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, January 20, 2015

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. (Reverend Jason Martin, Calvary Baptist Church, Rosenberg)

Presentation of the Willie D. McQueen, Jr. Employee of the Quarter Award. (Dallis Warren, Police Chief / Lisa Olmeda, Human Resources Director)

Presentation of Contest Award Winners and Sponsors of the Keep Rosenberg Beautiful 2014 Christmas Lighting and Decorating Contest Benefitting the Lord's Kitchen. (William Benton, Councilor)

Presentation of Certificates of Appreciation to 2014 BOO-berg Volunteers. (Lydia Acosta, Recreation Programs Coordinator)

Presentation of Certificates of Appreciation to 2014 Rosenberg Christmas Nights Volunteers. (Lydia Acosta, Recreation Programs Coordinator)

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 December 16, 2014, and Regular Meeting Minutes for January 06, 2015. (Linda Cernosek, City Secretary)

   B. Consideration of and action on Resolution No. R-1902, a Resolution awarding a bid for the purchase of a trailer-mounted generator; and, authorizing the City Manager to negotiate and execute, for and on behalf of the City, appropriate documents and/or agreements regarding same. (John Maresh, Assistant City Manager of Public Services)

REGULAR AGENDA

2. Review and discuss potential appointment of a Charter Review Committee, and take action as necessary. (William Benton, Councilor)

3. Consideration of and action on Resolution No. R-1903, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Amendment No. 5 to the Town Center, Rosenberg, Texas Development Agreement, by and between the City and A-S 70 HWY 59-FM 762, L.P., a Texas limited partnership. (Travis Tanner, Executive Director of Community Development)

4. Consideration of and action on Ordinance No. 2015-02, an Ordinance providing for the disannexation from the corporate boundaries of the City of that certain 82.7 acres, more or less, in the Wiley Martin Survey, Abstract 56, Fort Bend County, Texas (Fort Bend County Municipal Utility District No. 184), pursuant to the petition for disannexation; adjusting the boundaries of Council District No. 4 to exclude the tract disannexed hereby, containing certain findings, providing for non-severability; and establishing an effective date. (Travis Tanner, Executive Director of Community Development)

5. Consideration of and action on Resolution No. R-1898, a Resolution authorizing the City Manager to negotiate and execute, for and on behalf of the City, an Agreement for Engineering Design Services for the Old Richmond Road and Jennetta Street Reconstruction Project, by and between the City and CivilCorp, LLC, in the amount of $177,262. 00. (John Maresh, Assistant City Manager of Public Services)

6. Consideration of and action on Resolution No. R-1899, a Resolution awarding Bid No. 2014-16 for construction of Sanitary Sewer Improvements along US Highway 59/I-69; and, authorizing the City Manager to negotiate and execute, for and on behalf of the City, appropriate documents and/or agreements regarding same. (John Maresh, Assistant City Manager of Public Services)

7. Consideration of and action on Resolution No. R-1901, a Resolution awarding Bid No. 2015-04 for Street Sweeping Services; and, authorizing the City Manager to negotiate and execute, for and on behalf of the City, a General Services Contract related thereto, and/or all other necessary documentation regarding same. (John Maresh, Assistant City Manager of Public Services)

8. Consideration of and action on Resolution No. R-1908, a Resolution authorizing the City Manager to execute a Pipeline Crossing Agreement related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and Union Pacific Railway Company, in the amount of $7,200.00. (John Maresh, Assistant City Manager of Public Services)

9. Consideration of and action on Resolution No. R-1909, a Resolution authorizing the City Manager to execute a Pipeline Crossing Agreement related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and Union Pacific Railway Company, in the amount of $7,200.00. (John Maresh, Assistant City Manager of Public Services)

10. Consideration of and action on Resolution No. R-1910, a Resolution authorizing the City Manager to execute a Pipeline Crossing Agreement related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and Union Pacific Railway Company, in the amount of $7,200.00. (John Maresh, Assistant City Manager of Public Services)

11. Consideration of and action on Resolution No. R-1911, a Resolution authorizing the City Manager to execute a Pipeline License related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and BNSF Railway Company, in the amount of $4,150.00. (John Maresh, Assistant City Manager of Public Services)

12. Consideration of and action on Resolution No. R-1912, a Resolution authorizing the City Manager to execute a Pipeline License related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and BNSF Railway Company, in the amount of $4,150.00. (John Maresh, Assistant City Manager of Public Services)

13. Consideration of and action on Resolution No. R-1913, a Resolution authorizing the City Manager to execute a Pipeline License related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and BNSF Railway Company, in the amount of $4,150.00. (John Maresh, Assistant City Manager of Public Services)

14. Hold Executive Session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the City Manager pursuant to Section 551.074 of the Texas Government Code.

15. Adjourn Executive Session, reconvene into Regular Session, and take action as necessary as a result of Executive Session.

16. Consideration of and action on Resolution No. R-1914, a Resolution authorizing the Mayor to execute, for and on behalf of the City, an Employment Agreement, by and between the City and Robert Gracia to serve as City Manager. (Vincent M. Morales, Jr., Mayor)

17. Announcements.

18. Adjournment.

[EXECUTION PAGE TO FOLLOW]

DATED AND POSTED this the _____ day of _____ 2015, 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.

Executive Sessions: The City Council may retire to executive session in accordance with the Texas Government Code, any time between the meeting's opening and adjournment for the purposes of:

- **consultation with legal counsel (Section 551.071);**
- **deliberation regarding real property (Section 551.072);**
- **deliberation regarding economic development negotiations (Section 551.087)**
- **deliberation regarding the deployment or specific occasions for implementation of security personnel or devices (Section 551.076)**

Attendance by other elected or appointed officials: It is anticipated that members of other city boards, commissions or committees whose meetings may be governed by the Texas Open Meetings Act may attend this meeting in numbers that may constitute a quorum of the other city boards, commissions or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a possible quorum/meeting of the other boards, commissions or committees of the City, whose members may be in attendance. The members may speak as recognized by the presiding officer, but no action may be taken by any board, commission or committee unless such item is specifically provided for on an agenda designated for that board, commission or committee and posted in compliance with the Texas Open Meetings Act.

This Agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering the available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

Presentation of the Willie D. McQueen, Jr. Employee of the Quarter Award

Presentation of Contest Award Winners and Sponsors of the Keep Rosenberg Beautiful 2014 Christmas Lighting and Decorating Contest Benefitting The Lord's Kitchen.

City of Rosenberg

IMAGE COMMITTEE

Certificate of Recognition

Be it hereby known to all, that

Bernard and Olga Cunda

1108 Elizabeth Avenue

have, on this 20th day of January 2015, been recognized for achievements by demonstrating your holiday spirit as a result of your exceptional Christmas decorations, and for your caring efforts at making this location in our community more appealing, and deserve the recognition and appreciation of the people of our City for your undertaking.

Keep Rosenberg Beautiful krb

Vincent M. Morales, Jr., Mayor

CITY OF ROSENBERG FOUNDED 1883

City of Rosenberg

IMAGE COMMITTEE

Certificate of Recognition

Be it hereby known to all, that

Curtis Matheaus

1100 7th Street

have, on this 20th day of January 2015, been recognized for achievements by demonstrating your holiday spirit as a result of your exceptional Christmas decorations, and for your caring efforts at making this location in our community more appealing, and deserve the recognition and appreciation of the people of our City for your undertaking.

Vincent M. Morales, Jr., Mayor

City of Rosenberg

IMAGE COMMITTEE

Certificate of Recognition

Be it hereby known to all, that

Kelly Reznicek

Representing The Reserve at Brazos Town Center

have, on this 20th day of January 2015, been recognized for achievements by demonstrating your holiday spirit as a result of your exceptional Christmas decorations, and for your caring efforts at making this location in our community more appealing, and deserve the recognition and appreciation of the people of our City for your undertaking.

Keep Rosenberg Beautiful krb

Vincent M. Morales, Jr., Mayor

CITY OF ROSENBERG FOUNDED 1883

City of Rosenberg

IMAGE COMMITTEE

Certificate of Recognition

Be it hereby known to all, that

Guebara Family

have, on this 20th day of January 2015, been recognized for your generous contribution and unselfish commitment to the betterment of our community. Your efforts have also demonstrated your dedication to the success of the Keep Rosenberg Beautiful Christmas Lighting and Decorating Contest. You are deserving of this recognition and the appreciation of the people of our City.

