) The danger that materials may be swept onto other lands to the injury of others;
- (4) The compatibility of the proposed use with existing and anticipated development;
- (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

- (6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- (7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
- (8) The necessity to the facility of a waterfront location, where applicable;
- (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (10) The relationship of the proposed use to the comprehensive plan for that area.

Sec. 12-34. Variance procedures.

- (a) The planning ~~and zoning~~ commission as established by the city shall hear and render judgment on requests for variances from the requirements of this Code.
- (b) The planning ~~and zoning~~ commission shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or interpretation made by the floodplain administrator in the enforcement or administration of this chapter.
- (c) Any person or persons aggrieved by the decision of the planning ~~and zoning~~ commission may appeal such decision in the courts of competent jurisdiction.
- (d) The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (e) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this chapter.
- (f) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with existing structures constructed

below the base flood level, providing the relevant factors in section 12-33(b) of this article have been fully considered. As the lot size increases beyond the one-half (½) acre, the technical justification required for issuing the variance increases.

- (g) Upon consideration of the factors noted above and the intent of this chapter, the planning and zoning commission may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (Article I, section 12-3).
- (h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (i) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (j) Prerequisites for granting variances:
 - (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (2) Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (3) Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (k) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in [Article II](#), section 12-34, (a) through (i) are met, and (ii) the structure or other development is protected by methods that minimize flood

damages during the base flood and create no additional threats to public safety.

Secs. 12-35—12-50. Reserved.”

Section 3. The Code of Ordinances of the City of Rosenberg, Texas, is hereby further amended by deleting Article III of Chapter 12 and substituting therefor a new Article III of Chapter 12 thereof, to provide as follows:

**“Chapter 12 - FLOOD PREVENTION AND PROTECTION
ARTICLE III. PROVISIONS FOR FLOOD HAZARD REDUCTION**

Sec. 12-51. General standards.

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements.

- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Sec. 12-52. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Article I, section 12-6, (ii) Article II, section 12-32(8), or (iii) Article III, section 12-53(c), the following provisions are required:

- (1) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to a minimum of twelve (12) inches ~~or~~ above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the floodplain administrator that the standard of this subsection as proposed in Article II, section 12-33(a)(1), is satisfied.
- (2) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to a minimum of twelve (12) inches ~~or~~ above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined herein. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the floodplain administrator.
- (3) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.

- b. The bottom of all openings shall be no higher than one (1) foot above grade.
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

(4) *Manufactured homes.*

- a. Require that all manufactured homes to be placed within Zone A on the city's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- b. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the city's FIRM on-sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured housing subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to a minimum of twelve (12) inches ~~or~~ above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- c. Require that manufactured homes be placed or substantially improved on-sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the city's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:
 - 1. The lowest floor of the manufactured home is a minimum of twelve (12) inches ~~at or~~ above the base flood elevation, or
 - 2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-

six (36) inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- (5) *Recreational vehicles.* Require that recreational vehicles placed on-sites within Zones A1-30, AH, and AE on the city's FIRM either (i) be on the site for fewer than one hundred eighty (180) consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Article II, section 12-33(a), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

Sec. 12-53. Standards for subdivision proposals.

- (a) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article I, section 12-2, section 12-3 and section 12-4 of this chapter.
- (b) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet development permit requirements of ~~article~~ Article I, section 12-7, Article II, section 12-33, and Article III of this chapter.
- (c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to ~~A~~ Article I, section 12-6, or Article II, section 12-32(8) of this chapter.
- (d) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (e) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

Sec. 12-54. Standards for areas of shallow flooding (AO/AH Zones).

Located within the areas of special flood hazard established in ~~A~~ Article I, section 12-6, are areas designated as shallow flooding. These areas have

special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the city's FIRM (at least two (2) feet if no depth number is specified).
- (2) All new construction and substantial improvements of nonresidential structures;
 - a. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the city's FIRM (at least two (2) feet if no depth number is specified), or;
 - b. Together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability or resisting hydrostatic and hydrodynamic loads or effects of buoyancy.
- (3) A registered professional engineer or architect shall submit a certification to the floodplain administrator that the standards of this section, as proposed in Article II, section 12-33~~(a)(1)~~, are satisfied.
- (4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

Sec. 12-55. Floodways.

Floodways located within areas of special flood hazard established in Article I, section 12-6, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated

through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the city during the occurrence of the base flood discharge.

- (2) If Article III, section 12-55(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article III.
- (3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through FEMA.

Section 3. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 4. Any person who shall violate any provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount as provided in Section 1-13 of this Code. Each day of violation shall constitute a separate offense.

PASSED AND APPROVED by a vote of _____ “ayes” in favor and _____ “noes” against on this the second/final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on this the _____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

APPROVED AS TO FORM:

Lora Jean D. Lenzsch, **CITY ATTORNEY**

ORDINANCE NO. 2014-10

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, BY DELETING ARTICLES I, II, AND III OF CHAPTER 12 AND SUBSTITUTING THEREFOR NEW ARTICLES I, II, AND III OF CHAPTER 12 THEREOF; PROVIDING FOR GENERAL DEFINITIONS AND GUIDELINES FOR FLOOD PREVENTION AND CONTROL, ADMINISTRATIVE PROCEDURES, AND PROVISIONS FOR FLOOD HAZARD REDUCTION; PROVIDING A PENALTY NOT TO EXCEED \$500 FOR VIOLATION OF ANY PROVISION HEREOF; AND PROVIDING FOR SEVERABILITY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The Code of Ordinances of the City of Rosenberg, Texas, is hereby amended by deleting Article I of Chapter 12 and substituting therefor a new Article I of Chapter 12 thereof, to provide as follows:

**“Chapter 12 - FLOOD PREVENTION AND PROTECTION
ARTICLE I. IN GENERAL**

Sec. 12-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appurtenant structure means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of future conditions flood hazard means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

Area of shallow flooding means a designated AO, AH, or VO Zone on a community's flood insurance rate map (FIRM) with a one (1) percent chance or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard means the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

Base flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means a nonbasement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers),

or shear walls parallel to the floor of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3(e)(5) of the National Flood Insurance Program Regulations.

Existing construction means for the purpose of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood insurance rate map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of flooding).

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway (regulatory floodway) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the department of interior) or preliminarily determined by the secretary of the interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary of interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the secretary of the interior or;
 - b. Directly by the secretary of the interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program Regulations.

Manufactured home means a structure transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

New construction means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Recreational vehicle means a vehicle which is (i) built on a single chassis; (ii) four hundred (400) square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Start of construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home

on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or (2) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Variance is a grant of relief to a person from the requirement of this chapter when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program Regulations.)

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Sec. 12-2. Findings of fact.

- (a) The flood hazard areas of the City of Rosenberg, Texas are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- (b) Flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

Sec. 12-3. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and

- (7) Insure that potential buyers are notified that property is in a flood area.

Sec. 12-4. Methods of reducing flood losses.

In order to accomplish its purposes, this chapter and its several sections use the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sec. 12-5. Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazard within the city.

Sec. 12-6. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Fort Bend County, Texas and Incorporated Areas," dated April 4, 2014, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) dated April 4, 2014, and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter.

Sec. 12-7. Development permit required.

A development permit shall be required to ensure conformance with the provisions of this chapter.

Sec. 12-8. Compliance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this chapter and other applicable regulations.

Sec. 12-9. Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance or chapter of the Code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Sec. 12-10. Interpretation.

In the interpretation and application of this chapter, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under state law.

Sec. 12-11. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city or any official or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

Secs. 12-12—12-30. Reserved.”

Section 2. The Code of Ordinances of the City of Rosenberg, Texas, is hereby further amended by deleting Article II of Chapter 12 and substituting therefor a new Article II of Chapter 12 thereof, to provide as follows:

**“Chapter 12 - FLOOD PREVENTION AND PROTECTION
ARTICLE II. ADMINISTRATION**

Sec. 12-31. Designation of the floodplain administrator.

The city engineer or his designee is hereby appointed as the floodplain administrator and is directed to implement the provisions of this chapter and other appropriate sections of Title 44 of the United States Code of Federal Regulations (The National Flood Insurance Program Regulations) pertaining to floodplain management.

Sec. 12-32. Duties and responsibilities of the floodplain administrator.

The duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:

- (1) Maintain and hold for public inspection all records pertaining to the provisions of this chapter.
- (2) Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
- (3) Review, approve or deny all applications for development permits required by adoption of this chapter.
- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, state or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the floodplain administrator shall make the necessary interpretation.
- (6) Notify, in riverine situations, adjacent communities and the state coordinating agency which is the Texas Water Development Board (TWDB) and also the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

- (8) When base flood elevation data has not been provided in accordance with Article I, section 12-6, the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of Article III.
- (9) When a regulatory floodway has not been designated, the floodplain administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the city's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the municipal limits of the city.
- (10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one (1) foot, provided that the community first completes all of the provisions required by Section 65.12.

Sec. 12-33. Permit procedures.

- (a) Application for a development permit shall be presented to the floodplain administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. In addition, the following information is required:
 - (1) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
 - (2) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
 - (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Article III, section 12-52(2);

- (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
 - (5) Maintain a record of all such information in accordance with Article II, section 12-32(1).
- (b) Approval or denial of a development permit by the floodplain administrator shall be based on all of the provisions of this chapter and the following relevant factors:
- (1) The danger to life and property due to flooding or erosion damage;
 - (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (3) The danger that materials may be swept onto other lands to the injury of others;
 - (4) The compatibility of the proposed use with existing and anticipated development;
 - (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
 - (7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
 - (8) The necessity to the facility of a waterfront location, where applicable;
 - (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (10) The relationship of the proposed use to the comprehensive plan for that area.

Sec. 12-34. Variance procedures.

- (a) The planning commission as established by the city shall hear and render judgment on requests for variances from the requirements of this Code.
- (b) The planning commission shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or interpretation made by the floodplain administrator in the enforcement or administration of this chapter.
- (c) Any person or persons aggrieved by the decision of the planning commission may appeal such decision in the courts of competent jurisdiction.
- (d) The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (e) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this chapter.
- (f) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half ($\frac{1}{2}$) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in section 12-33(b) of this article have been fully considered. As the lot size increases beyond the one-half ($\frac{1}{2}$) acre, the technical justification required for issuing the variance increases.
- (g) Upon consideration of the factors noted above and the intent of this chapter, the planning and zoning commission may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter (Article I, section 12-3).
- (h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (i) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (j) Prerequisites for granting variances:

- (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (2) Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (3) Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (k) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Article II, section 12-34, (a) through (i) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Secs. 12-35—12-50. Reserved.”

Section 3. The Code of Ordinances of the City of Rosenberg, Texas, is hereby further amended by deleting Article III of Chapter 12 and substituting therefor a new Article III of Chapter 12 thereof, to provide as follows:

**“Chapter 12 - FLOOD PREVENTION AND PROTECTION
ARTICLE III. PROVISIONS FOR FLOOD HAZARD REDUCTION**

Sec. 12-51. General standards.

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements.

- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Sec. 12-52. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Article I, section 12-6, (ii) Article II, section 12-32(8), or (iii) Article III, section 12-53(c), the following provisions are required:

- (1) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to a minimum of twelve (12) inches above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the floodplain administrator that the standard of this subsection as proposed in Article II, section 12-33(a)(1), is satisfied.
- (2) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to a minimum of twelve (12) inches above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of

buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined herein. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the floodplain administrator.

- (3) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The bottom of all openings shall be no higher than one (1) foot above grade.
 - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

- (4) *Manufactured homes.*
 - a. Require that all manufactured homes to be placed within Zone A on the city's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
 - b. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the city's FIRM on-sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or

subdivision, (iii) in an expansion to an existing manufactured housing subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to a minimum of twelve (12) inches above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

c. Require that manufactured homes be placed or substantially improved on-sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the city's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

1. The lowest floor of the manufactured home is a minimum of twelve (12) inches above the base flood elevation, or

2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) *Recreational vehicles.* Require that recreational vehicles placed on-sites within Zones A1-30, AH, and AE on the city's FIRM either (i) be on the site for fewer that one hundred eighty (180) consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Article II, section 12-33(a), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

Sec. 12-53. Standards for subdivision proposals.

(a) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article I, section 12-2, section 12-3 and section 12-4 of this chapter.

- (b) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet development permit requirements of Article I, section 12-7, Article II, section 12-33, and Article III of this chapter.
- (c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to Article I, section 12-6, or Article II, section 12-32(8) of this chapter.
- (d) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (e) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

Sec. 12-54. Standards for areas of shallow flooding (AO/AH Zones).

Located within the areas of special flood hazard established in Article I, section 12-6, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the city's FIRM (at least two (2) feet if no depth number is specified).
- (2) All new construction and substantial improvements of nonresidential structures;
 - a. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the city's FIRM (at least two (2) feet if no depth number is specified), or;
 - b. Together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is

watertight with walls substantially impermeable to the passage of water and with structural components having the capability or resisting hydrostatic and hydrodynamic loads or effects of buoyancy.

- (3) A registered professional engineer or architect shall submit a certification to the floodplain administrator that the standards of this section, as proposed in Article II, section 12-33, are satisfied.
- (4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

Sec. 12-55. Floodways.

Floodways located within areas of special flood hazard established in Article I, section 12-6, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the city during the occurrence of the base flood discharge.
- (2) If Article III, section 12-55(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article III.
- (3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through FEMA.

Section 3. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a

whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 4. Any person who shall violate any provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount as provided in Section 1-13 of this Code. Each day of violation shall constitute a separate offense.

PASSED AND APPROVED by a vote of _____ “ayes” in favor and _____ “noes” against on this the second/final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on this the _____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

APPROVED AS TO FORM:

Lora Jean D. Lenzsch, **CITY ATTORNEY**



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
11	Ordinance No. 2014-08 – Sign Ordinance Amendments (Aves. H, I & SH 36)

ITEM/MOTION

Consideration of and action on Ordinance No. 2014-08, an Ordinance amending the Code of Ordinances by amending subsections (a)(4) and (a)(7) and by adding new subsections (a)(8), (a)(9) and (a)(10) to Section 6-362.2 of Article XIII of Chapter 6 thereof, providing for expanded boundaries of Sign District “B”; by adding a new Section 6-362.3 of Article XIII of Chapter 6 thereof, establishing Sign District “C” and regulations for Sign District “C”; by adding a new Section 6-362.4 of Article XIII of Chapter 6 thereof, establishing a Sign District map; providing a penalty in an amount as provided in Section 1-13 of this Code for violation of any provision hereof; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith; and providing for severability.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

1. Ordinance No. 2014-08 – Redline w/o Exhibit
2. Ordinance No. 2014-08
3. City Council Meeting Minute Excerpt – 11-26-13
4. City Council Meeting Minute Excerpt - 09-24-13

MUD #: N/A

APPROVALS

Submitted by:

Travis Tanner
 Travis Tanner, AICP
 Executive Director
 Community Development

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney *LJL/rlm*
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
 Robert Gracia
 City Manager

EXECUTIVE SUMMARY

Freestanding sign regulations for height and area for Avenues H and I and State Highway 36 (between I-69/U.S. 59 and Avenue H) have been discussed in two (2) previous City Council Workshop meetings: once on September 24, 2013, and again on November 26, 2013. In the most recent discussion on November 26, 2013, staff presented options for sign regulations for these corridors to City Council. The most agreed-upon option involved designating the eastern parts of Avenues H and I as being included in previously-approved Sign District “B.” These parts of the corridors have larger properties that could accommodate the larger signage allowed in District “B” (maximum of 16-foot/120 square foot single-tenant signs and 24-foot/320 square foot multi-tenant signs). Staff recommended that should City Council choose this option, the dividing lines for larger signage would be Miles and Mahlmann Streets. This was due to the larger properties and shopping centers mostly being located to the east of these streets. There was subsequent discussion and potential agreement on the dividing line being moved to the west to 8th Street with the exception properties located on the south side of Avenue I, which should have smaller signage due to more residences being located in the area.