Vincent M. Morales, Jr., Mayor

City of Rosenberg

IMAGE COMMITTEE

Certificate of Recognition

Be it hereby known to all, that

Larry's Signs

have, on this 20th day of January 2015, been recognized for your generous contribution and unselfish commitment to the betterment of our community. Your efforts have also demonstrated your dedication to the success of the Keep Rosenberg Beautiful Christmas Lighting and Decorating Contest. You are deserving of this recognition and the appreciation of the people of our City.

Keep Rosenberg Beautiful krb

Vincent M. Morales, Jr., Mayor

CITY OF ROSENBERG FOUNDED 1883

City of Rosenberg

IMAGE COMMITTEE

Certificate of Recognition

Be it hereby known to all, that

Living Water Christian School

have, on this 20th day of January 2015, been recognized for your generous contribution and unselfish commitment to the betterment of our community. Your efforts have also demonstrated your dedication to the success of the Keep Rosenberg Beautiful Christmas Lighting and Decorating Contest. You are deserving of this recognition and the appreciation of the people of our City.

Vincent M. Morales, Jr., Mayor

City of Rosenberg

IMAGE COMMITTEE

Certificate of Recognition

Be it hereby known to all, that

The Lord's Kitchen

have, on this 20th day of January 2015, been awarded a donation graciously provided by the sponsors of the 2014 Keep Rosenberg Beautiful Christmas Lighting and Decorating Contest for your dedicated and unselfish commitment to the service and support of women and children in need of assistance and for the betterment of our community. You are deserving of this recognition and the appreciation of the people of our City.

Vincent M. Morales, Jr., Mayor

Presentation of Certificates of Appreciation to 2014 BOO-berg Volunteers.

City of Rosenberg

CERTIFICATE OF APPRECIATION

Presented to

Annalee Machemehl

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at the annual BOO-berg Children's Halloween Carnival held in Seabourne Creek Nature Park. Your dedication and selfless work for the good of others has earned you 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, on this the 20th day of January, 2015.

Vincent M. Morales, Jr., Mayor
City of Rosenberg, Texas

City of Rosenberg

CERTIFICATE OF APPRECIATION

Presented to

Coastal Prairie Chapter
Texas Master Naturalists

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at the annual BOO-berg Children's Halloween Carnival held in Seabourne Creek Nature Park. Your dedication and selfless work for the good of others has earned you 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, on this the 20th day of January, 2015.

Vincent M. Morales, Jr., Mayor
City of Rosenberg, Texas

CITY OF ROSENBERG
FOUNDED 1883

City of Rosenberg

CERTIFICATE OF APPRECIATION

Presented to

Girl Scout Troop 29064

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at the annual BOO-berg Children's Halloween Carnival held in Seabourne Creek Nature Park. Your dedication and selfless work for the good of others has earned you 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, on this the 20th day of January, 2015.

Vincent M. Morales, Jr., Mayor
City of Rosenberg, Texas

City of Rosenberg

CERTIFICATE OF APPRECIATION

Presented to

Kempner High School Interact Club

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at the annual BOO-berg Children's Halloween Carnival held in Seabourne Creek Nature Park. Your dedication and selfless work for the good of others has earned you 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, on this the 20th day of January, 2015.

Vincent M. Morales, Jr., Mayor
City of Rosenberg, Texas

City of Rosenberg

CERTIFICATE OF APPRECIATION

Presented to

Rosenberg Fire Department

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at the annual BOO-berg Children's Halloween Carnival held in Seabourne Creek Nature Park. Your dedication and selfless work for the good of others has earned you 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, on this the 20th day of January, 2015.

Vincent M. Morales, Jr., Mayor
City of Rosenberg, Texas

Presentation of Certificates of Appreciation to 2014 Rosenberg Christmas Nights Volunteers.

City of Rosenberg

CERTIFICATE OF APPRECIATION

Presented to

Annalee Machemehl

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at the inaugural Rosenberg Christmas Nights event held in Historic Downtown Rosenberg. Your dedication and selfless work for the good of others has earned you 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, on this the 20th day of January, 2015.

Vincent M. Morales, Jr., Mayor
City of Rosenberg, Texas

CITY OF ROSENBERG
FOUNDED 1883

City of Rosenberg

CERTIFICATE OF APPRECIATION

Presented to

Austin High School
National Honor Society

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at the inaugural Rosenberg Christmas Nights event held in Historic Downtown Rosenberg. Your dedication and selfless work for the good of others has earned you 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, on this the 20th day of January, 2015.

Vincent M. Morales, Jr., Mayor
City of Rosenberg, Texas

City of Rosenberg

CERTIFICATE OF APPRECIATION

Presented to

Girl Scouts 3503

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at the inaugural Rosenberg Christmas Nights event held in Historic Downtown Rosenberg. Your dedication and selfless work for the good of others has earned you 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, on this the 20th day of January, 2015.

Vincent M. Morales, Jr., Mayor
City of Rosenberg, Texas

City of Rosenberg

CERTIFICATE OF APPRECIATION

Presented to

William Allen

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at the inaugural Rosenberg Christmas Nights event held in Historic Downtown Rosenberg. Your dedication and selfless work for the good of others has earned you 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, on this the 20th day of January, 2015.

Vincent M. Morales, Jr., Mayor
City of Rosenberg, Texas

City of Rosenberg

CERTIFICATE OF APPRECIATION

Presented to

Melissa Dixon

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at the inaugural Rosenberg Christmas Nights event held in Historic Downtown Rosenberg. Your dedication and selfless work for the good of others has earned you 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, on this the 20th day of January, 2015.

Vincent M. Morales, Jr., Mayor
City of Rosenberg, Texas

City of Rosenberg

CERTIFICATE OF APPRECIATION

Presented to

Julia Worley

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at the inaugural Rosenberg Christmas Nights event held in Historic Downtown Rosenberg. Your dedication and selfless work for the good of others has earned you 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, on this the 20th day of January, 2015.

Vincent M. Morales, Jr., Mayor
City of Rosenberg, Texas

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.

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 – December 16, 2014**
2. **Regular City Council Meeting Minutes – January 06, 2015**

CITY OF ROSENBERG
REGULAR CITY COUNCIL MEETING MINUTES
DRAFT

On this the 16th day of December, 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 Barta	Councilor, District 4

STAFF PRESENT

Robert Gracia	City Manager
Linda Cernosek	City Secretary
Scott Tschirhart	Attorney for the City
John Maresh	Assistant City Manager of Public Services
Jeff Trinker	Executive Director of Support Services
Joyce Vasut	Executive Director of Administrative Services
Charles Kalkomey	City Engineer
Dallis Warren	Police Chief
Wade Goates	Fire Chief
Randall Malik	Economic Development Director
Jeremy Heath	Assistant Economic Development Director
Travis Tanner	Executive Director of Community Development
Angela Fritz	Executive Director of Information Services
Lisa Olmeda	Human Resources Director
Kaye Supak	Executive Assistant
Tommy Havelka	Police Sergeant
Anthony Schnacky	Police Sergeant

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 7:00 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE.
Pastor Jose Linares, Lion of Judah Church International, Rosenberg gave the invocation and led the pledge of allegiance to the flag.

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.
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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 NOVEMBER 18, 2014.**

B. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1892, A RESOLUTION PROVIDING CONSENT FOR DESIGNATED PORTIONS OF THE EXTRATERRITORIAL JURISDICTION OF THE CITY TO BE INCLUDED WITHIN THE PROPOSED EMERGENCY SERVICES DISTRICT, NAMED "FORT BEND COUNTY EMERGENCY SERVICES DISTRICT NO. 6" TO PROVIDE EMERGENCY SERVICES FOR THE RESIDENTS RESIDING WITHIN THE DESIGNATED PORTIONS OF THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF ROSENBERG, AND TO PROVIDE EMERGENCY SERVICES WITHIN THE BOUNDARIES OF THE PROPOSED EMERGENCY SERVICES DISTRICT.**
Executive Summary: The City of Rosenberg received a copy of a petition to create Emergency Services District (ESD) No. 6 in an area south of the City. Portions of proposed ESD No. 6, if approved, would include portions of the City of Rosenberg's Extraterritorial Jurisdiction (ETJ). The petitioners are seeking approval to include a portion of the City of Rosenberg's ETJ into proposed ESD No.6.

Due to the size of the petition, this document was not included in the Agenda packet but is available for review in the City Secretary's office.

Staff recommends approval of Resolution No. R-1892 as presented.

C. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1893, A RESOLUTION PROVIDING CONSENT FOR DESIGNATED PORTIONS OF THE EXTRATERRITORIAL JURISDICTION OF THE CITY TO BE INCLUDED WITHIN THE PROPOSED EMERGENCY SERVICES DISTRICT, NAMED "FORT BEND COUNTY EMERGENCY SERVICES DISTRICT NO. 8" TO PROVIDE EMERGENCY SERVICES FOR THE RESIDENTS RESIDING WITHIN THE DESIGNATED PORTIONS OF THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF ROSENBERG, AND TO PROVIDE EMERGENCY SERVICES WITHIN THE BOUNDARIES OF THE PROPOSED EMERGENCY SERVICES DISTRICT.**
Executive Summary: The City of Rosenberg received a copy of a petition to create Emergency Services District No.8 (District) in an area west and southwest of the City. Portions of this District, if approved, would include parts of the City of Rosenberg's Extraterritorial Jurisdiction (ETJ). The petitioners are seeking approval to include portions of the City of Rosenberg's ETJ in Emergency Services District No.8.

Due to the size of the petition, the document was not included in the Agenda packet but is available for review in the City Secretary's office.

Staff recommends approval of Resolution No. R-1893 as presented.

D. **CONSIDERATION OF AND ACTION ON ORDINANCE NO. 2014-46, 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 FOR A FOUR-WAY STOP AT THE INTERSECTION OF AVENUE L AND GEORGINA STREET; 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; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**
Executive Summary: The need for a four-way stop at the intersection of Avenue L and Georgina Street has been identified. The intersection of Avenue L and Georgina Street currently

functions as a two-way stop, with Avenue L stopping and Georgina Street being non-controlled. There is an existing sight restriction to the north, for eastbound traffic on Avenue L. Due to the sight restriction, the recommendation is to make this a four (4) way stop intersection.
Staff has prepared an Ordinance that deletes the above listed intersection from the two-way stop sign designations and will add said intersection to the four-way stop sign designations.

Staff recommends approval of Ordinance No. 2014-46 as presented.

E. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1896, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, A GENERAL SERVICES CONTRACT EXTENSION, BY AND BETWEEN THE CITY AND BIO LANDSCAPE AND MAINTENANCE, INC., FOR RIGHT-OF-WAY, OPEN ACREAGE, AND WASTEWATER TREATMENT PLANT MOWING, FOR A PERIOD OF ONE (1) YEAR, EFFECTIVE MARCH 01, 2015, IN THE APPROXIMATE AMOUNT OF $123,191.94.**
Executive Summary: On February 05, 2013, City Council approved Resolution No. R-1614 which awarded a General Services Contract (Contract) for right-of-way, open acreage, and wastewater treatment plant mowing. The Contract was awarded to Bio Landscape & Maintenance, Inc., (Contractor) in the amount of $113,949.66, for a one (1) year term with the option to renew for two (2) additional one (1) year terms. The first one-year Contract extension was approved by City Council on December 17, 2013. The acreage amounts for each mowing category have again been updated to account for drainage and street projects that occurred during the past year. Based on the current acreage amounts and unit prices, the total 2015 Contract amount is approximately $123,191.94.

Staff recommends approval of Resolution No. R-1896, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a General Services Contract Extension, by and between the City and Bio Landscape & Maintenance, Inc., for right-of-way, open acreage, and wastewater treatment plant mowing, for a period of one (1) year, effective March 01, 2015.

F. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1882, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, AMENDMENT NO. 2 TO THE BONBROOK PLANTATION DEVELOPMENT AGREEMENT, BY AND BETWEEN BONBROOK PLANTATION, L.P., BEAZER HOMES TEXAS, L.P. AND CITY OF ROSENBERG, TEXAS.**
Executive Summary: The revised Development Plan for Bonbrook Plantation contains 448.62 acres and 1,300 residential lots. Bonbrook Plantation (Fort Bend County MUD No. 155) is located on both the north and south sides of Reading Road between Benton Road and Bridlewood Estates in the Extraterritorial Jurisdiction (ETJ).

It is important to note that plats have already been recorded for the majority of the 1,300 lots suggested in the proposed, revised Development Plan. The remaining lots that have not been recorded are in the review process, pending approval and recordation. The reason for the revised Development Plan is to change a 23.4-acre tract currently designated as multi-family residential to single-family residential, sixty-foot (60') lots.

The subject area is generally located at the northeast corner of Benton and Reading Roads. The change represents a likely decrease in the density of the development. Further, all proposed lots would comply with current standards. Overall, 54 percent of the lots in the development will be sixty feet (60') or greater in width at build-out, compared to only 42 percent per the previously-approved Land Plan.

The Planning Commission recommended approval of these revisions on August 20, 2014. Therefore the next step is City Council consideration of a Resolution amending this exhibit of the Development Agreement for Bonbrook Plantation / MUD No. 155. City staff finds no issues with the proposed amendment. The area must still comply with all platting requirements, and plats must come before the Planning Commission and City Council. Per the Planning Commission's recommendation, staff recommends approval of Resolution No. R-1882.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to approve the Consent Agenda Items A-F. The motion carried by a unanimous vote.

REGULAR AGENDA

2. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1891, A RESOLUTION REGARDING APPOINTMENTS TO THE TEXAS MAIN STREET ADVISORY BOARD.**

Executive Summary: On October 23, 2014, Rosenberg was one of two (2) communities designated by the Texas Historical Commission as official Texas Main Street cities. Rosenberg will officially enter the Texas Main Street Program on January 01, 2015. One of the first steps in the process is the appointment of the Main Street Advisory Board.

On November 19, 2014, the state coordinator of the Texas Main Street Program visited Downtown Rosenberg to discuss the purpose of the Main Street Program, Main Street Advisory Board, and the four (4) Main Street Committees (Design, Economic Restructuring, Organization, and Promotion). After the meeting, nine (9) individuals expressed an interest in serving on the Main Street Advisory Board. The member applications have been distributed under separate cover for City Council review. Seven (7) individuals have expressed interest in serving on one of the committees, which will be established at a later date.

Staff recommends approval of Resolution No. R-1891 to confirm the appointment of the nine (9) applicants to serve on the Texas Main Street Advisory Board.

Key discussion points:

- Randall Malik, Economic Development Director gave a brief overview of the item.
- Councilor McConathy suggested to table the item to allow advertising and to give the opportunity for others to apply for the Advisory Board.

Action: Councilor McConathy made a motion, seconded by Councilor Benton to table the item until after advertising for applicants.

Discussion:

- Councilor Benton concurred with Councilor McConathy to advertise for volunteers. Traditionally we advertise for these positions.
- Councilor Barta stated business owners should be allowed to serve on the Board. She doesn't have a problem with business owners who own businesses in Rosenberg and live outside Rosenberg to serve, but does have a problem with those not having a business in Rosenberg and living outside of Rosenberg.
- Councilor Grigar stated that time is of the essence on this and he suggested appointing these applicants tonight and then advertise for more members to possibly serve in an advisory capacity.
- Councilor Pena stated Council needs to move on this and if more volunteers are interested they can be added later.
- Councilor Euton asked how time sensitive this is. Randall Malik stated we need to hire a Main Street Manager and it will be established January 1, 2015.
- Councilor Euton agreed that time is of the essence with this and Council needs to elect the applicants and open it up to others the second meeting in January.
- Randall Malik explained the by-laws will have to be created and addressed at the meeting. The downtown merchants are a mixture of business owners and merchants.

Upon voting the motion to table failed by a vote of 3 to 4 as follows: Yeses: Councilors Benton, McConathy and Barta. Noes: Mayor Morales, Councilors Pena, Euton and Grigar.

Action: Councilor Pena made a motion, seconded by Councilor Grigar to approve Resolution No. R-1891, a Resolution Regarding Appointments to the Texas Main Street Advisory Board, appointing those names included in the resolution, and advertise and appoint other members at a later date. The motion carried by a unanimous vote.

3. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1890, A RESOLUTION REGARDING APPOINTMENT OF A CITY COUNCIL MEMBER TO SERVE AS AN EX-OFFICIO MEMBER TO THE TEXAS MAIN STREET ADVISORY BOARD.**

Executive Summary: The previous agenda item provided City Council an opportunity to appoint members to serve on the Texas Main Street Advisory Board (Board). As with many other City boards and committees, staff recommends a City Council member to serve as an ex-officio liaison between the City Council and the Board.

Resolution No. R-1890 allows for City Council to select a City Council member to serve in this capacity.

Key discussion points:

- Randall Malik gave an overview of the item.
- Mayor Morales stated this is in Council District 1 and he would nominate Councilor Pena.