Staff has prepared an Ordinance amendment that we believe most reflects the discussion and consensus of City Council on November 26, 2013. It can be summarized as follows:

State Highway 36 between I-69/U.S. 59 and Avenue H (not including Downtown); Avenue H between Spur 529 and 8th Street (not including Downtown); Avenue I between Spur 529 and 8th Street (not including Downtown); and the south side of Avenue I between 8th and Mahlmann:

- Single-tenant:
 - Maximum height: twelve (12) feet
 - Maximum size: sixty (60) square feet
- Multi-tenant:
 - Maximum height: twelve (12) feet
 - Maximum size: ninety-six (96) square feet
 - Maximum of sixty (60) square feet per tenant

Avenue H east of 8th Street; Avenue I east of Mahlmann; and the north side of Avenue I between 8th and Mahlmann:

- Single-tenant:
 - Maximum height: sixteen (16) feet
 - Maximum size: one-hundred twenty (120) square feet
- Multi-tenant:
 - Maximum height: twenty-four (24) feet
 - Maximum size: three-hundred twenty (320) square feet
 - Maximum of one-hundred twenty (120) square feet per tenant

You will notice that the Downtown Area is not included in these recommendations. This is because Downtown already has its own standards that do not allow freestanding signs. This is due to the buildings mostly adjoining the right-of-way; thus the sites do not have yards for freestanding signs to be located in. No changes are recommended to the Downtown Area's existing sign regulations. In fact, Downtown has been discussed in previous meetings as potentially being Sign District "C" and Avenues H, I, and State Highway 36 as District "D"; however, because no changes are recommended to Downtown, staff does not see the need to create another sign district for it and therefore Avenues H, I & 36 are being designated as District "C."

Finally, due to the complexity of the Ordinance, staff has created a Sign District Map to make the Ordinance more user-friendly for staff and sign permit applicants. The map is attached as Exhibit "A" and incorporated in the Ordinance. Staff recommends approval of Ordinance No. 2014-08 in order to move forward with establishing permanent freestanding sign regulations for the corridors, as opposed to the current maximum height of nine (9) feet and maximum area of 36 square feet.

ORDINANCE NO. 2014-08

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, BY AMENDING SUBSECTIONS (a)(4) AND (a)(7) AND BY ADDING NEW SUBSECTIONS (a)(8), (a)(9) AND (a)(10) TO SECTION 6-362.2 OF ARTICLE XIII OF CHAPTER 6 THEREOF, PROVIDING FOR EXPANDED BOUNDARIES OF SIGN DISTRICT “B”; BY ADDING A NEW SECTION 6-362.3 OF ARTICLE XIII OF CHAPTER 6 THEREOF, ESTABLISHING SIGN DISTRICT “C” AND REGULATIONS FOR SIGN DISTRICT “C”; BY ADDING A NEW SECTION 6-362.4 OF ARTICLE XIII OF CHAPTER 6 THEREOF, ESTABLISHING A SIGN DISTRICT MAP; PROVIDING A PENALTY IN AN AMOUNT AS PROVIDED IN SECTION 1-13 OF THIS CODE FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The Code of Ordinances of the City of Rosenberg, Texas, is hereby amended by amending subsections (a)(4) and (a)(7) and by adding new subsections (a)(8), (a)(9) and (a)(10) to Section 6-362.2; by adding a new Section 6-362.3; and by adding a new Section 6-362.4 to Article XIII of Chapter 6 thereof to provide as follows:

“Sec. 6-362.2. - Sign District “B”.

(a) There is hereby created a Sign District “B”, which shall include:

- (1) All property located within the City adjacent to and fronting on the right-of-way of FM 2218; and
- (2) All property located within the City adjacent to and fronting on the right-of-way of FM 2977; and
- (3) All property located within the City adjacent to and fronting on the right-of-way of FM 762; and
- (4) All property located within the City adjacent to and fronting on the right-of-way of FM 723 and not in the Downtown Area; and
- (5) All property located within the City adjacent to and fronting on the right-of-way of the sections of State Highway 36 that extend south of U.S. Highway 59 and north of U.S. Highway 90A; and

- (6) All property located within the City adjacent to and fronting on the right-of-way of the section of U.S. Highway 90A that extends west of Spur 529; and
 - (7) All property located within the City adjacent to and fronting on the right-of-way of Spur 529; and
 - (8) All property located within the City adjacent to and fronting on the right-of-way of the section of U.S. Highway 90A that extends east of 8th Street; and
 - (9) All property located within the City adjacent to and fronting on the right-of-way of the section of FM 1640 that extends east of Mahlmann Street; and
 - (10) All property located within the City adjacent to and fronting on the north side of the right-of-way of the section of FM 1640 between 8th and Mahlmann Streets.
- (b) The following standards shall apply to single tenant signs within District “B”:
- (1) The maximum height shall be sixteen (16) feet.
 - (2) The maximum size shall be one-hundred twenty (120) square feet.
- (c) The following standards shall apply to multi-tenant signs within District “B”:
- (1) The maximum height shall be twenty-four (24) feet.
 - (2) The maximum overall size shall be three-hundred twenty (320) square feet.
 - (3) The maximum size per individual tenant shall be one-hundred twenty (120) square feet.

Sec. 6-362.3. - Sign District “C”.

- (a) There is hereby created a Sign District “C”, which shall include:
- (1) All property located within the City adjacent to and fronting on the right-of-way of the section of State Highway 36 between U.S. Highway 59 and U.S. Highway 90A and not in the Downtown Area; and
 - (2) All property located within the City adjacent to and fronting on the right-of-way of the section of U.S. Highway 90A between Spur 529 and 8th Street and not in the Downtown Area; and
 - (3) All property located within the City adjacent to and fronting on the right-of-way of the section of FM 1640 between Spur 529 and 8th Street and not in the Downtown Area; and
 - (4) All property located within the City adjacent to and fronting on the south side of the right-of-way of the section of FM 1640 between 8th and Mahlmann Streets.

(b) The following standards shall apply to single tenant signs within District “C”:

- (1) The maximum height shall be twelve (12) feet.
- (2) The maximum size shall be sixty (60) square feet.

(c) The following standards shall apply to multi-tenant signs within District “C”:

- (1) The maximum height shall be twelve (12) feet.
- (2) The maximum overall size shall be ninety-six (96) square feet.
- (3) The maximum size per individual tenant shall be sixty (60) square feet.

Sec. 6-362.4. – Sign District Map.

The Sign District Map, depicting Sign Districts “A,” “B,” and “C” and the Downtown Area of the City of Rosenberg, is attached hereto as Exhibit “A” and incorporated herein for reference purposes.”

Section 2. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount as provided in Section 1-13 of this Code. Each day of violation shall constitute a separate offense.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED by a vote of _____ “ayes” in favor and _____ “noes” against on this first and final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on the _____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

APPROVED AS TO FORM:

Lora Jean D. Lenzsch, **City Attorney**

ORDINANCE NO. 2014-08

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, BY AMENDING SUBSECTIONS (a)(4) AND (a)(7) AND BY ADDING NEW SUBSECTIONS (a)(8), (a)(9) AND (a)(10) TO SECTION 6-362.2 OF ARTICLE XIII OF CHAPTER 6 THEREOF, PROVIDING FOR EXPANDED BOUNDARIES OF SIGN DISTRICT “B”; BY ADDING A NEW SECTION 6-362.3 OF ARTICLE XIII OF CHAPTER 6 THEREOF, ESTABLISHING SIGN DISTRICT “C” AND REGULATIONS FOR SIGN DISTRICT “C”; BY ADDING A NEW SECTION 6-362.4 OF ARTICLE XIII OF CHAPTER 6 THEREOF, ESTABLISHING A SIGN DISTRICT MAP; PROVIDING A PENALTY IN AN AMOUNT AS PROVIDED IN SECTION 1-13 OF THIS CODE FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The Code of Ordinances of the City of Rosenberg, Texas, is hereby amended by amending subsections (a)(4) and (a)(7) and by adding new subsections (a)(8), (a)(9) and (a)(10) to Section 6-362.2; by adding a new Section 6-362.3; and by adding a new Section 6-362.4 to Article XIII of Chapter 6 thereof to provide as follows:

“Sec. 6-362.2. - Sign District “B”.

(a) There is hereby created a Sign District “B”, which shall include:

- (1) All property located within the City adjacent to and fronting on the right-of-way of FM 2218; and
- (2) All property located within the City adjacent to and fronting on the right-of-way of FM 2977; and
- (3) All property located within the City adjacent to and fronting on the right-of-way of FM 762; and
- (4) All property located within the City adjacent to and fronting on the right-of-way of FM 723 and not in the Downtown Area; and
- (5) All property located within the City adjacent to and fronting on the right-of-way of the sections of State Highway 36 that extend south of U.S. Highway 59 and north of U.S. Highway 90A; and

- (6) All property located within the City adjacent to and fronting on the right-of-way of the section of U.S. Highway 90A that extends west of Spur 529; and
 - (7) All property located within the City adjacent to and fronting on the right-of-way of Spur 529; and
 - (8) All property located within the City adjacent to and fronting on the right-of-way of the section of U.S. Highway 90A that extends east of 8th Street; and
 - (9) All property located within the City adjacent to and fronting on the right-of-way of the section of FM 1640 that extends east of Mahlmann Street; and
 - (10) All property located within the City adjacent to and fronting on the north side of the right-of-way of the section of FM 1640 between 8th and Mahlmann Streets.
- (b) The following standards shall apply to single tenant signs within District “B”:
- (1) The maximum height shall be sixteen (16) feet.
 - (2) The maximum size shall be one-hundred twenty (120) square feet.
- (c) The following standards shall apply to multi-tenant signs within District “B”:
- (1) The maximum height shall be twenty-four (24) feet.
 - (2) The maximum overall size shall be three-hundred twenty (320) square feet.
 - (3) The maximum size per individual tenant shall be one-hundred twenty (120) square feet.

Sec. 6-362.3. - Sign District “C”.

- (a) There is hereby created a Sign District “C”, which shall include:
- (1) All property located within the City adjacent to and fronting on the right-of-way of the section of State Highway 36 between U.S. Highway 59 and U.S. Highway 90A and not in the Downtown Area; and
 - (2) All property located within the City adjacent to and fronting on the right-of-way of the section of U.S. Highway 90A between Spur 529 and 8th Street and not in the Downtown Area; and
 - (3) All property located within the City adjacent to and fronting on the right-of-way of the section of FM 1640 between Spur 529 and 8th Street and not in the Downtown Area; and
 - (4) All property located within the City adjacent to and fronting on the south side of the right-of-way of the section of FM 1640 between 8th and Mahlmann Streets.

(b) The following standards shall apply to single tenant signs within District “C”:

(1) The maximum height shall be twelve (12) feet.

(2) The maximum size shall be sixty (60) square feet.

(c) The following standards shall apply to multi-tenant signs within District “C”:

(1) The maximum height shall be twelve (12) feet.

(2) The maximum overall size shall be ninety-six (96) square feet.

(3) The maximum size per individual tenant shall be sixty (60) square feet.

Sec. 6-362.4. – Sign District Map.

The Sign District Map, depicting Sign Districts “A,” “B,” and “C” and the Downtown Area of the City of Rosenberg, is attached hereto as Exhibit “A” and incorporated herein for reference purposes.”

Section 2. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount as provided in Section 1-13 of this Code. Each day of violation shall constitute a separate offense.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED by a vote of _____ “ayes” in favor and _____ “noes” against on this first and final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on the _____ day of _____ 2014.

ATTEST:

APPROVED:

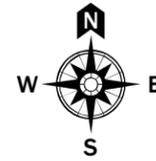
Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

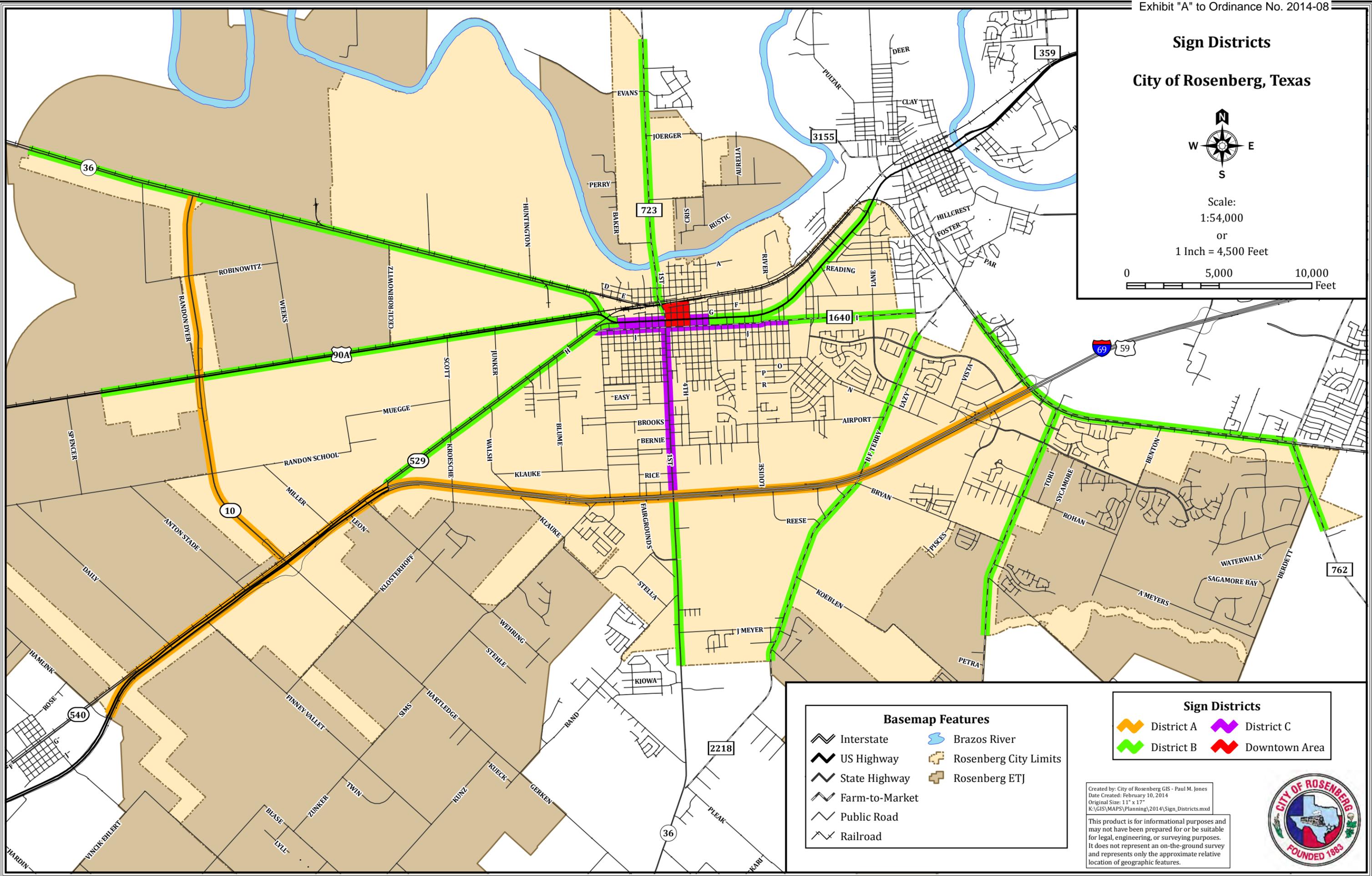
APPROVED AS TO FORM:

Lora Jean D. Lenzsch, **City Attorney**

Sign Districts City of Rosenberg, Texas



Scale:
1:54,000
or
1 Inch = 4,500 Feet



Basemap Features

- Interstate
- US Highway
- State Highway
- Farm-to-Market
- Public Road
- Railroad
- Brazos River
- Rosenberg City Limits
- Rosenberg ETJ

Sign Districts

- District A
- District B
- District C
- Downtown Area

Created by: City of Rosenberg GIS - Paul M. Jones
 Date Created: February 10, 2014
 Original Size: 11" x 17"
 K:\GIS\MAPS\Planning\2014\Sign_Districts.mxd

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 geographic features.



- Councilor Benton agreed with the weighted formula for the entire City.
- Staff will come back to another workshop with guidelines to expand the Program.
- No action was taken on the item.