Action: Mayor Morales made a motion, seconded by Councilor Benton to approve Resolution No. R-1890, a Resolution regarding appointment of a City Council Member to serve as an Ex-Officio Member to the Texas Main Street Advisory Board and to appoint Councilor Jimmie J. Pena to serve as the Ex-Officio Member to that Board. The motion carried by a unanimous vote.

4. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1895, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, AN ENGINEERING SERVICES AGREEMENT FOR CONSTRUCTION PROJECT REPRESENTATION/INSPECTION SERVICES, BY AND BETWEEN THE CITY AND JONES AND CARTER, INC., IN AN AMOUNT UP TO $100,000.00.**

Executive Summary: This item has been placed on the Agenda to offer City Council the opportunity to consider the proposal for Engineering Services for Providing Construction Project Representation Services (Proposal) for 2015.

City Council has annually approved the Proposal from Jones and 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 six (6) 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 and 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 and 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.

The inspection service fees for calendar year 2014 (January 2014 - November 2014) are approximately $95,000.00. No changes have been made to the proposed Agreement for calendar year 2015. The Proposal for said services is attached as Exhibit "A" to Resolution No. R-1895. Staff recommends approval of Resolution No. R-1895, authorizing the City Manager to execute an Engineering Services Agreement with Jones and Carter, Inc., for 2015 construction project representation/inspection services.

Key discussion points:

- John Maresh, Assistant City Manager of Public Services read the Executive Summary regarding the item.

Action: Councilor McConathy made a motion, seconded by Councilor Grigar to approve Resolution No. R-1895, a Resolution authorizing the City Manager to execute, for and on behalf of the City, an Engineering Services Agreement for Construction Project Representation/Inspection Services, by and between the City and Jones and Carter, Inc., in an amount up to $100,000.00. The motion carried by a unanimous vote.

5. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1897, A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY, AN**

INTERLOCAL AGREEMENT, BY AND BETWEEN THE CITY AND FORT BEND COUNTY, FOR THE USE OF FORT BEND COUNTY MOBILITY FUNDS FOR A PROJECT REGARDING AVENUE H AND I WATER AND SANITARY SEWER UTILITY LINE REPLACEMENT/RELOCATIONS.

Executive Summary: In 2007, the citizens of Fort Bend County approved mobility project bonds for certain infrastructure improvements within Fort Bend County. The City of Rosenberg was initially allocated $1.5 million, or fifty percent (50%) of construction costs (whichever amount is the lesser) for improvements to the US 90A (Avenue H) / FM 1640 (Avenue I) corridor. Fort Bend County has provided the attached Interlocal Agreement (Agreement) to formalize the funding allocation. Per the Agreement, the City would receive up to $1.0 million, for construction costs associated with the water and sanitary sewer line replacement/relocations. Fort Bend County has allocated the remainder of the funds to the Texas Department of Transportation (TxDOT) for other utility relocations and right of way acquisitions that may be necessary. The Agreement also stipulates the City could receive additional funding if the amount allocated to TxDOT is not fully used; and likewise, if TxDOT requires additional funding for these specific purposes, the City may request reallocation of funding from another approved County mobility project to cover the additional funding amount necessary to meet the ten percent (10%) local share.

On May 07, 2013, City Council approved Resolution No. R-1658 awarding the construction bid for the sanitary sewer line replacements. On June 17, 2014, City Council approved Resolution No. R-1801 consenting to the FY2015 Capital Improvement Plan priorities which included the water line utility replacement/relocation for Avenues H and I, and the downtown area. On August 26, 2014, City Council discussed, and agreed that the water line replacement/relocation should move forward. On September 16, 2014, City Council approved Resolution No. R-1856, which authorized the engineering services required to facilitate the water line replacement/relocation.

In order to fully fund the construction phase of the Project, staff recommends approval of Resolution No. R-1897, a Resolution authorizing the City Manager to execute the Interlocal Agreement regarding the allocation of 2007 Fort Bend County mobility project funds for improvements to Avenue H and I water and sanitary sewer utility replacement/relocations. The Interlocal Agreement will serve as Exhibit "A" to Resolution No. R-1897.

Key discussion points:

- John Maresh read the Executive Summary regarding the item.

Action: Councilor McConathy made a motion, seconded by Councilor Euton to approve Resolution No. R-1897, a Resolution authorizing the City Manager to negotiate and execute, for and on behalf of the City, an Interlocal Agreement, by and between the City and Fort Bend County, for the use of Fort Bend County Mobility Funds for a project regarding Avenue H and I water and sanitary sewer utility line replacement/relocations. The motion carried by a unanimous vote.

6. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1886, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, BUDGET AMENDMENT 15-03, IN THE AMOUNT OF $3,168,000 FOR CERTIFICATES OF OBLIGATION, SERIES 2014A.**

Executive Summary: During the October 21, 2014 meeting, City Council approved Ordinance No. 2014-41 authorizing and ordering the issuance of Certificates of Obligation, Series 2014A, in an aggregate principal amount not to exceed $3,200,000.00 for improvements to Airport Avenue, Bryan Road and utility adjustments to Avenue H and Avenue I.

Budget Amendment 15-03, in the amount of $3,168,000.00, will record bond proceeds for Certificates of Obligation, Series 2014A, and fund the capital expenditures for improvements to Airport Avenue, Bryan Road and utility adjustments to Avenue H and Avenue I.

Budget Amendment 15-03 is included as Exhibit "A" to Resolution No. R-1886. Staff recommends approval of Resolution No. R-1886 as presented.

Key discussion points:

- Joyce Vasut, Executive Director of Administrative Services gave an overview of the item.

Questions:

Q: How much will the County contribute for Airport Road?
A: These are all County Mobility Funds.
Q: Did this have to be a budget amendment, should this have been budgeted?
A: We didn't have good estimates for these projects and the bonds had not sold at that point.

Action: Councilor Euton made a motion, seconded by Councilor Grigar to approve Resolution No. R-1886, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 15-03, in the amount of $3,168,000 for Certificates of Obligation, Series 2014A. The motion carried by a unanimous vote.

7. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1887, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, BUDGET AMENDMENT 15-04, IN THE AMOUNT OF $75,614 FOR THE IMPLEMENTATION OF THE TEXAS MAIN STREET PROGRAM.**

Executive Summary: During the July 01, 2014 meeting, City Council approved Resolution No. R-1808, authorizing staff to submit an application for participation in the Texas Main Street Program (Program). The City has received confirmation that Rosenberg was accepted into the Program.

Budget Amendment 15-04, in the amount of $75,614.00, will utilize Hotel Motel Funds to set-up a budget for the Program and allow staff to proceed with the hiring of a Main Street Manager.

Budget Amendment 15-04 is included as Exhibit "A" to Resolution No. R-1887. Staff recommends approval of Resolution No. R-1887 as presented.

Key discussion points:

- Joyce Vasut read the Executive Summary and gave an overview of the item.

Questions/Comments:

C: Councilor Euton stated she is glad that hotel/motel taxes can be used for this. Councilors Pena, Grigar and Barta concurred.

C: Councilor Benton stated he has concerns with $80,000 for three years. We can't pay someone to manage every street in Rosenberg.

A: Randall Malik, Economic Development Director stated this is a state program to utilize some of the state resources. This has been a priority for the past few years and was included in our strategic plan.

Q: Where is the job description for this position?

A: This will be a city employee to help Historic Downtown Rosenberg to promote events. Four committees will be established under promotions, economic restructuring, business events and organization of City codes and ordinances. This will allow downtown to be developed and come into the downtown district.

C: Councilor McConathy stated this is a three year commitment and there is fundraising to be generated as part of this to raise those funds.

C: Mayor Morales stated that when he and Randall Malik went to Austin and visited, Austin extended it up to fifteen years. There is an informative website for this.

Action: Councilor McConathy made a motion, seconded by Councilor Grigar to approve Resolution No. R-1887, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 15-04, in the amount of $75,614 for the implementation of the Texas Main Street Program. ***The motion carried by a vote of 6 to 1 as follows: Yeses: Mayor Morales, Councilors McConathy, Pena, Euton, Grigar and Barta. No: Councilor Benton.***

8. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1888, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, BUDGET AMENDMENT 15-05, IN THE AMOUNT OF $707,000 FOR THE I-69 UTILITY RELOCATIONS AND ADJUSTMENTS, THE COMMUNITY DEVELOPMENT BLOCK GRANT NORTH SIDE WATER LINE IMPROVEMENTS PROJECT – PHASE II, AND EMERGENCY RESPONSE EQUIPMENT.**

Executive Summary: During previous meetings, City Council approved agreements with Texas Department of Transportation (TxDOT) for utility relocations and adjustments for the I-69 project. City Council also approved an Agreement with Fort Bend County for Community Development Block Grant (CDBG) funding for Phase II of the North Side Water Line Improvements Project. Staff is proposing the following budget adjustments to accommodate these agreements and also to purchase some much needed emergency response equipment for the Water/Wastewater Department.

Budget Amendment 15-05, in the amount of $707,000, will allow for the following:

1. Utility relocations and adjustments along I-69, which will be refunded by TxDOT once the work is complete. The agreements for this item were approved on September 02, 2014.
2. Increase the amount originally budgeted for the CDBG North Side Water Line Project Phase II. The additional amount will be funded by additional grant funds from Fort Bend County. The

agreement for this item was approved by City Council on December 02, 2014. The minutes for this meeting are not yet available.

3. Purchase of a trailer mounted pump and a portable light tower to be used during emergency repairs for the water and wastewater systems.

Budget Amendment 15-05 is included as Exhibit "A" to Resolution No. R-1888. Staff recommends approval of Resolution No. R-1888 as presented.

Key discussion points:

- Joyce Vasut read the Executive Summary and gave an overview of the item.

Questions/Comments:
Q: Is there no funding for this?
A: The $36,000 will come from fund balance and the supplemental fund.
C: Councilor Pena stated there is a need for the tower and the pump will be helpful in the future.
Q: Councilor Benton asked what the pump is for and the cost of the pump?
A: John Maresh explained it is a trailer mounted pump with a portable light tower. The pump cost is $24,000.
Q: Councilor McConathy asked if this is the only light portable tower we have?
A: Yes. It is primarily for utilities and if we have a main break at night.
C: Councilor Benton stated a water main broke in front of Fiesta on a Saturday night and the requested equipment is very necessary.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to approve Resolution No. R-1888, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 15-05, in the amount of $707,000 for the I-69 utility relocations and adjustments, the Community Development Block Grant North Side Water Line Improvements Project – Phase II, and emergency response equipment. The motion carried by a unanimous vote.

9. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1889, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, BUDGET AMENDMENT 15-06, IN THE AMOUNT OF $103,950 FOR THE INSTALLATION OF POLE MOUNTED RADAR SPEED SIGNS, COMPENSATION STUDY, ROSENBERG CHRISTMAS NIGHTS AND POLICE DEPARTMENT TRAINING.**

Executive Summary: Budget Amendment 15-06, in the amount of $103,950, will allow for the following items:

1. The installation of fourteen (14) pole mounted radar speed signs as authorized by City Council. Four (4) of the signs will be placed in school zones and purchased through the Child Safety Fund and ten (10) will be purchased from an increase in sales tax revenues. The signs were approved by City Council on November 18, 2014.
2. The Classification and Total Compensation Study and Analysis (Study) as authorized by City Council has been negotiated and a budget adjustment in the amount of $41,000 is needed to finalize the contract. Sales tax revenues will also be used to fund this increase. A firm was selected to perform the study by City Council on November 25, 2014. The minutes for this meeting are not yet available.
3. Rosenberg Christmas Nights generated more contributions than budgeted. The excess contributions will be used for additional costs of the event.
4. The Police Department is transitioning to a new handler for the K-9. This requires additional training for the handler and K-9. Funds are being transferred from the machinery and equipment account to cover the training costs.

Budget Amendment 15-06 is included as Exhibit "A" to Resolution No. R-1889. Staff recommends approval of Resolution No. R-1889 as presented.

Key discussion points:

- Joyce Vasut read the Executive Summary and gave an overview of the item.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to divide the Resolution so as to consider separately the question of the Compensation Study from the remaining items. ***The motion failed by a vote of 3 to 4 as follows: Yeses: Councilor Benton, McConathy and Barta. Noes:***

Mayor Morales, Councilors Pena, Euton and Grigar.

Questions/Comments:
Q: Councilor Barta asked how much sponsorship was received for Rosenberg Christmas Nights?
A: $22,000 was contributed. We had some agreement on the décor. The cost is much higher the first year. We will get better pricing next year.
C: Councilor Grigar stated the reminder came from HOT funding.
C: Councilor Pena stated it is amazing how much we can discuss this. We understood the process and here we are questioning what we did. Everyone did a good job.
C: Councilor Euton agreed and stated this is just an accounting entry to make the budget numbers balance when we do our CAFR to make sure everything is correct.
C: Jeff Trinker, Executive Director of Support Services stated it was paid for out of the HOT fund and this is the purpose of those funds.
C: Joyce Vasut stated the $80,000 was in the original budget, we are increasing it by the additional $10,000.

Action: Councilor Barta made a motion, seconded by Councilor Grigar to approve Resolution No. R-1889, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 15-06, in the amount of $103,950 for the installation of pole mounted radar speed signs, compensation study, Rosenberg Christmas Nights and Police Department training.

Comment:

- Councilor Benton stated I will support the Budget Amendment, I will not support the Compensation Study. I reserve those concerns and go on record to support the amendment.

Upon voting the motion carried by a unanimous vote.

10. **HOLD EXECUTIVE SESSION TO CONSULT WITH CITY ATTORNEY ON PENDING OR CONTEMPLATED LITIGATION REGARDING ROSENBERG V. HARWIN EXCHANGE CENTER EMINENT DOMAIN PROCEEDINGS PURSUANT TO SECTION 551.071 OF THE TEXAS GOVERNMENT CODE; AND, TO DELIBERATE THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE, OR DISMISSAL OF CITY MANAGER PURSUANT TO SECTION 551.074 OF THE TEXAS GOVERNMENT CODE.**
An Executive Session was held to consult with City Attorney on pending or contemplated litigation regarding Rosenberg v. Harwin Exchange Center eminent domain proceedings pursuant to Section 551.071 of the Texas Government Code; and, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of City Manager pursuant to Section 551.074 of the Texas Government Code.

11. **ADJOURN EXECUTIVE SESSION, RECONVENE INTO REGULAR SESSION, AND TAKE ACTION AS NECESSARY AS A RESULT OF EXECUTIVE SESSION.**
Mayor Morales adjourned the Executive Session and reconvened into Regular Session at 9:40 p.m.

12. **ANNOUNCEMENTS.**
There were no announcements.

13. **ADJOURNMENT.**
There being no further business Mayor Morales adjourned the meeting at 9:40 p.m.

_____
Linda Cernosek, TRMC, City Secretary

CITY OF ROSENBERG
REGULAR CITY COUNCIL MEETING MINUTES
DRAFT

On this the 6th day of January, 2015, 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
Dwayne Grigar	Councilor, District 3

ABSENT

Susan Euton	Councilor, District 2
Amanda Barta	Councilor, District 4

STAFF PRESENT

Robert Gracia	City Manager
Linda Cernosek	City Secretary
John Maresh	Assistant City Manager of Public Services
Jeff Trinker	Executive Director of Support Services
Joyce Vasut	Executive Director of Administrative Services
Charles Kalkomey	City Engineer
Dallis Warren	Police Chief
Wade Goates	Fire Chief
Travis Tanner	Executive Director of Community Development
Randall Malik	Economic Development Director
Angela Fritz	Executive Director of Information Services
James Lewis	Information Services Manager
Kaye Supak	Executive Assistant
Tommy Havelka	Police Department
Anthony Schnacky	Police Department

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 7:00 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE.
Reverend Dave Hodges, Grace Community Bible Church, Richmond gave the invocation and led the pledge of allegiance to the flag.

PRESENTATION OF CERTIFICATE OF APPRECIATION TO MR. BENNY WLECZYK FOR HIS SERVICE AS A DIRECTOR OF THE FORT BEND SUBSIDENCENVOCATION AND PLEDGE OF ALLEGIANCE.
Mayor Morales presented a Certificate of Appreciation to Mr. Benny Wleczyk for his service as a Director of the Fort Bend Subsidence District for the City of Rosenberg from February 01, 2013 through January 31, 2015.