4. REVIEW AND DISCUSS PROPOSED REVISIONS TO THE "SIGN" ORDINANCE FOR SIGN HEIGHT AND SIGN SIZE FOR DISTRICT "D" (AVENUE H, AVENUE I, AND STATE HIGHWAY 36) AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: At the September 24, 2013 City Council Workshop Meeting, staff presented recommendations for the maximum height and size of freestanding signs on Avenues H and I and the part of State Highway 36 (SH 36) between U.S. Highway 90A (US 90A) and Interstate-69/U.S. Highway 59 (I-69/US 59). The recommendations were as follows:

- Single-tenant:
 - Maximum height: twelve (12) feet
 - Maximum size: sixty (60) square feet
- Multi-tenant:
 - Maximum height: twelve (12) feet
 - Maximum size: ninety-six (96) square feet
 - Maximum of sixty (60) square feet per tenant

The above recommendations were the result of coordinating with the City of Richmond as directed by City Council in 2012. The concept, as generally agreed upon by Rosenberg, Richmond, and the West Fort Bend Management District (WFBMD), was for the two (2) cities to coordinate and adopt similar sign regulations on major corridors, after which the District would relinquish sign control to the cities.

There was discussion at the September 24, 2013, meeting regarding potentially larger multi-tenant sign sizes or dividing District "D" to allow larger signs to the east on Avenues H and I, where there are larger tracts and shopping centers. Councilors subsequently requested more information on the suggestions of the Sign Review Task Force and photos of existing signs and their sizes to help visualize the sign regulations.

The Sign Review Task Force met between January and May of 2010 and their recommendations were as follows for Avenues H and I and SH 36, which were grouped together at the time as they are proposed to be now:

- Single-tenant:
 - Maximum height: twenty-five (25) feet
 - Maximum size: one hundred (100) square feet
- Multi-tenant:
 - Maximum height: thirty-five (35) feet
 - Maximum size: five hundred (500) square feet

The above recommendations are similar to what the City has already adopted for I-69/US 59, and we have stepped down in size on the lesser corridors beginning with 16-foot/120 square foot single-tenant and 24-foot/320 square foot multi-tenant signs on the farm-to-market roads (District "B"). Staff would recommend continuing to step down in size due to the relatively small size of tracts and developed nature of the area, including close proximity to many residences and residential areas.

As a result of that discussion, staff recognizes that there are a variety of opinions on sign sizes and would like to provide options that City Council may reach a consensus on. Photos were included in the agenda packet to help visualize the following potential options:

1. Staff's original recommendation of 12-foot/60 square foot single-tenant and 12-foot/96 square foot multi-tenant signs
2. 12-foot/120 square foot single-tenant and 16-foot/256 square foot multi-tenant signs, similar to MUD No. 144 (Summer Lakes) Planned Unit Development (PUD)
3. If the above option is not satisfactory, City Council may wish to consider dividing District "D" at Miles Street and Mahlmann Street and incorporating the properties to the east of those streets on Avenues H and I into Sign District "B", as they are generally larger tracts and shopping centers that could be more compatible with District "B" (maximum 16-foot/120 square foot single-tenant signs and 24-foot/320 square foot multi-tenant signs).

Photos of a range of sign sizes were included in the agenda packet for review. The current allowed sign height is nine (9) feet, with a maximum of 36 square feet. Any of the above options would increase the allowed signage. Staff's recommendation is for sign standards to be adopted in the near future to facilitate development and redevelopment of the corridors. Further, completion of the City's "Sign" Ordinance amendments would expedite the West Fort Bend Management District's transferring of signage control to the cities as planned.

Key discussion points:

- Travis Tanner, Planning Director presented the proposed revisions to the "Sign" Ordinance for sign height and sign size for district "D" (Avenue H, Avenue I, and State Highway 36).
- **Freestanding Sign Regulation - Avenues H, I & SH 36**
- September 24 City Council Workshop Meeting
- Staff recommendation:
- 12' / 60 SF single-tenant signs
- 12' / 96 SF multi-tenant signs
- Coordinated with City of Richmond
- Per direction from Council in 2012
- Role of West Fort Bend Management District
- September 24 and Subsequent Feedback
- Concerns regarding multi-tenant sign recommendation (12') being too strict
- Talk of raising multi-tenant sign height
- Or allowing larger signs on east side of H & I
- Request for Sign Review Task Force Recommendations
- Request for Photos/Visuals
- **Sign Review Task Force**
- January-May 2010
- Avenues H, I & SH 36 grouped together
- Recommendations
- 25' / 100 SF single-tenant signage
- 35' / 500 SF multi-tenant signage
- Recommendations similar to what has already been adopted on 59
- Regulations have stepped down in size on lesser corridors
- Ex. 16' / 120 SF single-tenant and 24' / 320 SF multi-tenant signs in District B (farm-to-market roads)
- Pictures shown of:
 - 9' / 30 SF Single-Tenant Sign
 - 16' / 192 SF Multi-Tenant Sign
 - 24' / 225 SF Multi-Tenant Sign
 - 25' / 60 SF Single-Tenant Sign
 - 33' / 500 SF Multi-Tenant Sign
- **Freestanding Sign Options - Avenues H, I & SH 36**
- 1. Staff's original recommendation: 12' / 60 SF single-tenant and 12' / 96 SF multi-tenant signs
- 2. 12' / 120 SF single-tenant and 16' / 256 SF multi-tenant signs (MUD 144 / Summer Lakes PUD)
- 3. #1 above and place the parts of H and I east of Miles and Mahlmann in District B with 16-24' signs
- Map shown of Divided District Option
 - 12' / 96 SF; 12' / 60 SF
 - 16' / 256 SF; 12' / 120 SF
 - 24' / 320 SF; 16' / 120 SF
- Staff is seeking direction from Council on freestanding sign options for Avenues H, I and 36.
- Discussion was held regarding the proposed revisions.
- A suggestion was made to split Avenue H and Avenue I into two districts and expanding it east of Miles and Mahlmann to 8th Street.
- Council gave no direction to staff to move forward at this time.
- No action was taken on the item.

did not make a recommendation to delete or repeal it from the Code. It was suggested through a motion and the Board carried it.

- The Rental Inspector and Code Enforcement Officers agree they seldom quote out of this code.
- Councilor McConathy stated some people have had problems with bedbugs, particularly in an apartment complex. At the time it happened there was an apartment complex in Rosenberg that had an infestation of bedbugs. They were appropriately treated but then there was a re-infestation. At that time we did not have an ordinance that specifically addressed bedbugs. How are we handling this?
- Tonya Palmer stated it is being handled under the nuisance ordinance. The apartments are covered by the rental property inspector. She does not know what he has for enforcement. We have gone out to address for bats and bees in houses. We have had one complaint in a hotel for bedbugs. If they spray and are clean when inspected and then they come back, then the complainant needs to complain again and it has to be sprayed again.
- Wade Goates, Fire Chief explained that two factors play into the bedbug issues. One, there are a couple of methods they can use per experts in pest control. Second, the Houston Apartment Association, which helps the outlying areas, attached a line item to their contracts that makes the individual occupant responsible for it. When our property inspector is called on these we are a mitigating factor. They still get treated. If they take luggage and furnishings out and someone else acquires those furnishings then they re-infest and then it falls back on the occupant. We were working under the guidelines because the Center for Disease Control (CDC) has not identified them as an issue. It would be more of a nuisance and are not a health concern.
- Councilor McConathy stated an apartment complex had an issue with bats and the City was called and they could not do anything about it and the County was called and they did not do anything about it. That particular unit remained unoccupied due to the odor of the bats.
- Tonya Palmer stated she would like to know the specifics on that issue. We get complaints and we always handle them. The landlord has ten days to get a professional to get rid of them. Then there is an inspection to see that they are gone.
- The Board discussed this at great length and this was one code they did not feel comfortable with presenting to Council for adoption and recommended that it be repealed.
- Tonya Palmer referenced the Contractor Registration and stated a contractor registration was being enforced but we did not have an outlined procedure. She wanted to put it in ordinance form rather than in procedure form so people going to the codes know exactly what is required of them. There is no fee for registration.
- Councilor McConathy referenced the revocation of the registration – Under item 2 – “refusal to correct any code violation after notice”. That would be a contractor that is registered, pulled a permit and is being inspected and as part of the inspection process the inspector points out something to be corrected and if they refuse they will not get the permit but are subject to having their registration revoked. Is that correct?
- Tonya Palmer stated yes and the penalty for not being registered in the City of Rosenberg is they are not eligible to do work in the City.
- Tonya Palmer referenced carbon monoxide detectors and clarified that one and two family dwellings, town houses, duplexes and quadplexes meeting a certain criteria are all covered under the residential code. In the residential code, carbon monoxide detection is not retroactive. It is for new construction.
- No action was taken on the item.

RECESS SESSION, RECONVENE SESSION'

Mayor Morales recessed the Session at 8:04 p.m. and reconvened the Session at 8:12 p.m.

5. **REVIEW AND DISCUSS PROPOSED REVISIONS TO THE “SIGN” ORDINANCE FOR SIGN HEIGHT AND SIGN SIZE FOR DISTRICT “D” (AVENUE H, AVENUE I, STATE HIGHWAY 36, ETC.), AS RECOMMENDED BY THE SIGN REVIEW TASK FORCE, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

Executive Summary: Free-standing sign regulations for Districts “A” and “B” were adopted by City Council in January 2013. The next step, as directed by City Council at the time, was for staff to coordinate with the City of Richmond and propose regulations for District “D”. Proposed Sign District “D” consists of Avenues H and I and the portion of State Highway 36 located between U.S. Highway 90A and Interstate-69/U.S. Highway 59.

The current regulations applying to District “D” (and other parts of the City not in District “A” or “B”) require a maximum sign height of nine (9) feet and a maximum area of thirty-six (36) square feet. As a result of

our continued coordination with the City of Richmond in this process, staff recommends increasing the maximum height and area to the following:

- Single-tenant:
 - Maximum height: twelve (12) feet
 - Maximum size: sixty (60) square feet
- Multi-tenant:
 - Maximum height: twelve (12) feet
 - Maximum size: ninety-six (96) square feet
 - Maximum of sixty (60) square feet per tenant

Richmond is currently moving forward with these sign sizes for the Jackson Street and Thompson Road corridors, which are the similar corridors in Richmond. It is important to note that District "D" consists of mostly developed areas with compact tracts relative to Districts "A" and "B". There are also many existing, nonconforming signs due to the largely developed nature of the area. The "Sign" Ordinance is very lenient regarding the reuse and "re-facing" of existing signs.

Staff believes the proposed regulations will not negatively impact property owners for the following reasons:

- Lack of vacant land on which new freestanding signage would typically be placed
- The ability to reuse existing, nonconforming signs under the current Ordinance
- An overall increase in the amount of signage that is allowed (1.67 times more for single-tenant signs and 2.67 times more for multi-tenant signs)
- The proposed regulations are appropriate for an area with relatively compact sites and developments.

Until permanent regulations are adopted for these corridors, new development and redevelopment will be subject to a maximum freestanding sign height of nine (9) feet and a maximum area of thirty-six (36) square feet. The proposed regulations are consistent with the City of Richmond, as directed by City Council, and would increase the amount of signage allowed on the subject corridors. With direction from City Council, staff will prepare an Ordinance specifying the above sign dimensions for District "D" for placement on a future City Council agenda.

Key discussion points:

- Travis Tanner, Planning Director read the Executive Summary and showed the area affected in a color coded map included in the agenda packet.

Questions/Comments:

- Councilor Benton stated if someone had a large piece of property with a lot of frontage it would not have an impact on the size of the sign.
- Travis Tanner stated no, not in this particular case; however, it would impact how many signs could be on the property because of spacing requirements. The larger the property the more signage you could have.
- Councilor McConathy stated the suggestion is sixty (60) square feet per tenant. Is that to allow for multiples?
- Travis Tanner stated the 60 square feet per tenant we are allowing is a maximum of ninety-six (96) square feet on the multi-tenant signs. This is to put a limit per tenant so one tenant does not have a much larger sign than can be on a single tenant sign. That is what we have done with District A and B in the past. It was recommended by Council at the time that we go with a per tenant maximum.
- Councilor McConathy stated both she and Councilor Benton served on the Sign Task Force and there are a couple of conflicting things. The Sign Task Force did recommend a District D with the twelve (12) foot height of the single tenant and with the multi-tenant there were three different recommendations. But, that was not including Avenue I, H and Highway 36 because the recommendation from the committee was to put those in District B. She still holds to that recommendation of those corridors be included in District B and they would comply with the other major thoroughfares other than Spur 10 and 59.
- Travis Tanner asked for clarification what corridors or parts of corridors in District B.
- Councilor McConathy stated Avenue I, Avenue H and Highway 36 from south of US 90A all the way up to US 59 because that was the Sign Task Force recommendation. We envisioned going into District D the other minor streets that were outside of the neighborhoods, such as, Radio

Lane, Avenue N, etc.

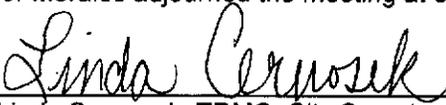
- Travis Tanner stated this could be a labeling issue. He thought that whether it was called District B or D or whatever it was called by the Sign Task Force was that the ones indicated in purple, Avenue H and I and Highway 36, regardless of whether it was one of those districts, they were distinguished from the farm to market roads and from Spur 10 and US 59, is that not correct.
- Councilor McConathy stated that is not correct. The reason why they should be included in District B was because Rosenberg's corridors, unlike Richmond's have large developments such as the Rose-Rich Shopping Center, Lamar Plaza, and others. There is the large development at the corner of 36 and 59 with large frontage. That is why the Sign Task Force put Avenue I, H and 36 in District B because of what was defined and recommended as the height, actual size of the sign recommendations for District B.
- Travis Tanner stated he was not here at the time and it could be that with working with the City of Richmond over the last few years since the Sign Task Force, they could have changed that recommendation or recommended something different. Some of these properties are tighter than others and as you go to the east we could look at something different for some of these parts of the corridor but that is our recommendation at this time for the majority of those roads. That is what we coordinated with Richmond on and the idea was to have a unified vision so our regulations can eventually replace the West Fort Bend Management District's.
- Councilor McConathy stated she agrees with the majority of that except that we, unlike Richmond, have these large frontage properties. If we as a unified Council adopt this then there should be some kind of exception for properties that have large four-hundred (400) linear foot frontages as far as sign height for multi-tenant. In most cases they will be multi-tenant.
- Mayor Morales stated on the larger properties they could have multiple signs versus a single tenant can have one sign. For each two-hundred fifty (250) feet they could have a multiple tenant signs.
- Councilor McConathy stated the other thing the committee addressed was the short monument signs provided they have the frontage for that. If the Rose-Rich property decided to demolish and start over, the existing signs would go away and they would be held to the standard adopted. She has a concern for a multi-tenant location having the necessary signage to give the businesses the opportunity to prosper at that location.
- Travis Tanner stated most of those multi-tenant locations have existing signs that will be grandfathered under our ordinance. We looked at that in developing these standards and he does not feel they will be affected. This is what the City of Richmond is moving forward with on Jackson Street and Thompson Road and that is our recommendation.
- Mayor Morales stated the historical area could be defined as one and then east of that, which is where the larger properties area.
- Travis Tanner stated that is an option for us to look at. If the majority of Council wants to go with our recommendation, which is the same sizes on all the corridors as shown in purple and if that wasn't the case we would look at breaking it down into different parts for the areas that have larger properties. Most of this is compact.
- Councilor McConathy stated her concern isn't the single tenant. What the committee recommended is not too far from what is being suggested. The size is reduced. The committee recommended one-hundred (100) square feet and sixty (60) square feet is being recommended. That is not a problem, it is the multi-tenant. The committee recommended for two or less tenants it would be twelve (12) feet and one-hundred fifty (150) square feet. But, if it was three to five tenants then eighteen (18) feet and one-hundred fifty (150) square feet for the size and for six and above twenty four (24) feet with two-hundred fifty (250) square feet for the size.
- Travis Tanner stated staff looked at the recommendations of the Task Force. We were asked to look at MUD 144 which has its own sign standards, the Management District's and the City's existing standards. It ended up between the City of Rosenberg and Richmond coming up with a compromise with a lot of those different things and is how we came up with these standards.
- Councilor Euton asked if Richmond has the multi-tenants like we have.
- Travis Tanner stated they have a few on Thompson Road.
- Mayor Morales suggested taking the corridor considered the historical district and keep a consistent lower profile signage there; then going east break it into another district where there are the larger tracts coming out of the historical district.
- Councilor Benton stated 8th Street is the first big development and he concurs with that.
- Mayor Morales stated the only way he would agree is that we do not have as many signs.
- Travis Tanner stated the larger properties give you more signage. That is a concern going up on the size.
- Councilor McConathy suggested leaving the single tenant as recommended. It is the multi-tenant

where we need to be more flexible. The maximum size is two-hundred (200) square feet for a twenty-four (24) foot sign for a District D.