PRESENTATION OF ROSENBERG IMAGE COMMITTEE BEAUTIFICATION AND RENOVATION AWARDS.
Mayor Morales and Councilor Benton presented Image Committee Beautification and Renovation Awards to:

Present:

- First United Methodist Church — 1106 4th Street
- Joe and Doris Gurecky — 1820 Allen Street
- McDonald's – Cyndy Spacek and Mike Schmidt — 3417 1st Street

Not Present:

- Charles and Tammy Rosales — 1734 Jones Street

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 SPECIAL MEETING MINUTES FOR NOVEMBER 25, 2014, WORKSHOP MEETING MINUTES FOR NOVEMBER 25, 2014, AND REGULAR MEETING MINUTES FOR DECEMBER 02, 2014.**

   B. **CONSIDERATION OF AND ACTION ON ORDINANCE NO. 2015-01, AN ORDINANCE AMENDING THE CODE OF ORDINANCES BY ADDING TO SECTION 28-71 OF DIVISION 4 OF ARTICLE II OF CHAPTER 28 THEREOF, A NEW PRIMA FACIE SPEED LIMIT OF TWENTY-FIVE (25) MILES PER HOUR ALONG SALLY ANNE DRIVE FROM LANE DRIVE TO THE EAST CITY LIMIT LINE, APPROXIMATELY ONE-THOUSAND AND FIFTY (1,050) FEET; AND REPEALING THE PRIMA FACIE SPEED LIMIT OF THIRTY (30) MILES PER HOUR ALONG SALLY ANNE DRIVE FROM LANE DRIVE TO THE EAST CITY LIMIT LINE, APPROXIMATELY ONE-THOUSAND AND FIFTY (1,050) FEET; MAKING CERTAIN FINDINGS, AUTHORIZING THE PLACEMENT OF SPEED LIMIT SIGNS ALONG SUCH STREET; PROVIDING A PENALTY FOR VIOLATION OF ANY PROVISION HEREOF; PROVIDING AN EFFECTIVE DATE AND PROVIDING FOR SEVERABILITY.**
   Executive Summary: Staff has prepared Ordinance No. 2015-01 to establish a 25 mile per hour speed limit on the portion of Sally Anne Drive located from Lane Drive to the east City Limit line. The current speed limit within the Rosenberg City limits is 30 miles per hour and the speed limit is reduced to 20 miles per hour within the Richmond City limits. Due to this 10 mile per hour speed limit differential at the Rosenberg/Richmond City limit line, it would be appropriate to reduce the speed limit within the Rosenberg City limits to 25 miles per hour. Based on the Texas Transportation Code, City Council has the ability to lower the speed limit to 25 miles per hour without the need to conduct a traffic study.

   Staff recommends approval of Ordinance No. 2015-01, establishing the aforementioned speed limit along a portion of Sally Anne Drive.

C. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1894, A RESOLUTION DESIGNATING THE REAPPOINTMENT OF BENNY WLECZYK TO A TWO-YEAR TERM OF OFFICE ON THE FORT BEND SUBSIDENCE DISTRICT BOARD OF DIRECTORS BEGINNING FEBRUARY 01, 2015.**

Executive Summary: Every two years, the Fort Bend Subsidence District (FBSD) requires the appointment of a representative from the City of Rosenberg to its Board of Directors. Benny Wleczyk is currently serving in this position. This appointment must be made by January 16, 2015, and the representative's term of office begins on February 01, 2015. A copy of the letter from Mr. Michael Turco, General Manager for the FBSD, and Resolution No. R-1894 was included in the agenda packet.

Staff recommends approval of Resolution No. R-1894 regarding the reappointment of Benny Wleczyk to the Fort Bend Subsidence District Board of Directors.

D. **CONSIDERATION OF AND ACTION ON A FINAL PLAT OF RIVERS MIST SECTION TWO, BEING A SUBDIVISION OF 15.597 ACRES OUT OF THE WM. LUSK SURVEY, A-276, IN FORT BEND COUNTY, TEXAS (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 158); 46 LOTS, 2 BLOCKS, 3 RESERVES (4.2658 ACRES).**

Executive Summary: The Final Plat of Rivers Mist Section Two is located off of Furleson Drive, southwest of the intersection of Reading Road and Sorens Mist Boulevard. The proposed Plat is in the Extraterritorial Jurisdiction (ETJ) and in Fort Bend County MUD No. 158.

The proposed Plat consists of 15.597 acres, 46 lots, two (2) blocks, and three (3) reserves with a total of 4.2658 acres. All proposed lots are a minimum of sixty feet (60') in width. This is in accordance with the approved Land Plan for Rivers Mist dated May 2006. The Preliminary Plat of this subdivision was approved by the Planning Commission on August 20, 2014. The Commission subsequently recommended approval to City Council of the Final Plat on November 19, 2014.

The proposed Final Plat meets all applicable regulations of the City of Rosenberg and is not in conflict with the Land Plan for Rivers Mist or with the approved Preliminary Plat. Staff recommends approval of the Final Plat of Rivers Mist Section Two.

E. ***Item E. was pulled and not considered.***

CONSIDERATION OF AND ACTION ON A FINAL PLAT OF SUMMER LAKES SECTION SEVEN, BEING A SUBDIVISION OF 23.92 ACRES OUT OF THE W.M. LUSK SURVEY, A-276, IN THE CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 144); 53 LOTS, 5 BLOCKS, 8 RESERVES (7.4454 ACRES).

Executive Summary: The Final Plat of Summer Lakes Section Seven is located off of Reading Road and Round Lake Drive in the eastern portion of the Summer Lakes development. The Plat consists of 23.92 acres, 53 residential lots, and eight (8) reserves with a total of 7.4454 acres.

The proposed Plat contains 21 sixty-foot (60') lots and 32 seventy-foot (70') lots. The Plat complies with the Development Agreement and approved Land Plan for Fort Bend County MUD No. 144. The Land Plan, which is attached for reference, identifies the area of the Plat as single-family residential development. The Development Agreement calls for a minimum lot width of fifty feet (50') and minimum size of 6,000 square feet. All proposed lots comfortably meet these requirements. The Planning Commission approved the Preliminary Plat of this subdivision on June 18, 2014. The Commission subsequently recommended approval to City Council of the Final Plat on November 19, 2014.

The Final Plat of Summer Lakes Section Seven is not in conflict with any applicable regulations, with the Development Agreement for Fort Bend County MUD No. 144, or with the approved Preliminary Plat. Staff recommends approval of the Final Plat of Summer Lakes Section Seven.

F. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1885, A RESOLUTION REGARDING THE APPOINTMENT OF A BLUE RIBBON FACILITIES TASK FORCE TO ASSIST WITH THE DEVELOPMENT OF A FACILITIES MASTER PLAN TO ADDRESS THE CITY'S CURRENT AND FUTURE FACILITY AND SPACE REQUIREMENTS.**

Executive Summary: Pursuant to conversations held during the November 25, 2014 City Council Workshop, staff recommends approval of Resolution No. R-1885. The Resolution will name the participants that have agreed to serve on the City's Blue Ribbon Facilities Task Force.

Once established, the Task Force will begin its work in support of the City's ongoing efforts to address current and future space needs through the development of a Facilities Master Plan.

Mayor Morales stated that Consent Agenda Item E. will be pulled at the developer's request.

Action: Councilor McConathy made a motion, seconded by Councilor Grigar to approve Consent Agenda Items A, B, C, D, and F. The motion carried by a unanimous vote of those present.

REGULAR AGENDA

2. **HOLD EXECUTIVE SESSION TO CONSULT WITH CITY ATTORNEY ON PENDING OR CONTEMPLATED LITIGATION REGARDING ROSENBERG V. HARWIN EXCHANGE CENTER EMINENT DOMAIN PROCEEDINGS PURSUANT TO SECTION 551.071 OF THE TEXAS GOVERNMENT CODE.**

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

An Executive Session was held to consult with City Attorney on pending or contemplated litigation regarding Rosenberg v. Harwin Exchange Center eminent domain proceedings pursuant to Section 551.071 of the Texas Government Code.

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

The Executive Session was adjourned and the meeting was reconvened into Regular Session at 7:27 p.m.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to settle the eminent domain proceedings with Harwin Exchange Center not to exceed $21,000, plus closing costs and legal fees. The motion was approved by a unanimous vote of those present.

4. **ANNOUNCEMENTS.**

There were no announcements.

5. **ADJOURNMENT.**

There being no further business, the meeting adjourned at 7:29 p.m.

_____

Linda Cernosek, TRMC, City Secretary

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
B	**Resolution No. R-1902 - Awarding Bid for Purchase of Trailer-Mounted Generator**

ITEM/MOTION

Consideration of and action on Resolution No. R-1902, a Resolution awarding a bid for the purchase of a trailer-mounted generator; and, authorizing the City Manager to negotiate and execute, for and on behalf of the City, appropriate documents and/or agreements regarding same.