- Councilor Benton suggested keeping it at eighteen (18) square feet.
- Councilor Euton agreed that it needs to be higher than twelve (12) feet for the multi-tenant and suggested eighteen (18) feet.
- Mayor Morales stated he does not think that size of sign should be allowed in the historical corridor.
- Travis Tanner stated he would have been concerned having anything greater than twelve (12) feet. Downtown is a separate area. There is a distinction of these in terms of size and we have to look at it to decide a breaking point. The downtown area goes up to Avenue I. Those are more restricted because there's not even a setback area in which to put the signs. The buildings are up to the right-of-way.
- Mayor Morales stated the strip center that was Hajdik's could put up a sixteen (16) foot sign.
- Travis Tanner stated yes. He asked Council if there is a consensus to stay with the twelve (12) feet and sixty (60) square feet for the single tenant within the central part of this district and do we want to go up to sixteen (16) feet potentially? Will the square footage stay at ninety-six (96) square feet?
- Councilor McConathy stated if we are saying sixteen (16) feet in height and three (3) feet per tenant sign are we allowing for the seven (7) foot clearance at the bottom or will we allow them to go from top to bottom on multi-tenant?
- Travis Tanner stated they can do it however they want as long as they are not creating a sight visibility issue. It would depend on the location of the sign.
- Mayor Morales asked what is in the other district.
- Travis Tanner stated we had sixteen (16) feet in District B for the single tenant and one-hundred twenty (120) square feet.
- Councilor McConathy stated she agreed with that.
- Mayor Morales stated his concern is the distance having that many signs and they could have any signs every two-hundred fifty (250) feet that size.
- Travis Tanner stated staff could look at it and bring back to Council.
- Councilor McConathy stated the committee addressed that and they limited those large size properties to two multi-tenant signs and the rest were the monument signs.
- Mayor Morales stated he could agree with that.
- Councilor Benton stated Town Center has a lot of signs.
- Travis Tanner stated it is on the freeway and travelling at a higher rate of speed and the signs are farther off the street. We are trying to be fair about it but also recognize the differences in these corridors in terms of as we go down to lower speed limits and tighter properties we have been lowering the signage based on that. That is reasoning behind the recommendation.
- Mayor Morales agreed. Staff will come back with signage recommendation in the downtown district areas and going east towards Richmond.
- No action was taken on the item.

6. **ADJOURNMENT.**

There being on further business Mayor Morales adjourned the meeting at 8:38 p.m.



Linda Cernosek, TRMC, City Secretary



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
12	Ordinance No. 2014-04 – Special Election

ITEM/MOTION

Consideration of and action on Ordinance No. 2014-04, an Ordinance ordering a Special Election to be held on May 10, 2014, for the purpose of submitting to the qualified voters, for adoption or rejection, a proposed ordinance and/or resolution prohibiting the City from donating specified real property for the “One-Way Pairs” Project; and making provisions for the conduct of the election.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds:

101-1300-510-5720

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

1. Ordinance No. 2014-04
2. City Council Meeting Minutes – 12-16-13

MUD #: All In-City MUDs

APPROVALS

Submitted by:

Linda Cernosek
City Secretary

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney *LL/lc*
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

Ordinance No. 2014-04 is an Ordinance ordering a Special Election to be held on May 10, 2014.

The purpose of Ordinance No. 2014-04 is to submit to the qualified voters, for adoption or rejection, a proposed ordinance and/or resolution prohibiting the City from donating specified land to TXDOT (Texas Department of Transportation) or any other person or entity for the “One-Way Pairs” Project, per a petition received by the citizens of the City of Rosenberg on December 06, 2013, and making provisions for the conduct of the election.

Staff recommends approval of Ordinance No. 2014-04 as presented.

ORDINANCE NO. 2014-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, ORDERING A SPECIAL ELECTION TO BE HELD ON MAY 10, 2014, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED VOTERS, FOR ADOPTION OR REJECTION, A PROPOSED ORDINANCE AND/OR RESOLUTION PROHIBITING THE CITY FROM DONATING SPECIFIED REAL PROPERTY FOR THE "ONE-WAY PAIRS" PROJECT; AND MAKING PROVISIONS FOR THE CONDUCT OF THE ELECTION.

WHEREAS, the City Charter of the City of Rosenberg, Texas, provides for the Citizens of Rosenberg to initiate legislation pursuant to Article VII, Section 7.02 of said Charter; and,

WHEREAS, on December 06, 2013, the City Secretary received an initiative petition for an ordinance and/or a resolution prohibiting the City from donating real property for the "One-Way Pairs" Project; and,

WHEREAS, City Council decided to submit said petition to the citizens for a vote at a properly ordered election; and,

WHEREAS, the laws of the State of Texas further provide that Section 3.001 of the Election Code of the State of Texas is applicable to said elections, and in order to comply with said Code, an Order should be passed ordering said election and establishing the procedure to be followed in said election; and,

WHEREAS, the City Council of the City of Rosenberg, Texas, hereby orders a special election, to be held on May 10, 2014, for a vote by the qualified voters of the City, as to the initiative; and,

WHEREAS, the City Council of the City of Rosenberg, Texas, hereby directs City staff to publish notice of the election in a newspaper of general circulation in the City at least once, not earlier than the 30th day or later than the 10th day before election day in compliance with the Texas Election Code; and,

WHEREAS, the City Council of the City of Rosenberg, Texas hereby directs City staff to publish notice of the election in a newspaper of general circulation in the City at least once, within fifteen (15) days before the date of election, in compliance with the City Charter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS:

Section 1. Findings.

That the facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are adopted as part of this Ordinance for all purposes.

Section 2. Election Order.

That a special election of the City of Rosenberg, shall be held on the 10th day of May, 2014.

Section 3. Ordinance and Resolution.

The following initiated ordinance and resolution will be submitted to the qualified voters of the City at the Special Election as follows:

Shall the City Council for the City of Rosenberg pass an ordinance which reads as follows?

The City of Rosenberg shall not donate to any person or entity, including TXDOT (Texas Department of Transportation), the real property owned by the City, and located in Rosenberg, Texas, between: Avenue H and Avenue I, and Damon and Louise Streets, for the roadway project known as the "One-Way Pairs" Project. The property may only be sold in the future for fair market value, as determined by independent appraisal.

FOR the ordinance

AGAINST the ordinance

Shall the City Council for the City of Rosenberg pass a resolution which reads as follows?

The City of Rosenberg shall not donate to any person or entity, including TXDOT (Texas Department of Transportation), the real property owned by the City, and located in Rosenberg, Texas, between: Avenue H and Avenue I, and Damon and Louise Streets, for the roadway project known as the "One-Way Pairs" Project. The property may only be sold in the future for fair market value, as determined by independent appraisal.

FOR the resolution

AGAINST the resolution

Section 4. Voting System and Ballots.

Voting on the date of the election, and early voting therefore, shall be by the use of a lawfully approved voting system. The preparation of the voting equipment to be used in connection with such voting system and the official ballots for the election shall conform to the Texas Election Code, as amended, so as to permit the electors of the City of Rosenberg, Texas, to vote "For" or "Against" the ordinance and/or resolution.

Section 5. Polling Places and Procedures.

That the City of Rosenberg does hereby designate Election Day polling locations for the voters of the City of Rosenberg. The Election Day polling place is hereby designated to be as shown in **Exhibit A**. The polls for said election shall be open from 7:00 a.m. to 7:00 p.m.

Section 6. Early voting: Early Voting Polling Place.

(a) Early voting by personal appearance for all election precincts shall be held at the locations, at the times and on the days hereafter designated by the County Elections Administrator as provided in the Election Services Agreement.

(b) The County Elections Administrator is hereby designated as the Early Voting Clerk.

Applications for ballots to be voted by mail by City residents should be mailed to:

Attention: Mr. John Oldham, Election Administrator
Fort Bend County Elections
4520 Reading Road
Rosenberg, Texas 77471

That the early voting by personal appearance shall be conducted at the sites and times as shown on **Exhibit B**.

Section 7. Joint Election.

The City has agreed to participate in a joint election with other participating governmental entities in the County who are also holding elections on Election Day and will contract with the County Elections Administrator for election services. The County precinct numbers for the City of Rosenberg will be 1007(p), 1012, 1013, 1015(p), 1025(p), 1037, 1040(p), 1048, 1054(p), and 1074.

Section 8. Appointment of Election Officers.

The election judges, alternate judges, clerks, members of the early voting ballot board and other personnel necessary for conducting the Election shall be appointed, the election judges and alternate judges may be changed, polling places may be combined for some precincts, and the central counting station shall be established and staffed as all provided in the Joint Election Agreement. Further, the Mayor is hereby authorized to appoint any such other officials not designated herein or appointed pursuant to the Joint Election Agreement as are necessary and appropriate to conduct the Election in accordance with the Code and other applicable law.

Section 9. Election Compliance.

This election shall be held in accordance with, and shall be governed by, the election laws of the State of Texas. In all City elections, the Mayor, City Secretary, or City Council shall perform each act as is required to be performed, in connection with the holding and consummation of such election, and to give effect to the intent of this Ordinance.

Section 10. Voting Qualification; Voting Materials.

That all registered, qualified voters of the City shall be permitted to vote at the election. In addition, the election materials enumerated in the Texas Election Code, as amended, shall be printed in English and Spanish for use at the polling places and for early voting for the Election.

Section 11. Notices.

That the City Secretary is hereby ordered and directed to publish and post the required notices in the manner and for the time periods required by law:

- (a) Publishing the notice of the election at least once, not more than thirty (30) days nor less than (10) days before the election in the official newspaper of the City;
- (b) Publishing the notice of election at least once, within fifteen (15) days before the date of the election in the official newspaper of the City in compliance with the City Charter ;
- (c) Filing with the City Secretary, a copy of the notice of the election;
- (d) Posting a copy of the notice on the bulletin board used for posting notices of the meetings of the City Council at least twenty-one (21) days before the election;

The City Secretary shall file a copy of the Publisher's Affidavit, which complies with the Texas Election Code, as amended, that the notice was published, with the name of the newspaper and the dates of publication.

Section 12. Severability Clause.

If any word, section, article, phrase, paragraph, sentence, clause, or portion of this Ordinance or application thereof to any person or circumstance is held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this Ordinance; and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity which remaining portions shall remain in full force and effect.

Section 13. Effective Date.

This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the City Charter.

PASSED AND APPROVED by a vote of _____ "ayes" in favor and of _____ "noes" against on this first and final reading in full compliance with Section 3.10 of the City Charter of the City of Rosenberg, Texas, on this the _____ day of _____, 2014.

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

APPROVED AS TO FORM:

Lora Jean D. Lenzsch, **City Attorney**

May 10, 2014 Polling Places for the City of Rosenberg Election
Polls will be open from 7:00 A.M. until 7:00 P.M.
Election Day Polling Locations

Precinct

Polling Place & Address

1007(p), 1012, 1013,
1015(p), 1025(p), 1037,
1040(p), 1048, 1054(p),
1074

Rosenberg City Hall
2110 4th Street
Rosenberg, Texas 77471

Revised: 02/13/2014

Early Voting Schedule May 10, 2014 Joint Election

Schedule for: Irene Stern Community Center - 6920 Fulshear-Katy Road, Fulshear, TX
 Missouri City Community Center - 1522 Texas Pkwy, Missouri City, TX
 Fort Bend County Rosenberg Annex - 4520 Reading Road, Rosenberg, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 – May 2, 2014	8:00 a.m. to 5:00 p.m.
Saturday	May 3, 2014	8:00 a.m. to 5:00 p.m.
Sunday	May 4, 2014	CLOSED
Monday - Tuesday	May 5 – 6, 2014	7:00 a.m. to 7:00 p.m.

Schedule for: First Colony Conference Center – 3232 Austin Parkway, Sugar Land, TX
 Hightower High School – 3333 Hurricane Lane, Missouri City, TX
 Sugar Land Branch Library - 550 Eldridge, Sugar Land, TX
 Four Corners Community Center – 15700 Old Richmond Road, Sugar Land, TX
 James Bowie Middle School – 700 Plantation Dr, Richmond, TX
 Randall’s – 5800 New Territory Blvd., Sugar Land, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 – May 2, 2014	8:00 a.m. to 7:00 p.m.
Saturday	May 3, 2014	8:00 a.m. to 5:00 p.m.
Sunday	May 4, 2014	CLOSED
Monday - Tuesday	May 5 – 6, 2014	7:00 a.m. to 7:00 p.m.

Schedule for: Lost Creek Park – 3703 Lost Creek Blvd, Sugar Land, TX
 Sugar Land City Hall – 2700 Town Center Blvd. North, Sugar Land, TX
 Richmond Water Maintenance Facility – 110 N. 8th Street, Richmond, TX
 Sienna Branch Library – 8411 Sienna Springs Blvd, Missouri City, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 – May 2, 2014	10:00 a.m. to 7:00 p.m.
Saturday	May 3, 2014	CLOSED
Sunday	May 4, 2014	CLOSED
Monday – Tuesday	May 5 – 6, 2014	7:00 a.m. to 7:00 p.m.

Schedule for: Fort Bend ISD Admin. Bldg. – 16431 Lexington Blvd., Sugar Land, TX
 Willowridge High School – 16301 Chimney Rock, Houston, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 – May 2, 2014	8:00 a.m. to 7:00 p.m.
Saturday	May 3, 2014	CLOSED
Sunday	May 4, 2014	CLOSED
Monday - Tuesday	May 5 – 6, 2014	7:00 a.m. to 7:00 p.m.

Early Voting Schedule May 10, 2014 Joint Election

Schedule for: Meadows Place City Hall – One Troyan Dr., Meadows Place, TX
Stafford City Hall – 2610 Main Street, Stafford, TX
Fort Bend County Road & Bridge – 3743 School Street, Needville, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 – May 2, 2014	8:00 a.m. to 5:00 p.m.
Saturday	May 3, 2014	CLOSED
Sunday	May 4, 2014	CLOSED
Monday - Tuesday	May 5 – 6, 2014	7:00 a.m. to 7:00 p.m.

Schedule for: Stafford MSD Administration Bldg – 1625 Staffordshire Rd, Stafford, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 - May 2, 2014	7:30 a.m. to 4:30 p.m.
Saturday	May 3, 2014	CLOSED
Sunday	May 4, 2014	CLOSED
Monday – Tuesday	May 5 - 6, 2014	7:00 a.m. to 7:00 p.m.

CITY OF ROSENBERG

CITY COUNCIL SPECIAL MEETING MINUTES

On this the 16th day of December, 2013, the City Council of the City of Rosenberg, Fort Bend County, Texas, met in a Special Session, in the Rosenberg City Hall Council Chamber, located at 2110 4th Street, Rosenberg, Texas.

PRESENT

Vincent M. Morales, Jr.	Mayor
William Benton	Councilor at Large, Position 1
Cynthia McConathy	Councilor at Large, Position 2
Jimmie Pena	Councilor, District 1
Susan Euton	Councilor, District 2
Dwayne Grigar	Councilor, District 3
Amanda Bolf	Councilor, District 4

STAFF PRESENT

Robert Gracia	City Manager
Linda Cernosek	City Secretary
Lora Lenzsch	City Attorney
John Maresh	Assistant City Manager/Utilities Director
Jeff Trinker	Assistant to the City Manager
Joyce Vasut	Finance Director
Matt Fielder	Economic Development Director
Wade Goates	Fire Chief
Travis Tanner	Planning Director
Kaye Supak	Executive Assistant

The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by Title 5, Chapter 551, of the Texas Government Code.

CALL TO ORDER.

Mayor Morales called the meeting to order at 6:00 p.m.

GENERAL COMMENTS FROM THE AUDIENCE.

Citizens who desire to address the City Council with comments of a general nature will be received at this time. Each speaker is limited to three (3) minutes. In accordance with the Texas Open Meetings Act, the City Council is restricted from discussing or taking action on items not listed on the agenda. It is our policy to have all speakers identify themselves by providing their name and residential address when making comments.

COMMENTS FROM THE AUDIENCE FOR AGENDA ITEMS.

Citizens who desire to address the City Council with regard to matters on the Agenda will be received at this time. Each speaker is limited to three (3) minutes. Comments or discussion by the City Council Members will only be made at the time the agenda item is scheduled for consideration. It is our policy to have all speakers identify themselves by providing their name and residential address when making comments.

AGENDA

1. CONSIDERATION OF AND ACTION ON PETITIONS TO INITIATE/PROPOSE LEGISLATION PURSUANT TO SECTION 7.02 OF THE CITY CHARTER STATED "THAT THE CITY SHALL NOT DONATE TO ANY PERSON OR ENTITY, INCLUDING TxDOT, THE REAL PROPERTY OWNED BY THE CITY, AND LOCATED IN THE CITY BETWEEN AVENUE H AND AVENUE I, AND DAMON AND LOUISE STREETS, FOR THE ROADWAY PROJECT KNOWN AS THE "ONE-WAY PAIRS" PROJECT. THE PROPERTY MAY ONLY BE SOLD IN THE FUTURE FOR FAIR MARKET VALUE, AS DETERMINED BY INDEPENDENT APPRAISAL."

The following persons spoke on the Agenda Item No. 1:

- **Adolph Sebesta, 1116 Tobola Street, Rosenberg, Texas:**
 - He is a lifelong resident of Rosenberg. He has children and grandchildren who lived their entire lives in Rosenberg. He owned a business on Avenue H for many years. Tonight he is speaking in favor of the petition and he urges the City Council to call a special election. He feels they cannot afford to give away \$1M in real estate and especially for something like this. If TxDOT needs this property, they should pay for it. Thank you.
- **Bob Ray, 719 Perry, Rosenberg, Texas (Business address: 2719 Avenue H, Rosenberg, Texas):**
 - In September 2013 a large contingent of business owners spoke in favor of the one way pairs. Seventeen retail business owners spoke in favor of this project. The general public has been led to believe that the City is spending \$4-7 million dollars, whatever number is thrown out there. That is the amount TxDOT is spending, not Rosenberg. The truth is the City stands to lose a \$1.5M if this project does not go through. Does our fiscally conservative Council want to burn \$1.5M? H-GAC has two projects tied to this project to improve Avenue H. Because of the controversy, Rosenberg has already been blackballed on one of them. The access management study has been cut out between Frost on the west and the crossover on the east. Not one improvement in the one-way pairs segment. My business pays over \$8,000 in property taxes and a considerable amount in sales taxes each year, but since I live in the ETJ, it seems my voice falls on deaf ears. I believe that is called taxation without representation. At the September meeting a Council Member said and I quote, "Rosenberg and Avenue H will look just as ugly." It is sad to think that this is the perception of Rosenberg and no one wants to take advantage of turning it around. We cannot build on TxDOT proposal unless we work with them, instead of fighting them. Any H-GAC enhancements or any other improvements cannot happen without first accepting one-way pairs. The businesses have waited decades for help and improvements to Avenue H, one-way pairs if just the first step. Thank you.
- **Helen Lev, 2009 Ward Street, Rosenberg, Texas:**
 - She is a lifelong resident of Rosenberg. She understands the City is already in debt and that in particular does not make any sense to her because the City has grown by leaps and bounds the last seven to ten years. Where is all the money going? It seems like we are using money we don't have to purchase property for this project that the State wants to implement and without any thought as to what the citizens want. Keep in mind this was approved years ago before the growth started toward the freeway and the surrounding areas. Therefore, we have spent money we don't have to spend. We don't do that in our own life, why would we run our City that way? I have and will always feel that the voters need to have a say in what they want for the future of this town. Many citizens of this town have no idea what is going on in respect to the changes that are going to be made to the roadways and surrounding area and the confusion this may cause. I have lived in this town all my life and do not understand why the accident rate is so high. I hardly ever see an accident in the area they are planning to change, in fact, most of the traffic now is moving towards the freeway where all the stores are. Actually, the biggest problems I see are the trucks on Highway 36 wanting to get to the Katy and Fulshear area. I have seen streets in lots of towns that do not allow truck traffic through their town and that would probably be the possible solution to this problem. The main point of this is to let the citizens of Rosenberg decide what they want and put this out for the citizens and be honest with everyone and let them know that all this money of their tax dollars has already been spent and expect more money to be spent. Money that our City doesn't have. Should we get in a debt situation that we can't get out of? That happens to individual people and corporations all the time, but it should not happen to our City. That's why the City has financial advisors and planners. They should be able to plan and foresee what the future will hold—do their homework. It's sad that our government is in bad shape, but our community—this is just wrong. Thank you.
- **Bobby McKinney, 2314 Jones, Rosenberg, Texas:**
 - He is a taxpayer, and a registered voter in this town. He asks for this Council to call for special election to let the public voters decide on whether or not the City should donate a \$1M piece of property to TxDOT. How can a city that owes nearly \$70M in debt and one that had to borrow money to purchase property afford such an endowment to TxDOT? It was recently announced that the State of Texas has a nearly \$7 billion surplus in its rainy day fund. Between the State and Federal funds that TxDOT receives, they can well afford to purchase this property without the City giving away what taxpayers are having to buy. As a final note, regardless of whether Council approves a special election, I cordially ask that the City not donate this property to TxDOT. Thank you.

- ***Maria Camacho, 1802 Klauke Street, Rosenberg, Texas.***
- Her husband and she also own a business on Avenue H. She has lived here and raised two children lived here for over 30 years. She speaks on behalf of urging City Council to call a special election. She is against the one-way street project. It will affect our business and many other businesses in a negative way. If the City is already in debt over \$70M and has raised taxes in 2012, why are we giving away to TxDOT over \$1M in property? Like other citizens I urge the City Council to please vote for a special election to allow the voters to decide.
- ***Jose Camacho, 1802 Klauke Street, Rosenberg, Texas.***
- He and his wife have raised two children in Rosenberg. He has owned a business on Avenue H for ten years and worked in the same location for over 30 years. He disagrees with the one-way project. He signed the petition as well as others. Tonight, he speaks on behalf of the petition and the Council to call a special election. He feels the City cannot afford to give away over \$1M to the State, especially for something like this. If TxDOT needs the property, they should pay for it. Thank you.
- ***James Urbish, 2514 Cypress Lane, Rosenberg, Texas (business: 2404 Avenue I, Rosenberg):***
- He has been involved with the business in Rosenberg for sixty years. He is here to speak in favor of the petition to have a vote for this expenditure of money. He knows the City bought Baker out—he was in a bind—he couldn't sell, it was hanging over his head. The City bought Speedy Sticker Stop. I know you spent a lot of money on it, and I remember last year we were fighting over a penny in the budget trying to determine what a penny was worth—somewhere between \$160-\$170,000 and now we are talking about giving my money-your money to the State of Texas. When this project was put together originally, I guess about ten years ago, and it was determined that this is the only way to do it and we sent a letter from the City to the State and they took the ball and ran with it. When they came back and said they really can't fix the problem at FM 723. They came back and said it will be a safety issue, so we said it is a safety issue. Then they came back and were told well, it's the State of Texas and you don't want to get blackballed by the State of Texas and they are going to do what they are going to do. I think they need to pay us that \$1M back. I think money is tight—we can use it to pay down our debt. The more I look at this one-way pair deal, the more I don't like it and I don't like the idea of being sold down the river on it, but I think the whole way it's been done has been not undercover, but when you start something ten years earlier with a different council, and I don't even know that Council voted on it ten years ago, but the idea is it is going to affect our business—it is going to affect safety, and it's going to change the way Rosenberg is and I don't see the worthiness of it. That's why I am saying, if they want the project, it's a State highway, let them pay for it. If they are so concerned about that, and they knew about what's going on here, I don't know why we didn't have a bigger bridge going across the river, if the State of Texas is always right about everything. It also has to do with money, I understand, but this project started out with a lot of work on both ends. This one-way pairs—we needed to let them know how we are going to do it, so they can get the bridges right on the ends, so now the bridges won't be done until 2025, so if they have the money to mess up the streets and change our way of life, then they can buy that piece of land. Thank you.
- ***Glenn Johnson, 1102 Timberlane Drive, Rosenberg, Texas.***
- He lived in Rosenberg for 38 years. He raised his children here and they went to school here. He has had a business since 1985; unfortunately, it burned down last Saturday morning. He is here to speak on the one-way pairs. He personally has talked to over 100 people in the last six months concerning this project. I have only found one person and he can give you his name if he needs to, one person that was for the one-way streets. That is a staggering figure. I am not saying I talked to everyone in town, because I didn't. A lot of these people are businessmen, some were individual citizens—people he knows in town, but no one wanted it. I feel like it's been crammed down our throat, I have been against it from day one. I feel we definitely do not need to donate or give the land worth a \$1M to TxDOT. If they feel like it's that important, it's their street, they need to pay for it. I don't feel we need to use City funds to do that, especially, since the citizens have never voted on this. I think we need to call a special election and the citizens need to decide this. We need to put this on the ballot and let them decide. Thank you.
- ***Mike Parsons, 2635 Sequoia, Rosenberg, Texas.***
- Three minutes is not near enough time to discuss the validity of this project. I sat through several meetings where I thought was resolved. It is interesting to note that the debt of the City has risen from about \$62.4 million to \$70 million, since the budget was approved. Speaking of voting on spending, we do all realize that we have approved a budget in the amount of \$30,596,123 for

personnel, supplies, maintenance and service or a total of \$53,311,222. Should I assume that all the people in this room that want to vote on a \$1M piece of property, would also like to vote on the approval of the budget? We elect City Council to make decisions for us, we trust them. If we find the people on the City Council are making decisions not to our liking, their term limits are established by votes. I looked at the ad that Mr. Villagomez had put together and I find some real problems with that. First of all, we are talking about the value of the piece of property as \$1M. I am not sure anyone in this room would pony up and buy that piece of property for \$1M, in terms of where it is, and in terms of mobility to that piece of property. I already expressed current debt. This minimum of \$8M for the project, I am assuming is the entire project, not the one-way pairs. If you are talking about the one-way pairs, the amount of money that the City is going to put into this project is substantially lower than that, in fact, it may be a positive number, because the County has provided \$1.5M in mobility funds if the project is carried through. I certainly understand there will be disruption to business in the area. If disruption to business is going to be the criteria for us making a decision on this project, I guess we better need to turn down the widening of Highway 59, because it will certainly affect the businesses that are off Highway 59 while they widen that area. In a turn of adverse affect and safety, I think that anybody who has driven in downtown Houston fully knows that downtown Houston has been converted to nothing more than one-way pairs on either side of Main Street. Few people drive on Main Street because that's where they put the trolley cars. One-way pairs actually control the traffic because you have to go the speed limit in order to make all the green lights. If you want to get to one light faster than the other, it will cause you a problem with speed and time with your brakes. I hope this meeting tonight is the end of these meetings, so we can get on with doing our regular business. Thank you.

- **Ben Brink, 1833 Old Creek Drive, Rosenberg, Texas.**
- My comments also reflect those of my wife. I want to support the petition and I want to respectfully request that the Council pass an Ordinance prohibiting the transfer with free gratis to TxDOT. I cannot say anything that has been said by preceding petitioners, except to say one thing and that is, that the overall U.S. economy and by extension of Texas economy is by no means as robust and free and secure as many would like to think it is. If this project goes through, this Council is indebting the City to an unknown amount of spending that could very easily be jeopardized by the overall economy or other decisions by TxDOT. If the arguments by Mr. Parsons and others that the project needs to go through are as valid as people seem to think they are I don't see why a full complete and exhausted discussion of the whole project isn't basically done. To do otherwise, is to say that outside interest, such as a trucking concerns, people who are to be involved in this, are going to make the decision and I would; therefore, like to suggest either go with the petition or prohibit the transfer without cause to TxDOT. Thank you.
- **Sergio Villagomez, 1119 5th Street, Rosenberg, Texas.**
- He appreciates everyone's input and everybody taking the time out. I know I and many other concerned citizens have put a lot into this. Council, Mayor, I would ask that consider to call a special election. I ask that you honor the petition and the people who signed the petition to not donate the property to TxDOT. Typically, I don't come with anything written down, I just go off the top of my head, but I feel pretty strong about the topic. I appreciate everyone's opinion, whether for or against, it's always good to hear both sides. When the City is faced with financial decisions that will impact the city and its residents, I highly suggest a special election is called. The whole point of a special election is to give the option of the people, so they can decide. What is the point of creating such a system, if we don't use it? Anytime we have a big issue, I feel that as a City Council, or as a person if I was on City Council is to call a special election. Yes, we do vote you in to make these decisions; however, I can remember at the time of Election Day, there were several people that were for or against several things, and now it seems their minds have changed. So, we will just leave that at that. Myself, and over 500 concerned citizens have a huge problem with the City throwing away over \$1M of real estate. The reasons go on and on, but in 2012, like the gentleman said, our taxes were raised. If we are struggling financially of course, we really don't have any business donating over \$1M of property. I should have been the first one to sign up because everybody said what I wanted to say. \$70M, \$62M, however many dollars that is a lot of money. That money can be put to good use. I understand there is a lot of logistics to go on with that; however, I am a hands on person. You think about it, put it on paper, you get it done. With \$1M you can get two or three miles of asphalt and curb and gutter for that amount of money, and I know there are a lot of streets that need that asphalt, curb and gutter. My biggest thing is that if you deny the petition and the election process, you are really turning your backs on democracy and not giving the people the chance to make the effort or commit to something. It's a \$1M and we should have the right to vote on it. I ask that you

consider the fact. My biggest thing is this transition—the one-way pair—some people like it, some people don't. I am to the point where it really doesn't matter, but we should have the option to vote on it and \$1M is a lot of money. Thank you.

- **Renee Butler, 1100 George Street, Rosenberg, Texas (business: 800 3rd Street, Rosenberg):**
 - She has two questions: 1) How much is tonight costing the City of Rosenberg to have another special meeting over something we did in September 2013 that was stated it was not going to happen. 2) Did we not hear what the attorney said in September 2013 for those of us that were here? I understood. Maybe I am wrong, so did we not understand what the City Attorney said in September that is not even a conversation we should be having. I am so confused and I am so tired, please make a decision tonight. Thank you.
- **Eric Garcia, 1601 Cedar, Richmond, Texas (business: 1101 James Street, Rosenberg):**
 - Had a business for the last 31 years. He and his wife put three children through Holy Rosary School. We have been parishioners at Holy Rosary for many years and have deep roots in Rosenberg. We are very concerned about the City giving away \$1M property to TxDOT. All the other speakers have already spoken eloquently on the reasons why. The only thing I can add is personally I feel having driving through that intersection twice a day; the traffic problem is more a north/south problem than east/west. I respectfully urge City Council to consider a special election to let the people decide whether to give away a \$1M property or not. Thank you.
- **Shanta Kuhl, 515 Olive Street, Wharton, Texas (president of the Fort Bend Central Chamber, 4120 Avenue H, Rosenberg):**
 - She wanted to repeat something she said when she came to speak in September, and that was that our governmental affairs department met and held two separate meetings at their Chamber offices, both of those were to talk about the one-way pairs and invite the members we have to visit with the Chamber about the one-way pairs. At one of the meetings, we had TxDOT available to go over their plans and at both of these meetings we did not have any Chamber members that were against the one-way pairs. They all were there in support of the project and to find out further information about the construction and how the project was to take place. So, we felt this was a significant amount of support for the project. We have a very strong historic downtown Rosenberg division and numerous meetings that we held in the downtown area. We specifically have 43 members in the downtown district and almost 100 along both those corridors including the downtown district. At this point, we have not had anyone who has come to us and say they are against the one-way pairs. None of those business owners have come and expressed their concern over this. What our job is to provide information to them and make information accessible and also to hear their comments about the project. I wanted to report that to you. We felt like we did our due diligence many, many, months ago. We have encouraged people to come to the City's public meetings, holding our own meetings, and then meeting with our merchants and businesses in the downtown businesses. We urge you to vote in favor of the one-way pairs—let's get this finished. Thank you.
- **William Lafleur, 1024 Wilson Drive, Rosenberg, Texas:**
 - He is in favor of the special election to give the people of Rosenberg the decision on selling the land.
- **Gregory Wheat, 2614 Bamore Road, Rosenberg, Texas:**
 - He is against the one-way pairs. He doesn't think it will solve anything in the City and for the Council to consider a special election to let the people vote to donate the land. He thinks it should be the people's decision. Thank you.
- **Fran Naylor, 1424 Callendar Street, Rosenberg, Texas:**
 - She is in favor of the petition to stop the donation of the land or at least allowing citizen input through a special election. She remembers the history of when this project began. There were a lot of other strings attached to it, such as the repairs and widening and repairs of the bridges coming between Richmond and Rosenberg and then leaving Rosenberg at the far end of town. Now, we are talking about turning Rosenberg around and making one-way streets and not having any citizen input. To me, this is something that is changing the face of our whole community. I have sat at the intersection and watched what goes on. I can't imagine how one-way streets are going to resolve this problem. You have a short stretch between Avenue H and I on Highway 36 that is going to end up being a bottle neck, no matter which way the traffic is going. So maybe we'll just push that traffic jam down a little bit further and then you can have the people from the Baptist Church and Hartz's Chicken coming here complaining about the cars that are backed up. I don't think anybody has seriously looked at options to fix this without totaling changing the face of our community. Once that interchange is built, it will end up being an

eyesore. Drive in Houston where you see the different turnarounds and passes, even at the small underpasses you have in Richmond and Rosenberg—that is always in need of repair and cleaning up. Here we are going to put this right in the middle of our town. I think the citizens of Rosenberg deserve better than that and more thought put behind it and I would hope you would take this back to the table and everybody that says they are afraid of TxDOT—we have State legislators, if we have to, let's get them involved. Their money comes from our pockets. Nobody can say that TxDOT is paying for this, because we pay for TxDOT. Thank you.