FINANCIAL SUMMARY

Annualized Dollars:

[X] One-time
[ ] Recurring
[ ] N/A

Budgeted:

[X] Yes [ ] No [ ] N/A

Source of Funds:

515-0000-550-7040

ELECTION DISTRICT

[ ] District 1
[ ] District 2
[ ] District 3
[ ] District 4
[X] City-wide
[ ] N/A

SUPPORTING DOCUMENTS:

1. Bid Summary Form
2. Proposal
3. Resolution No. R-1902

MUD #: N/A

APPROVALS

Submitted by:

John Maresh
Assistant City Manager of Public Services

Reviewed by:

[X] Exec. Dir. of Administrative Services
[ ] Asst. City Manager of Public Services
[ ] City Attorney
[ ] City Engineer
[ ] (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

As part of the continued effort to improve emergency response capabilities, the FY2015 Budget includes funding for the purchase of a second trailer-mounted generator for the Utilities Department. Staff has received proposals from the Houston-Galveston Area Council cooperative purchasing program (HGACBuy) for the purchase of one (1) trailer-mounted generator that is identical to the unit purchased in FY2013. Staff is recommending the purchase of a Kohler 210 KW generator from Loftin Equipment Company, Inc., located in Houston, Texas, through the HGACBuy program. The total cost of the trailer-mounted generator is $75,818.00, including HGAC administrative fees. Funding is allocated for this purchase in the FY2015 Budget.

Staff recommends approval of Resolution No. R-1902, a Resolution authorizing the City Manager to execute appropriate documents and/or agreements regarding same. Should City Council award the purchase to Loftin Equipment Company, Inc., the proposal for the trailer-mounted generator will be added to Resolution No. R-1902 to serve as Exhibit “A”.

BID SUMMARY
Trailer-Mounted Portable Generator

BID NO.	COMPANY	TOTAL BASE BID
1.	Loftin Equipment Company, Inc. Houston, TX (Kohler 200REOZT)	$75,818.00

HGACBuy	CONTRACT PRICING WORKSHEET For Standard Equipment Purchases	Contract No.:	GE02-14	Date Prepared:	7-Jan-15

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City of Rosenberg	Contractor:	Loftin Equipment Company, Inc.
Contact Person:	Karl Zwahr	Prepared By:	Bryan Dietert
Phone:	832-595-3582	Phone:	281-310-6858 ext 313
Fax:	832-595-3501	Fax:	281-310-6865
Email:	karlz@ci.rosenberg.tx.us	Email:	bryand@loftinequip.com

Product Code:	DE07	Description:	200REOZT: Diesel; output, standby/prime 210 kW/190 kW; 60 hz Engine Deere 6.8L

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 63820

B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
RS - Remote Start	100	Please see attached specification sheet G5569 for	
BD - Battery charger, 6A	300	additional details on ratings and available voltages	
		Spec sheet also shows included options and other	
System quotation includes generator mounted on trailer		available options.	
		Note that this is a Tier III flex credit engine.	
		Standard voltage selector switch on base unit:	
		120/240 v, 1ph; 120/208 v, 3 ph; 277/480 3 ph	
		Subtotal From Additional Sheet(s):	
		Subtotal B:	400

C. Unpublished Options - Itemize below - Attach additional sheet if necessary
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
Loftin to change 3 poisiton voltage swtich to:	3500		
120/240 v, 1ph; 120/240 v, 3 ph; 277/480 3 ph			
Five strands 4/0 DLO cable, cam to cam, 50' long each	1900		
Five strands 4/0 DLO cable, tails - bare to cam, 5' long each	398	Subtotal From Additional Sheet(s):	
		Subtotal C:	5798

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	For this transaction the percentage is:	9%

D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	70018	=	Subtotal D:	70018

E. Other Charges, Trade-Ins, Allowances, Discounts, Etc.

Description	Cost	Description	Cost
Freight/Start up in Rosenberg, TX	5,800.00		
		Subtotal E:	5800

Delivery Date:	21 - 23 weeks	**F. Total Purchase Price (D+E):**	75818

HGACBuy THE SMART PURCHASE

RESOLUTION NO. R-1902

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AWARDING A BID FOR THE PURCHASE OF A TRAILER-MOUNTED GENERATOR; AND, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, APPROPRIATE DOCUMENTS AND/OR AGREEMENTS 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 purchase of a trailer-mounted generator.

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 _____ 2015.

ATTEST:

_____

Linda Cernosek, **City Secretary**

APPROVED:

_____

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

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
2	**Charter Review Committee Discussion**

ITEM/MOTION

Review and discuss potential appointment of a Charter Review Committee, and take action as necessary.

FINANCIAL SUMMARY

Annualized Dollars:

[ ] One-time
[ ] Recurring
[X] N/A

Budgeted:

[ ] Yes [ ] No [X] N/A

Source of Funds: N/A

ELECTION DISTRICT

[ ] District 1
[ ] District 2
[ ] District 3
[ ] District 4
[ ] City-wide
[X] N/A

MUD #: N/A

SUPPORTING DOCUMENTS:

1. None

APPROVALS

Submitted by:

William Benton/rl

William Benton
Councilor, At Large Position One

Reviewed by:

[ ] Exec. Dir. of Administrative Services
[ ] Asst. City Manager of Public Services
[ ] City Attorney
[ ] City Engineer
[ ] (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

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

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
3	**Resolution No. R-1903 - Amendment No. 5 to Brazos Town Center Development Agreement**

ITEM/MOTION

Consideration of and action on Resolution No. R-1903, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Amendment No. 5 to the Town Center, Rosenberg, Texas Development Agreement, by and between the City and A-S 70 HWY 59-FM 762, L.P., a Texas limited partnership.

FINANCIAL SUMMARY

Annualized Dollars:

[ ] One-time
[ ] Recurring
[X] N/A

Budgeted:

[ ] Yes [ ] No [X] N/A

Source of Funds: N/A

ELECTION DISTRICT

[ ] District 1
[ ] District 2
[ ] District 3
[X] District 4
[ ] City-wide
[ ] N/A

MUD #: 167 (Brazos Town Center)

SUPPORTING DOCUMENTS:

1. Resolution No. R-1903
2. Vicinity Map – Brazos Town Center Amendments 4 and 5 Aerial Map
3. Town Center Lofts - Multi-Family Concept Plan
4. City Council Meeting Minute Excerpt – 09-30-14
5. Planning Commission Meeting Minute Excerpt – 09-17-14

APPROVALS

Submitted by:

Travis Tanner

Travis Tanner, AICP
Executive Director of
Community Development

Reviewed by:

[ ] Exec. Dir. of Administrative Services
[ ] Asst. City Manager of Public Services
[ ] City Attorney
[ ] City Engineer
[ ] (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

On September 30, 2014, Resolution No. R-1860 for the Amendment No. 5 to the Brazos Town Center Development Agreement, generally concerning multi-family development of the 10.8 acre tract located at the intersection of Town Center Boulevard and Vista Drive, received only three (3) votes in favor and therefore did not pass. Councilor Benton requested that this item again be placed on a City Council Agenda in January for further discussion and consideration. For clarity, staff has assigned a new Resolution number, Resolution No. R-1903, so City Council may discuss and reconsider Amendment No. 5, attached thereto as Exhibit "A". Provided for reference below is the executive summary from the item originally presented to City Council in September:

NewQuest Properties, the developer of Brazos Town Center, has requested a fifth amendment to their Development Agreement and Conceptual Plan. The proposed Amendment No. 5 and Revised Exhibit "B," Conceptual Plan, involves one (1) tract. An aerial/vicinity map is attached to the previous Agenda item for reference:

1. *The vacant 10.8-acre tract located at the intersection of Town Center Boulevard and Vista Drive and currently designated for office development on the approved Land Plan.*

The developer proposes to develop the 10.8-acre tract as 234 apartment units. City ordinances contain a number of requirements with which the project would not comply, including the number of parking spaces,

density (14 units per acre maximum), maximum of 200 units, and two (2) story maximum height. To compensate for not meeting these requirements, pursuant to the Planned Unit Development (PUD) provisions of the "Subdivision" Ordinance, the developer proposes the following standards be added to the Development Agreement:

- *Said multifamily development shall be at least seventy (70) percent masonry exterior;*
- *Said multifamily development shall be comprised of no more than two hundred thirty-four (234) units, at least seventy-five (75) percent of which have direct attached garages, and at least sixty (60) percent of which are one-bedroom;*
- *Maximum density of twenty-two (22) units per acre;*
- *Maximum overall height of three (3) stories, and maximum height of two (2) stories for buildings fronting on Town Center Boulevard and Vista Drive rights-of-way;*
- *Minimum parking ratios of 1.5 spaces per one-bedroom unit, two (2) spaces per two-bedroom unit, and 2.5 spaces per three-bedroom unit; and,*
- *Site to consist of a minimum of fifteen (15) percent landscaping, open space, and amenities (including amenity center, gym, and pool).*

At the regular meeting on September 17, 2014, by a vote of 4-2, the Planning Commission recommended approval to City Council of Amendment No. 5 to the Town Center, Rosenberg, Texas Development Agreement. Amendment No. 5 is attached as Exhibit "A" to Resolution No. R-1860.