- **Chris McFarlon, 1046 Lindsey Drive, Rosenberg, Texas:**
- This is one of those topics that come up when you talk with relatives, friends and neighbors. City initiatives can be great things and this is one that I can't see the common sense behind it. When I think about the daily traffic patterns and somebody who goes through these intersections from time to time during that time of the day, it really seems to be an interesting prospect that maybe before Town Center was there, there was a scientific pattern that made it make sense. To give away a \$1M chunk of land, is an interesting prospect, but to do for a cause—I can't see the day to day impact. I respect that we have a multi-tens of millions dollar debt and if there will be a return that paid back a positive dividend that made up for the expense, that would make sense, but I don't see it. I would like to see the City not give away that chunk of land and I would like to see there would be public referendum or vote on it. It was interesting that the Chamber-I can't see 100 business owners agreeing on anything, so I think that is a pretty amazing statistic, because in my antidotal conversations with my family and friends, I have yet to find one that said yea that's a great idea, they should push that through. Thank you.
- **Rudolpho Pettia, 1709 Avenue H, Rosenberg (business) lives in Richmond:**
- Been in business since 1997 over 16 years at 1709 Avenue H. Very concerned about one-way project. Asking City not to give the property to TxDOT. Request that Council call a special election to let the voters decide. Thank you.
- **George Hyde, City legal counsel, with Denton Navarro Rocha:**
- Explained that he wanted to meet with City Council in Executive Session after his presentation to meet in private with the Council.
- George Hyde stated there have been some discussions before the Council with regard to our form of government as a democracy and that we are a democratic form of government. He clarified that we are a republic and in the pledge of allegiance, it is the republic to which we stand and a republic is a little bit different than a democracy, because a true democracy doesn't work anywhere if you get more than six or seven people because it requires all of the people to vote on every issue. A republic is which we do as a representative democracy, of which they use their vote to place you in office from which they place the duty and obligation upon you as a Council member and as an elected official to legislate for them and take those votes for them in any matter in which you have that authority. That's the republic in which we are designed, your Charter in essence is a constitution, you are an administrative and in City Council for many purposes you are, the legislative branch of this local government and you have the same type of governmental model as the United States does. In that republic, your representative form of government does place as a duty for you to take consideration of all the matters of all the constituents in your districts that have voted you into office. Democracy in the worst sense of the word can be considered a lynch mob. If you think of it, if there is a majority of the people that want to do something without those regulations in the republic issue, without those issues a lynch mob would be a true democracy under its definition. The Council and the public are also reminded that in a republic that is the first duty of the Council to represent and make those decisions as a representative of that organization. 2) This is one of the most provisions discussed here, is repeatedly I have heard that the public has a misperception that is a giveaway. That the City is giving away money to TxDOT for purposes of this project. Today, this afternoon, TxDOT assert there is a statutory obligation for the City to contribute 10% of the right-of-way costs for any farm-to-market and state highway project that occurs within the municipality. The original agreement with regards to this process is not a giveaway. It is not a giveaway at all. 1) It is an exchange as a waiver for the obligation to pay the 10% right of way and state farm to market and state highway costs for both the one-way pair project as well as a future elevated intersection project. I have not been aware of this other project or that the assertion was done until this afternoon, so I don't have any additional information. I don't have any reason to believe this is not true, is that any other of these widening or roadway widening projects if the State has the ability under State law to require you to contribute 10% of those costs, then the value of this property may either exceed or be woefully less than what that 10% amount would be. Here you are receiving consideration because you are receiving the waiver of the otherwise statutory cost

obligation which I don't know that you have budgeted for purposes of these two projects or when they would come forward. Additionally, if the future elevated intersection project that they have slated is paid in today's dollars, when that elevated project occurs, you would already be paid. Those elevated project costs in the future would likely increase in value, which would mean it would cost you more in the future to pay that debt, than if you pay it now with this right of way exchange. There is specific exchange of consideration related to this project. 2) under the bond provisions of Fort Bend, I was informed that the City would be entitled if it participates and conducts this project to approximately \$1M or more in water and wastewater infrastructure funds from the Fort Bend County bond project. So, there is an additional consideration that if you provide this property for purposes of this project, not only do you get the waiver of the 10% cost to the State, but you also receive \$1M or plus dollars under the Fort Bend County bond to take care of your water and wastewater issues. In just those two things, it would be over a million dollars roughly of value that the City would be receiving in exchange for this property. This is an important point for the City Council to consider as well as the public to understand that this is not a giveaway. It is an exchange for consideration. The issues that will go in Executive Session will also discuss the legislative versus the administrative powers of government, which are defined under the common law with regards to the ability of initiative and referendum and whether or not this is even something that is appropriate under State law. It is a very complicated area of the law and that's one of the issues we need to discuss in Executive Session. Finally, by antidotal evidence that you should consider just coincidentally, I am also the City Attorney in Pflugerville. In Pflugerville, Texas, in 2006 there were 17,000 population. Based on water connections, there are over 60,000 today in 2013. One of the differences there was State Highway 130 which connects to I-10, which was a diverter for heavy traffic. Those numbers have increased. 2) I am also the City Attorney for Bay City in Matagorda County, and we just completed and are finalizing our 380 agreements on an economic project participated in all levels of government all the way including the Texas Governor for a \$1.2 billion manufacturing project that includes for stainless steel manufacturing that will be going on in Matagorda County and they anticipate 600 trucks a day from that project. That will be here in roughly two years. Between those two, I am also the City Attorney in Garden Ridge, Texas. Garden Ridge, Texas is a small suburb of about 3500 people outside of San Antonio. The unique thing about Garden Ridge is that its geographic jurisdiction doubles with one industrial user, Hanson Aggregates. Hanson Aggregates through our mining operation negotiations has indicated to the City of Garden Ridge, in public session, that they anticipate in the next 3-6 months a 500% increase in aggregates. I know that the Hanson Aggregates is also somebody also near and dear to the City of Rosenberg, because they have a deposit in your city limits. I would anticipate you would likely receive a significant increase in heavy truck traffic related to aggregate deposits that occur at your rail station. There are a number of things outside the per view of the City of Rosenberg that are going to affect the City of Rosenberg's roadway and infrastructure that is a bigger picture analysis of this. The last anecdote, and I don't know how much traveling along Interstate 35 North, but as you get into Oklahoma and in Kansas, they have a unique process, where there are very wide medians on the interstate and the width of the two lane medians that go north and south are actually businesses, and they made left exits and they only built one rest area because it serves both sides and there are restaurants and convenience stores in the middle of the freeway considered a similar two pair process where they have the two lanes going north and the two lanes going south and they have the businesses in between. When I was contacted with regard to this project, it reminded me of that project where you are actually receiving is a doubling of your roadway and a reduction of what's called traffic conflicts, because you have less turns which reduce the conflict issues. I am not an engineer. I know your City Engineer, Charles Kalkomey, because he's also the City Engineer in Bay City, where I work as City Attorney as well. I don't know whether he has provided you specific information in the past in regard to this project, but from the experience we have in our office of eighteen attorneys that only do local government work and have for a quarter of a century. This type of project is one that does reduce what they call traffic conflicts, which increases speed and reduces congestion in your community. The concern that other people need to know is what if this is not necessary today? Well, you may not be building for today. You may be building for three years from today, when that Hanson Aggregate trucks are here and the Matagorda County trucks are coming through Rosenberg to get to I-10. It is a very simple process to get to here. Those are considerations that the public as well as the Council should consider when dealing with this issue. When dealing with this infrastructure, not only are you getting \$1M plus back from the Fort Bend County bonds, that would not be available to you unless you do this project and the 10% waiver from the State. So there is significant consideration for you to have. The other issue is what do you do when you

are the City of Austin, where on Sunday at 3:00 p.m. it takes about an hour and 23 minutes to go 9 miles on I-35; or north San Antonio that is finally under construction where it took 45 minutes to go 6 miles? That was for years that I personally experienced both situations. Another issue with eliminating truck traffic the City would not have the authority to limit truck traffic on a state highway without the state's permission and that is typically what state highways are for. In Garden Ridge we did a "no thru truck traffic" statement, but we have FM 2252 and FM 3009 and those are not subject to regulation for purposes of truck traffic because they are state highways and state funds are provided. When we go into these issues, there is a lot more for the Council to consider and I want to make sure the public was aware that this is not a giveaway. You are receiving significant consideration for this project.

- Mayor Morales asked each Council member if they had any questions.
- Councilor McConathy commented that we are here as a governing body to review the petitions and to hear your comments regarding the conveyance of land to TxDOT and the one-way pair project. Whether the petition is valid or invalid is the topic by agenda for discussion here today. The true issue; however, for discussion is whether this Council will act upon what is being asked of us from the many voices represented on the 64 pages of the petition. I believe the total is somewhere around 500, more than the number it took to put one Council member into office. If this number can determine whether a man or woman should sit in this position to govern in the City of Rosenberg, it should also settle the issue of whether this land should be given to TxDOT or sold as well. Many of these same voices previously attempted to have a say on whether the one-way pairs should happen at all, but they were deprived of this opportunity and pressured to change their minds, but they are here again through signature representation to say I have not given up, and I won't back down. I'll admit, I like a good debate. If it's a good one, both sides of the issue are equally represented and common ground is established in the middle. People involved can walk away respectfully disagreeing on the subject, but found collaborating in agreement on another subject. On this subject matter, I believe the voice of the people should prevail, and I stand with them tonight to take this to public vote.
- Councilor Benton thanked everyone that spoke tonight. I am a member of the Chamber and I don't remember being asked about the one-way pairs. I do have some questions of the attorney. You mentioned you work with Mr. Kalkomey and you are a City Attorney at several different places. I have a concern about some conflicts of interest in your position here actually sir. You say TxDOT can only give permission for 18 wheelers to use or not to use certain streets.
- George Hyde replied that State Highways are ultimately operated and managed by the State and therefore your regulatory ability to change the speed limit or to regulate state highways—farm to market roads is dependent upon the State of Texas.
- Councilor Benton stated he understands that. We have a representative here and I am sure he has enough clout with TxDOT if we would encourage 18 wheelers to use Spur 10 to avoid our avenues, I don't think that would be an impossible request. Regarding the mobility bonds that you mentioned, the \$1.5M, is what you are saying we would lose out of. If we sold the property for \$1M, we are now looking at a loss of \$500,000. If you would ask folks what the possible loss of income would be added up, I am sure most would agree it would be more than \$1M. It's not just money we are talking about, it's a way of life, it's an entire economy, not just the project – it's a bigger concern that just the focus of this project. You mention 10% - you alluded to a contract. George Hyde stated it is a statute. Councilor Benton stated that if this is part of a statute that would be pointed out to our folks when we made agreements with TxDOT in what we should cost share in this project. Lora, do we have any agreements that legally bind us to conveying this property.
- Lora Lenzsch, City Attorney, answered she is not aware of any contracts, only resolutions and discussions. She is not aware of any contracts.
- Councilor Benton stated to Mr. Hyde that you mentioned where we are a republic, one that subscribes to the Charter, which is upheld to the State and federal constitution—would you agree--correct?
- George Hyde stated he is not sure.
- Councilor Benton stated well, it hasn't been thrown out. I don't recall that there has been a federal mandate that has thrown out our Charter, so I am assuming that as long as it adheres to the state and federal laws and as time has gone by, there have probably been some challenges with it, and it's still here and we're still here.
- George Hyde replied the result is accurate; however, the premise that the constitutions of the state have to do with challenges, I can't speak to that.
- Councilor Benton asked Mr. Hyde, "Did you look at the Charter at Section 7.02, where it provides

- for the people to petition their council for an initiative”?
- George Hyde answered yes I did.
 - Councilor Benton asked if he sees a conflict with that.
 - George Hyde asked in what regard?
 - Councilor Benton stated in regard to this petition?
 - George Hyde stated there are a couple of issues with the petition he would like to discuss in Executive Session with the Council; however, the initiative petition seems to be processed in such a way that they had an intention to Section 7.02 when they did it.
 - Councilor Benton stated that Renee Butler had two questions and he hopes she can get an answer to her two questions. I'll defer my comments until after the Executive Session.
 - Councilor Bolf stated there is such a division on this subject, some people want us to give the land, some don't. Some think it will help downtown to have one-ways. I don't know if it will. I love downtown, I go downtown all the time to shop, eat there. My main contention that this was never put up for a public vote and this is such a huge change for this city—to donating the land, and fully understanding what that means and changing the direction. It's just such a huge thing for the City and I would support at this time, but I do have some questions for you in Executive Session, for a public vote. I think the public needs to have a say in this and this was kept quiet for so long, they were not given the opportunity.
 - Councilor Pena stated we are a republic and we are not totally socialistic as the rest of our government is turning to be, I think we are at a local government. These problems we are having now, it's great that we can come in here and meet and we can simulate the information before us, but it's a shame that things like this happen and we come—sixteen years, and we have been going on when something at the very beginning. When you vote, make sure these people represent you. The people that are calling me are telling me what they want, they are my constituents, they voted for me, they put me here, it's important that we listen to what they say. We keep talking about this problem on Avenue H and I. If we would have let the people speak on it, if they would have had the opportunity to say, let's do the one way pairs. How do you do that? You put it up to a vote. Now, we are battling over this and the people have decided they don't want to do this. Now, TxDOT is saying no one ever told us they didn't want to do this. We had tons of meetings, and I talked to people and they said they never knew about the meetings. Now, you are telling us we are going to have to eat the bullet and do this and that and it's not this Council telling you that. We are just sitting up here trying to do what you people want, and it's a shame that a lot of us missed all this and it has come to this. Now, I don't believe this City Council should make that decision with so much controversy and I think the people should get an opportunity whether they vote it in or out, but give them the opportunity to say their peace.
 - Councilor Euton reserves to change her opinion after Executive Session, but this has come to us not because of decisions we have made, but because of previous Council's decisions. Now, whether we are legally obligated to continue to do things that previous Councils have committed us to, that's the question. Can we undo what has been done—I don't know. We will respectfully listen to our attorneys and see what they say and we want to do what is best, but we don't want to go against our legal system. We want to honor the initiative if we can, but if we can't, we understand that we will have to do what is right in the eyes of the law.

CONSIDER MOTION TO ADJOURN FOR EXECUTIVE SESSION.

Action: Councilor McConathy made a motion, seconded by Councilor Euton to adjourn for Executive Session. The motion carried by a unanimous vote.

HOLD EXECUTIVE SESSION TO RECEIVE LEGAL ADVICE FROM CITY ATTORNEY ON PETITION TO INITIATE/PROPOSE LEGISLATION PURSUANT TO SECTION 7.02 OF THE CITY CHARTER STATING “THAT THE CITY SHALL NOT DONATE TO ANY PERSON OR ENTITY, INCLUDING TxDOT, THE REAL PROPERTY OWNED BY THE CITY, AND LOCATED IN THE CITY BETWEEN AVENUE H AND AVENUE I, AND DAMON AND LOUISE STREETS, FOR THE ROADWAY PROJECT KNOWN AS THE “ONE-WAY PAIRS” PROJECT.

An Executive Session was held pursuant to Texas Government Code Section 551.071 to receive legal advice from City Attorney on petition to initiate/propose legislation pursuant to Section 7.02 of the City Charter stating “that the City shall not donate to any person or entity, including TxDOT, the real property owned by the City, and located in the City between Avenue H and Avenue I, and Damon and Louise Streets, for the roadway project known as the “One-Way Pairs” Project.

ADJOURN EXECUTIVE SESSION, RECONVENE INTO SPECIAL SESSION, AND TAKE ACTION AS

NECESSARY AS A RESULT OF EXECUTIVE SESSION.

Mayor Morales adjourned the Executive Session and reconvened into Special Session.

Action: Councilor McConathy made a motion, seconded by Councilor Bolf to call a Special Election to be held in accordance with the State Law for adopting or rejecting the proposed legislature which reads, "that the City of Rosenberg shall not donate to any person or entity, including TxDOT, the real property owned by the City, and located in the City between Avenue H and Avenue I, and Damon and Louise Street, for the roadway project known as the "One-Way Pairs" project. The property may only be sold in the future for fair market value, as determined by independent appraisal."

Discussion:

- Councilor Euton stated that previously she was against the one-way pairs. When we had all the meetings and discussions, I believe the "one-way pairs" is the lesser of the two evils and it is the better project. However, I do see that the petition put before Council is a valid petition and we should uphold the petition and we should do what the voters asked us to do, but I would also ask that we go out and educate the public why this is a better choice to go ahead and do the one-way pairs, but this is only on the property and the question that we will be voting on.
- Councilor Grigar stated he is all for progress and the City is booming and our population is getting larger. I am all for planning for the future and it seems this is not just a quick fix or a band aid to a problem that exists but has been pointed out by TxDOT that the safety factor of this roadway is five times the average of the state. I know this is emotional for all of us. I have lived here all my life. It wasn't an easy decision. At the beginning, I was against the one-way pairs, but after hearing all the data and how much it would increase the safety in our town and our visitors to get around and making left turn lanes rather than all turns, increases the safety. The motion tonight as I understand is this property was bought by the City with the statute that we would give 10% right of way to TxDOT for the improvements. That would be upholding our end of the contract and I understand is throughout the State, it's not just a local thing; it's what is asked of all municipalities. So, it's not something that is dreamed up by them. Every city pays the 10%, if there are improvements to the roadway. However, I will say this meets the 10% plus the overpasses that would be constructed at a later time with a cost of twenty plus million dollars which would be in the forked area of Highways 36 and 90, and that donated property would go toward that right of way donation. I think it's a good deal and the second part of this project is also on the books for the overpass, but it is for a long term. We are all looking for long term, we are all looking for fixes, but we need a permanent solution. I know it's tough, we are creatures of habit, we don't like change, but I believe that we are upholding our end of the 10% of the donation of the right of way.
- Councilor Bolf stated she thinks it's a good thing we are going to honor the petition and let the citizens' vote. This is your time to get out and educate. It should have been voted on, in my mind, years ago. This is a major issue, whether you are for or against it, you have a right to vote on it. Everyone should get out there and educate the public, not just the people who have businesses on Highway 90, but everyone. Thank you.
- Councilor Benton stated you have an opportunity to vote on it. I see folks on both sides of the issue and everyone will have an opportunity to vote on it. If you are against it, vote against it. If you are for it, vote for it—calling the election is the right thing to do. I think that it gives the people a voice. I don't think we could have ignored the petition. I will accept the results no matter what it is.
- Councilor McConathy stated the election will be in May, 2014—get out and vote.
- Mayor Morales stated that what he had to decide tonight is looking at and listening to the facts. The facts are that TxDOT could still move forward without (this land donation). The only thing we are voting on tonight is the land that the City purchased in good faith over a period of time through resolutions by previous councils, to meet that 10% requirement, which TxDOT is leveraging those dollars. As far as not only today, this project, which has been pointed out as a solution to mobility and a solution to safety in that corridor, it also gives us the ability with those dollars, that 10%, as Councilor Grigar said, \$2M without any more out of pocket expense to the taxpayer. We are leveraging dollars that the County given us \$1.5M back if the project is completed, and we are also leveraging those dollars as far as allowing them the 10% for future as far as completion of the project. There are a lot of facts that tonight we will vote on whether the land can be given to TxDOT or not, but at the end of the day, my understanding from legal counsel, is that TxDOT could still move forward with the rest of the project. They could redesign the project and end up doing the project. All we are doing tonight is voting on whether we are using your tax dollars to have a special election to vote on whether you want to release that land

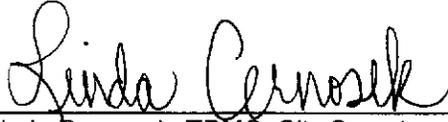
or not. But TxDOT, according to legal counsel, can move forward with this project. It's not a matter of we are stopping the project, it's a matter of just that one segment which is the piece of property. After saying all of that, you heard everyone here, we will vote on Councilor McConathy's motion, seconded by Councilor Bolf.

Upon voting, the motion carried by a 5-2 vote, as follows: **Ayes: Councilors Benton, McConathy, Pena, Euton and Bolf. Noes: Mayor Morales and Councilor Grigar.**

- Mayor Morales encouraged everyone to educate others and get out and vote in May 2014.

2. ADJOURNMENT.

There being no further business Mayor Morales adjourned the meeting at 8:45 p.m.



Linda Cernosek, TRMC, City Secretary



CITY COUNCIL COMMUNICATION

February 18, 2014

ITEM #	ITEM TITLE
13	Resolution No. R-1752 - Joint Election Agreement and Contract for Election Services between the City and Fort Bend County

ITEM/MOTION

Consideration of and action on Resolution No. R-1752, a Resolution authorizing the Mayor to execute and the City Secretary to attest, for and on behalf of the City, a Joint Election Agreement and Contract for Election Services for the 2014 Special Election, by and between the City and Fort Bend County, Texas.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds:

101-1300-510-5720

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

MUD #: N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1752

APPROVALS

Submitted by:

Linda Cernosek
City Secretary

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager for Public Services
- City Attorney *LL/lc*
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

Resolution No. R-1752 is a Resolution authorizing the Mayor to execute and the City Secretary to attest the 2014 Joint Election Agreement and Contract for Election Services (Contract) by and between the City and Fort Bend County, Texas.

This Contract with Fort Bend County provides for the Fort Bend County Elections Administrator to coordinate, supervise, and handle all aspects of administering the May 10, 2014 City of Rosenberg Special Municipal Election.

According to the Contract, the City will pay Fort Bend County for equipment, supplies, services and administrative costs related to the May 10, 2014 Special Election. The Elections Administrator will serve as the Administrator for the Election, but the City will remain responsible for the lawful conduct of the Election. The Elections Administrator will provide advisory services in connection with decisions to be made and actions to be taken by the officers of the City. The Early Voting Schedule is attached as Attachment "B" and the Election Day polling places are attached as Attachment "A" to the Contract.

The City Secretary recommends approval of Resolution No. R-1752 as presented.

RESOLUTION NO. R-1752

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AND THE CITY SECRETARY TO ATTEST, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A JOINT ELECTION AGREEMENT AND CONTRACT FOR ELECTION SERVICES FOR THE 2014 SPECIAL ELECTION, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND FORT BEND COUNTY, TEXAS.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. That the Mayor and the City Secretary are hereby authorized to execute and attest, respectively, the Joint Election Agreement and Contract for Election Services (Contract), by and between the City and Fort Bend County, Texas, for the purpose of conducting the 2014 Special Election on May 10, 2014. A copy of such Contract is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this ____ day of _____ 2014.

ATTEST:

APPROVED:

Linda Cernosek, TRMC, **City Secretary**

Vincent M. Morales, Jr., **Mayor**

THE STATE OF TEXAS
COUNTY OF FORT BEND

JOINT ELECTION AGREEMENT AND CONTRACT FOR ELECTION SERVICES

THIS CONTRACT made by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as "County" and the City of Rosenberg hereinafter referred to as "Political Subdivision," pursuant to Texas Election Code Sections 31.092 and 271.002 for a joint May 10, 2014 election to be administered by John Oldham, Fort Bend County Elections Administrator, hereinafter referred to as "Elections Administrator."

THIS CONTRACT is subject to the written approval of the Fort Bend County Attorney and shall not be binding on the parties until such written approval is obtained. Upon written approval of the Fort Bend County Attorney and the participating parties, this CONTRACT shall be binding on said parties.

RECITAL

The City of Rosenberg is holding a Special Election on May 10, 2014 (at the expense of Political Subdivision) for the purpose of approving or disapproving a citizen initiated public question.

The County owns an electronic voting system, the Hart InterCivic eSlate and the eScan Voting System, which has been duly approved by the Secretary of State pursuant to Texas Election Code Chapter 122 as amended, and is compliant with the accessibility requirements set forth by Texas Election Code Section 61.012. Political Subdivision desires to use the County's electronic voting system and to compensate the County for such use and to share in certain other expenses connected with joint elections in accordance with the applicable provisions of Chapters 31 and 271 of the Texas Election Code, as amended.

NOW THEREFORE, in consideration of the mutual covenants, agreements, and benefits to the parties, IT IS AGREED as follows:

I. ADMINISTRATION

The parties agree to hold a "Joint Election" in accordance with Chapter 271 of the Texas Election Code and this agreement. The Fort Bend County Elections Administrator shall coordinate, supervise, and handle all aspects of administering the Joint Election as provided in this agreement. Political Subdivision agrees to pay Fort Bend County for equipment, supplies, services, and administrative costs as provided in this agreement. The Fort Bend County Elections Administrator shall serve as the administrator for the Joint Election; however, the Political Subdivision shall remain responsible for the lawful conduct of its election. The Elections Administrator shall provide advisory services in connection with decisions to be made and actions to be taken by the officers of the Political Subdivision.

It is understood that other political subdivisions may wish to participate in the use of the County's electronic voting system and polling places, and it is agreed that Fort Bend County and the Elections Administrator may enter into other joint election agreements and contracts for election services for those purposes on terms and conditions generally similar to those set forth in this contract. Political Subdivision agrees that Fort Bend County may enter into joint election agreements with other political subdivisions that may have territory located partially or wholly within the boundaries of Political Subdivision, and in such case all parties sharing common territory shall share a joint ballot on the county's electronic voting system at the applicable polling places. In such cases, costs shall be pro-rated among the participants according to Section X of this contract.

At each polling location, joint participants shall share voting equipment and supplies to the extent possible. The participating parties shall share a mutual ballot in those precincts where jurisdictions overlap. However, in no instance shall a voter be permitted to receive a ballot containing an office or proposition stating a measure on which the voter is ineligible to vote. Multiple ballot styles shall be available in those shared polling places where jurisdictions do not overlap.

II. LEGAL DOCUMENTS

Political Subdivision shall be responsible for the preparation, adoption, and publication of all required election orders, resolutions, notices, and any other pertinent documents required by the Texas Election Code and/or Political Subdivision's governing body, charter, or ordinances.

Preparation of the necessary materials for notices and the official ballot shall be the responsibility of Political Subdivision, including translation to languages other than English. Political Subdivision shall provide a copy of their respective election orders and notices to the Elections Administrator.

III. VOTING LOCATIONS

The Elections Administrator shall select and arrange for the use of and payment for all Election Day voting locations. Voting locations will be, whenever possible, the usual voting location for elections in Political Subdivision. The proposed voting locations are listed in Attachment A of this agreement. In the event a voting location is not available, the Elections Administrator will arrange for use of an alternate location with the approval of the Political Subdivision. The Elections Administrator shall notify the Political Subdivision of any changes from the locations listed in Attachment A.

If polling places for the May 10, 2014 joint election are different from the polling place(s) used by Political Subdivision in its most recent election, Political Subdivision agrees to post a notice no later than May 9, 2014 at the entrance to any previous polling places in the jurisdiction stating that the polling location has changed and stating the political subdivision's polling place names and addresses in effect for the May 10, 2014 election.

IV. ELECTION JUDGES, CLERKS, AND OTHER ELECTION PERSONNEL

Fort Bend County shall be responsible for the appointment of the presiding judge and alternate judge for each polling location in accordance with Chapter 32 of the Texas Election Code. The Elections Administrator shall make emergency appointments of election officials if necessary.

Upon request by the Elections Administrator, Political Subdivision agrees to assist in recruiting polling place officials who are bilingual (fluent in both English and Spanish).

The Elections Administrator shall notify all election judges of the eligibility requirements of Subchapter C of Chapter 32 of the Texas Election Code, and will take the necessary steps to insure that all election judges appointed for the Joint Election are eligible to serve.

The Elections Administrator shall arrange for the training and compensation of all election judges and clerks. The Elections Administrator shall arrange for the date, time, and place for presiding election judges to pick up their election supplies. Each presiding election judge will be sent a letter from the Elections Administrator notifying the person of the appointment, the time and location of training and distribution of election supplies, and the number of election clerks that the presiding judge may appoint.

Each election judge and clerk will receive compensation at an hourly rate established by Fort Bend County pursuant to Texas Election Code Section 32.091. Judges and Clerks will be compensated for actual time working at a polling place, time spent preparing the polling location prior to Election Day, and time spent attending any training classes required to successfully conduct the election. The election judge will receive an additional sum of \$25.00 for picking up the election supplies prior to Election Day and for returning the supplies and equipment to the central counting station after the polls close.

The Elections Administrator may employ other personnel necessary for the proper administration of the election, including such part-time help as is necessary to prepare for the election, to ensure the timely delivery of supplies during early voting and on Election Day, and for the efficient tabulation of ballots at the central counting station. Part-time

personnel working in support of the Early Voting Ballot Board and/or central counting station on election night will be compensated at the rate set by Fort Bend County.

It is agreed by all parties that at all times and for all purposes hereunder, all election judges, clerks, and all other personnel involved in this election are independent contractors and are not employees or agents of the County. No statement contained in this Agreement shall be construed so as to find any judge, clerk, or any other election personnel an employee or agent of the County, and no election personnel shall be entitled to the rights, privileges, or benefits of County employees except as otherwise stated herein, nor shall any election personnel hold himself out as an employee or agent of the County, unless considered a county employee as determined by the Fort Bend County Human Resources Department. It further agreed by all parties that at all times and for all purposes hereunder, all election judges, clerks, and all other personnel involved in this election are independent contractors and are not employees or agents of Political Subdivision. No statement contained in this Agreement shall be construed so as to find any judge, clerk, or any other election personnel an employee or agent of Political Subdivision, and no election personnel shall be entitled to the rights, privileges, or benefits of Political Subdivision employees except as otherwise stated herein, nor shall any election personnel hold himself out as an employee or agent of Political Subdivision, unless considered an employee of the City of Rosenberg as determined by the Human Resources Department of the city of Rosenberg.

V. PREPARATION OF SUPPLIES AND VOTING EQUIPMENT

The Elections Administrator shall arrange for all election supplies and voting equipment including, but not limited to official ballots, sample ballots, voter registration lists, and all forms, signs, maps and other materials used by the election judges at the voting locations. At each polling location, joint participants shall share voting equipment and supplies to the extent possible. The participating parties shall share a mutual ballot in those precincts where jurisdictions overlap. However, in no instance shall a voter be permitted to receive a ballot containing an office or proposition stating a measure on which the voter is ineligible to vote. Multiple ballot styles shall be available in those shared polling places where jurisdictions do not overlap. The Elections Administrator shall provide the necessary voter registration information, maps, instructions, and other information needed to enable the election judges in the voting locations that have more than one ballot style to conduct a proper election.

Political Subdivision shall furnish the Elections Administrator a list of candidates and/or propositions showing the order and the exact manner in which the candidate names and/or proposition(s) are to appear on the official ballot (including titles and text in each language in which Political Subdivision's ballot is to be printed). This list shall be delivered to the Elections Administrator prior to the deadlines as described in section XVI. Political Subdivision shall be responsible for proofreading and approving the ballot insofar as it pertains to Political Subdivision's candidates and/or propositions.

VI. EARLY VOTING

The participating authorities agree to conduct joint early voting and to appoint the Election Administrator as the Early Voting Clerk in accordance with Sections 31.097 and 271.006 of the Texas Election Code. The participating authorities agree to appoint the Elections Administrator's permanent county employees as deputy early voting clerks. The participating authorities further agree that the Elections Administrator may appoint other deputy early voting clerks to assist in the conduct of early voting as necessary, and that these additional deputy early voting clerks shall be compensated at an hourly rate set by Fort Bend County pursuant to Section 83.052 of the Texas Election Code.

Early Voting by personal appearance will be held at the locations, dates, and times listed in Attachment "B" of this document. Any qualified voter of the Joint Election may vote early by personal appearance at any one of the joint early voting locations.

As Early Voting Clerk, the Elections Administrator shall receive applications for early voting ballots to be voted by mail in accordance with Chapters 31 and 86 of the Texas Election Code. Any requests for early voting ballots to be voted by mail received by Political Subdivision shall be forwarded immediately by fax or courier to the Elections Administrator for processing.

The Elections Administrator shall provide Political Subdivision a copy of the early voting report on a daily basis and a cumulative final early voting report following the election.

VII. EARLY VOTING BALLOT BOARD

Fort Bend County shall appoint an Early Voting Ballot Board (EVBB) to process early voting results from the Joint Election. The Presiding Judge of Central Court, with the assistance of the Elections Administrator, shall appoint two or more additional members to constitute the EVBB. The Elections Administrator shall determine the number of EVBB members required to efficiently process the early voting ballots.

VIII. CENTRAL COUNTING STATION AND ELECTION RETURNS

The Elections Administrator shall be responsible for establishing and operating the central counting station to receive and tabulate the voted ballots in accordance with the provisions of the Texas Election Code and of this agreement.

The participating authorities hereby, in accordance with Section 127.002, 127.003, and 127.005 of the Texas Election Code, appoint the following central counting station officials:

Counting Station Manager:	John Oldham, Elections Administrator
Tabulation Supervisor:	Robin Heiman, Assistant Elections Administrator
Presiding Judge:	James Guen, Equipment Technician

The counting station manager or his representative shall deliver timely cumulative reports of the election results as precincts report to the central counting station and are tabulated. The manager shall be responsible for releasing cumulative totals and precinct returns from the election to the joint participants, candidates, press, and general public by distribution of hard copies or electronic transmittals by facsimile (when so requested) and by posting to the Elections Administrator's web page located at "www.fortbendvotes.org".

The Elections Administrator will prepare the unofficial canvass reports after all precincts have been counted, and will deliver a copy of the unofficial canvass to the Political Subdivision as soon as possible after all returns have been tabulated. All participating authorities shall be responsible for the official canvass of their respective elections.

The Elections Administrator shall be responsible for conducting the post-election manual recount required by Section 127.201 of the Texas Election Code unless a waiver is granted by the Secretary of State. Notification and copies of the recount, if waiver is denied, will be provided to each participating authority and the Secretary of State's Office.

IX. RUNOFF ELECTION

Political Subdivision shall have the option of extending the terms of this agreement through its runoff election, if applicable. In the event of such runoff election, the terms of this agreement shall automatically extend unless the Political Subdivision notifies the Elections Administrator in writing within 10 days of the original election.

Political Subdivision shall reserve the right to reduce the number of early voting locations and/or Election Day voting locations in any runoff election.

X. ELECTION EXPENSES AND ALLOCATION OF COSTS

Political Subdivision agrees to share the costs of administering the Joint Election. Allocation of costs, unless specifically stated otherwise, is mutually agreed to be shared among the total number of political subdivisions. Costs for polling places shared by the County, Political Subdivision, and other political subdivisions shall be pro-rated equally among the participants utilizing that polling place.

Any expenses incurred in the rental of polling place facilities shall be attributed directly to the participants utilizing that polling location.

It is agreed that the normal rental rate charged for the County's voting equipment used on Election Day shall be pro-rated among the participants utilizing each polling location.

Costs for Early Voting by Personal Appearance shall be allocated as shown in Attachment C of this document.

Political Subdivision agrees to pay Fort Bend County an administrative fee equal to ten percent (10%) of its total billable costs in accordance with Section 31.100(d) of the Texas Election Code.

XII WITHDRAWAL FROM CONTRACT DUE TO CANCELLATION OF ELECTION

Political Subdivision may withdraw from this agreement and the Joint Election should it cancel its election in accordance with Sections 2.051 - 2.053 of the Texas Election Code. Political Subdivision is fully liable for any expenses incurred by Fort Bend County on behalf of Political Subdivision plus an administrative fee of ten percent (10%) of such expenses. Any monies deposited with the county by Political Subdivision shall be refunded, minus the aforementioned expenses and administrative fee if applicable.

XII. RECORDS OF THE ELECTION

The Elections Administrator is hereby appointed general custodian of the voted ballots and all records of the Joint Election as authorized by Section 271.010 of the Texas Election Code.

Access to the election records shall be available to each participating authority as well as to the public in accordance with applicable provisions of the Texas Election Code and the Texas Public Information Act. The election records shall be stored at the offices of the Elections Administrator or at an alternate facility used for storage of county records. The Elections Administrator shall ensure that the records are maintained in an orderly manner so that the records are clearly identifiable and retrievable.

Records of the election shall be retained and disposed of in accordance with the provisions of Section 66.058 of the Texas Election Code. If records of the election are involved in any pending election contest, investigation, litigation, or open records request, the Elections Administrator shall maintain the records until final resolution or until final judgment, whichever is applicable. It is the responsibility of Political Subdivision to bring to the attention of the Elections Administrator any notice of pending election contest, investigation, litigation or open records request which may be filed with Political Subdivision.

XIII. RECOUNTS

A recount may be obtained as provided by Title 13 of the Texas Election Code. Political Subdivision agrees that any recount shall take place at the offices of the Elections Administrator, and that the Elections Administrator shall serve as Recount Supervisor and Political Subdivision's official or employee who performs the duties of a secretary under the Texas Election Code shall serve as Recount Coordinator.

XIV. MISCELLANEOUS PROVISIONS

1. It is understood that to the extent space is available, that other districts and political subdivisions may wish to participate in the use of the County's election equipment and voting places, and it is agreed that the Elections Administrator may contract with such other districts or political subdivisions for such purposes and that in such event there may be an adjustment of the pro-rata share to be paid to the County by the participating authorities.

2. The Elections Administrator shall file copies of this document with the Fort Bend County Treasurer and the Fort Bend County Auditor in accordance with Section 31.099 of the Texas Election Code.
3. In the event that legal action is filed contesting Political Subdivision's election under Title 14 of the Texas Election Code, Political Subdivision shall choose and provide, at its own expense, legal counsel for the County, the Elections Administrator, and additional election personnel as necessary.
4. Nothing in this contract prevents any party from taking appropriate legal action against any other party and/or other election personnel for a breach of this contract or a violation of the Texas Election Code.
5. The parties agree that under the Constitution and laws of the State of Texas, neither Fort Bend County nor Political Subdivision can enter into an agreement whereby either party agrees to indemnify or hold harmless another party; therefore, all references of any kind, if any, to indemnifying or holding or saving harmless for any reason are hereby deleted.
6. This agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas.
7. In the event of one of 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 provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
8. All parties shall comply with all applicable laws, ordinances, and codes of the State of Texas, all local governments, and any other entities with local jurisdiction.
9. The waiver by any party of a breach of any provision of this agreement shall not operate as or be construed as a waiver of any subsequent breach.
10. Any amendments of this agreement shall be of no effect unless in writing and signed by all parties hereto.

XV. COST ESTIMATES AND DEPOSIT OF FUNDS

It is estimated that Political Subdivision's obligation under the terms of this agreement shall be \$8,800.00 The Political Subdivision agrees to pay to Fort Bend County a deposit of \$5,280.00 which is approximately sixty (60) percent of the total estimated obligation of Political Subdivision to the County under this agreement. This deposit shall be paid to Fort Bend County within 10 days after the final candidate filing deadline. The exact amount of the Political Subdivision's obligation under the terms of this agreement shall be calculated after the May 10, 2014 election (or runoff election, if applicable), and if the amount of the Political Subdivision's obligation exceeds the amount deposited, the Political Subdivision shall pay to Fort Bend County the balance due within thirty (30) days after receipt of the final invoice from the Elections Administrator. However, if the amount of the Political Subdivision's obligation is less than the amount deposited, Fort Bend County shall refund to the Political Subdivision the excess amount paid within thirty (30) days after final costs are calculated.

XVI. RESULT OF NON-COMPLIANCE OF DEADLINES

The Political Subdivision agrees that it shall provide ballot details to the Elections Office not later than the 61st day (March 10, 2014) before the election. It is understood that if the ballot details are not provided to the Elections Office by the 57th day before the election (March 14, 2014) that the Elections Office may impose a penalty fee of \$1000.00 assessed to the total cost. It is also understood that if the ballot details are not provided to the Elections Office by the 53rd day before

Election Day (March 17, 2014), this contract will be declared null and void and it will be the responsibility of the political entity to conduct a separate election.

IN TESTIMONY HEREOF, this agreement, its multiple originals all of equal force, has been executed on behalf of the parties hereto as follows, to-wit:

- (1) It has on the _____ day of _____, 2014 been executed on behalf of Fort Bend County by the County Judge and the Elections Administrator pursuant to the Texas Election Code so authorizing;
- (2) It has on the _____ day of _____, 2014 been executed on behalf of the City of Rosenberg by its Presiding Officer or authorized representative, pursuant to an action by the City Council of the City of Rosenberg.

ATTEST:

FORT BEND COUNTY

Dianne Wilson, County Clerk

By _____
Robert E. Hebert, County Judge

ATTEST:

CITY OF ROSENBERG

Linda Cernosek, City Secretary

By _____
Vincent M. Morales, Jr., Mayor

CONTRACTING OFFICER

APPROVED AS TO FORM:

John Oldham
Elections Administrator

By _____
Paul Stewart
Assistant County Attorney

**May 10, 2014 Polling Places for the City of Rosenberg Election
Polls will be open from 7:00 A.M. until 7:00 P.M.
Election Day Polling Locations**

Precinct

Polling Place & Address

1007(p), 1012, 1013,
1015(p), 1025(p), 1037,
1040(p), 1048, 1054(p),
1074

Rosenberg City Hall
2110 4th Street
Rosenberg, Texas 77471

Attachment B

Revised: 02/13/2014

**Early Voting Schedule
May 10, 2014 Joint Election**

Schedule for: Irene Stern Community Center - 6920 Fulshear-Katy Road, Fulshear, TX
Missouri City Community Center – 1522 Texas Pkwy, Missouri City, TX
Fort Bend County Rosenberg Annex – 4520 Reading Road, Rosenberg, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 – May 2, 2014	8:00 a.m. to 5:00 p.m.
Saturday	May 3, 2014	8:00 a.m. to 5:00 p.m.
Sunday	May 4, 2014	CLOSED
Monday - Tuesday	May 5 – 6, 2014	7:00 a.m. to 7:00 p.m.

Schedule for: First Colony Conference Center – 3232 Austin Parkway, Sugar Land, TX
Hightower High School – 3333 Hurricane Lane, Missouri City, TX
Sugar Land Branch Library - 550 Eldridge, Sugar Land, TX
Four Corners Community Center – 15700 Old Richmond Road, Sugar Land, TX
James Bowie Middle School – 700 Plantation Dr, Richmond, TX
Randall’s – 5800 New Territory Blvd., Sugar Land, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 – May 2, 2014	8:00 a.m. to 7:00 p.m.
Saturday	May 3, 2014	8:00 a.m. to 5:00 p.m.
Sunday	May 4, 2014	CLOSED
Monday - Tuesday	May 5 – 6, 2014	7:00 a.m. to 7:00 p.m.

Schedule for: Lost Creek Park – 3703 Lost Creek Blvd, Sugar Land, TX
Sugar Land City Hall – 2700 Town Center Blvd. North, Sugar Land, TX
Richmond Water Maintenance Facility – 110 N. 8th Street, Richmond, TX
Sienna Branch Library – 8411 Sienna Springs Blvd, Missouri City, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 – May 2, 2014	10:00 a.m. to 7:00 p.m.
Saturday	May 3, 2014	CLOSED
Sunday	May 4, 2014	CLOSED
Monday – Tuesday	May 5 – 6, 2014	7:00 a.m. to 7:00 p.m.

Schedule for: Fort Bend ISD Admin. Bldg. – 16431 Lexington Blvd., Sugar Land, TX
Willowridge High School – 16301 Chimney Rock, Houston, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 – May 2, 2014	8:00 a.m. to 7:00 p.m.
Saturday	May 3, 2014	CLOSED
Sunday	May 4, 2014	CLOSED
Monday - Tuesday	May 5 – 6, 2014	7:00 a.m. to 7:00 p.m.

Early Voting Schedule May 10, 2014 Joint Election

Schedule for: Meadows Place City Hall – One Troyan Dr., Meadows Place, TX
Stafford City Hall – 2610 Main Street, Stafford, TX
Fort Bend County Road & Bridge – 3743 School Street, Needville, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 – May 2, 2014	8:00 a.m. to 5:00 p.m.
Saturday	May 3, 2014	CLOSED
Sunday	May 4, 2014	CLOSED
Monday - Tuesday	May 5 – 6, 2014	7:00 a.m. to 7:00 p.m.

Schedule for: Stafford MSD Administration Bldg – 1625 Staffordshire Rd, Stafford, TX

<u>Day</u>	<u>Date</u>	<u>Hours</u>
Monday – Friday	April 28 - May 2, 2014	7:30 a.m. to 4:30 p.m.
Saturday	May 3, 2014	CLOSED
Sunday	May 4, 2014	CLOSED
Monday – Tuesday	May 5 - 6, 2014	7:00 a.m. to 7:00 p.m.

**City of Rosenberg proposed Election Services Contract
Estimate for the conduct of the May 10, 2014 Joint Election**

A. Statistical Information

1. Number of Registered Voters	<u>14,373</u>
2. Number of Precincts	<u>10</u>
3. Number of election day polling places (excluding early voting)	<u>1</u>
4. Number of polling places shared with another entity	<u>0</u>
5. Number of public buildings used as polling places	<u>1</u>
6. Number of early voting stations	<u>17</u>
7. Voting system:	<u>DRE</u>

B. Cost of Election

	Estimate	Actual
1. Early Voting and Election Day personnel (TEC § 32.091, 32.092, 32.114, 83.052, 271.013)		
Clerks x Rate x Hours / Entities		
a. Early voting judges / clerks <u>4</u> x <u>\$11</u> x <u>90</u> / <u>1</u>	<u>\$3,960</u>	
Locations x Clerks x Hours x Rate / Entities		
b. Election day judges / clerks <u>1</u> <u>4</u> x <u>17</u> x <u>\$10</u> / <u>1</u>	<u>\$680</u>	
2. Early Voting Ballot Board & central counting station personnel (TEC § 87.005, 127.006)		
a. Number of clerks and judge <u>1</u> <u>6</u> x <u>10</u> x <u>\$10</u> / <u>10</u>	<u>\$60</u>	
3. Elections Administration Dept. staff overtime (TEC § 31.100(e))	<u>\$250</u>	Actual
4. Election supplies & equipment		
Early Voting		
Kits x Cost / Entities		
a. Early Voting supply kits <u>1</u> x <u>\$35</u> / <u>1</u>	<u>\$35</u>	
Units x Rate / Entities		
c. Early Voting laptop PC's <u>1</u> x <u>\$125</u> / <u>1</u>	<u>\$125</u>	
c. Early Voting label printers <u>1</u> x <u>\$25</u> / <u>1</u>	<u>\$25</u>	
d. Early Voting JBCs <u>1</u> x <u>\$125</u> / <u>1</u>	<u>\$125</u>	
e. Early Voting eSlates <u>5</u> x <u>\$125</u> / <u>1</u>	<u>\$625</u>	
f. Early Voting DAUs <u>1</u> x <u>\$150</u> / <u>1</u>	<u>\$150</u>	
g. Cell Phones - 9 days <u>1</u> x <u>\$27</u> / <u>1</u>	<u>\$27</u>	
Election Day		
Units x Rate / Entities		
h. Election Day supply kits <u>1</u> x <u>\$35</u> / <u>1</u>	<u>\$35</u>	

ITEM 14

Announcements.

ITEM 15

Adjournment.