RESOLUTION NO. R-1903

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, AMENDMENT NO. 5 TO THE TOWN CENTER, ROSENBERG, TEXAS, DEVELOPMENT AGREEMENT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND A-S 70 HWY 59-FM 762, L.P., A TEXAS LIMITED PARTNERSHIP.

* * * * *

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 Amendment No. 5 to the Town Center, Rosenberg, Texas, Development Agreement, by and between the City and A-S 70 Hwy 59-FM 762, L.P., a Texas Limited Partnership.

Section 2. A copy of said Amendment No. 5 is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this _____ day of _____ 2015.

ATTEST: **APPROVED:**

_____ _____

Linda Cernosek, **CITY SECRETARY** Vincent M. Morales, Jr., **MAYOR**

AMENDMENT NO. 5 TO THE TOWN CENTER, ROSENBERG, TEXAS DEVELOPMENT AGREEMENT.

This Amendment No. 5 to the Town Center, Rosenberg, Texas Development Agreement ("Amendment") is effective as of _____, between THE CITY OF ROSENBERG, TEXAS, a Texas home-rule municipal corporation ("City"), and A-S 70 HWY 59 – FM 762, L.P., a Texas limited partnership (the "Developer").

WHEREAS, the parties entered into The Town Center, Rosenberg, Texas Development Agreement dated, December 7, 2004 (the "Original Development Agreement"; as amended, the "Development Agreement") whereby the City and the Developer agreed upon the terms and conditions for the development, financing and reimbursement for certain infrastructure related to a development in the City now commonly referred to as Brazos Town Center; and the parties entered into an Amendment No. 1 Agreement dated, October 4, 2005 ("Amendment No. 1"); and the parties entered into an Amendment No. 2 Agreement dated, June 7, 2011 ("Amendment No. 2"); and the parties entered into an Amendment No. 3 Agreement dated, December 18, 2013 ("Amendment No. 3"); and the parties entered into an Amendment No. 4 Agreement dated September ___, 2014 ("Amendment No. 4"); and the parties seek to enter into an Amendment No. 5 Agreement.

WHEREAS, the Developer has determined that it is necessary to amend the original conceptual plan to designate additional residential tracts.

WHEREAS, the parties seek to amend the Development Agreement as provided herein and enter into this Amendment.

For and in consideration of the mutual promises, obligations, covenants and benefits herein contained, and for other good and valuable consideration, the City and the Developer agree and contract as follows:

1. The term "Development Agreement" in the preamble of the Development Agreement is amended to include the terms and conditions contained in this Amendment No. 5.

2. The term "Developer's Conceptual Plan" in the preamble of the Development Agreement shall refer to "Developer's Conceptual Plan Revised Exhibit B," which is attached hereto and labeled as such.

3. Exhibit B attached to the Development Agreement is hereby deleted and replaced in its entirety with the "Developer's Conceptual Plan Revised Exhibit B" attached hereto.

4. Developer's Conceptual Plan, as amended by paragraph 2 above, provides for the option to develop a multifamily community in lieu of an office use on the 10.8-acre tract labeled as Restricted Reserve "A" in "Exhibit B" to the Development Agreement. Said multifamily development shall be at least seventy (70) percent masonry exterior, comprised of no more than two hundred thirty-four (234) units, at least seventy-five (75) percent of which have direct attached garages, and at least sixty (60) percent of which are one-bedroom. Further, the tract shall be subject to the following requirements:

a. Maximum density of twenty-two (22) units per acre;
b. Maximum overall height of three (3) stories, and maximum height of two (2) stories for buildings fronting on Town Center Boulevard and Vista Drive rights-of-way;
c. Minimum parking ratios of 1.5 spaces per one-bedroom unit, two (2) spaces per two-bedroom unit, and 2.5 spaces per three-bedroom unit; and,
d. Site to consist of a minimum of fifteen (15) percent landscaping, open space, amenities (including amenity center, gym, and pool) or a combination thereof.

5. Except as modified and amended by this Amendment, all of the terms and conditions of the Development Agreement remain in full force and effect.

6. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Facsimile signatures and/or signatures scanned and emailed hereon shall be treated for all purposes as original signatures.

7. Capitalized terms used, but not otherwise defined herein, shall have the meaning(s) ascribed to them in the Development Agreement.

[EXECUTION PAGE FOLLOWS]

DEVELOPER:

A-S 70 HWY 59-FM762, L.P., a Texas limited partnership

BY: A-S 70, L.C., a Texas limited liability company, its general partner

BY: _____

Steve D. Alvis
Member-Manager

DATE: _____

CITY:

City of Rosenberg, Texas, a municipal corporation

BY: _____

Robert Gracia
City Manager

DATE: _____

APPROVED AS TO FORM:

BY: _____

Scott Tschirhart
City Attorney

DATE: _____

BGE | KERRY R. GILBERT & ASSOCIATES

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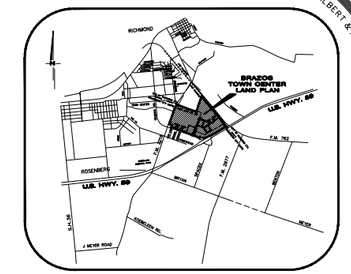


Vicinity Map
1"=3000'

LOT ANALYSIS

APARTMENTS	= 542 DWELLING UNITS
TOWN HOMES	= 139 LOTS (TYP. 24'/26'X115')
SINGLE FAMILY	= 364 LOTS
	166 LOTS (TYP. 50'X130')
	73 LOTS (TYP. 55'X130')
	81 LOTS (TYP. 60'X120')
	133 LOTS (TYP. 60'X130')
	77 LOTS (TYP. 70'X120')
TOTAL LOTS/DWELLING UNITS	= 1211

PARKLAND DEDICATION TABLE

TOTAL NUMBER OF LOTS:	1211
PUBLIC PARK REQUIREMENTS:	1211 / 160 = 7.57 ACRES
PUBLIC PARK DEDICATION	8
PRIVATE OPEN SPACE TO BE PROVIDED:	
REC. CENTER (S.F.–1&2)	: 2.6 AC. (X) 0.10 = 0.26 AC.
EXISTING DETENTION	: 11.0 AC. (X) 0.25 = 2.75 AC.
OPEN SPACE (M.F.)	: 1.9557AC.(X) 0.10 = .195 AC.
OPEN SPACE (T.H.)	: 5.3 AC. (X) 0.10 = 0.53 AC.
LAKE/TOWN CENTER BLVD. OPEN SPACE	: 6.4 AC. (X) 0.25 = 1.6 AC.
OPEN SPACE (S.F.–3&4)	: 7.2 AC. (X) 0.10 = 0.72 AC.
OPEN SPACE ALONG TOWN CENTER BLVD.	:1.32 AC. (X) 0.10 = .132 AC.
OPEN SPACE (21 Ac. Tract)	: 3.1 AC. (X) 0.10 = 0.31 AC.
TOTAL:	6.50 ACRES
MONEY IN LIEU OF PARKLAND DEDICATION:	1211 / 2 = 606 LOTS 606 LOTS (X) $350.00 = $212,100.00

DEVELOPER'S CONCEPTUAL PLAN, REVISED EXHIBIT "B"

BRAZOS TOWN CENTER

BEING 393.8± ACRES OF LAND

OUT OF THE
SIMON JONES SURVEY, A-187 AND
ROBERT E. HANDY SURVEY, A-271
JANE H. LONG LEAGUE, A-55
CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS

OWNER:
A-S 70 HWY. 59 FM. 762 LP., A TEXAS LIMITED PARTNERSHIP
8807 W. SAM HOUSTON PARK N, SUITE 200
HOUSTON, TX. 77040
ATTN. STEVEN D. ALVIS (281)477-4510

ENGINEER:
DANNENBAUM ENGINEERING CORP., 3100 W. ALABAMA
HOUSTON, TX. 77098
ATTN. STEVE SHIELDON, P.E., PH. (713)520-9870

SURVEYOR:
T.E.A.M.-TEXAS ENGINEERING & MAPPING, 12810 CENTURY DRIVE
STAFFORD, TX. 77477
ATTN. GREG SCHMIDT, R.P.L.S., PH. (281)491-2525

PLANNER:
BGE | KERRY R. GILBERT & ASSOCIATES, INC.

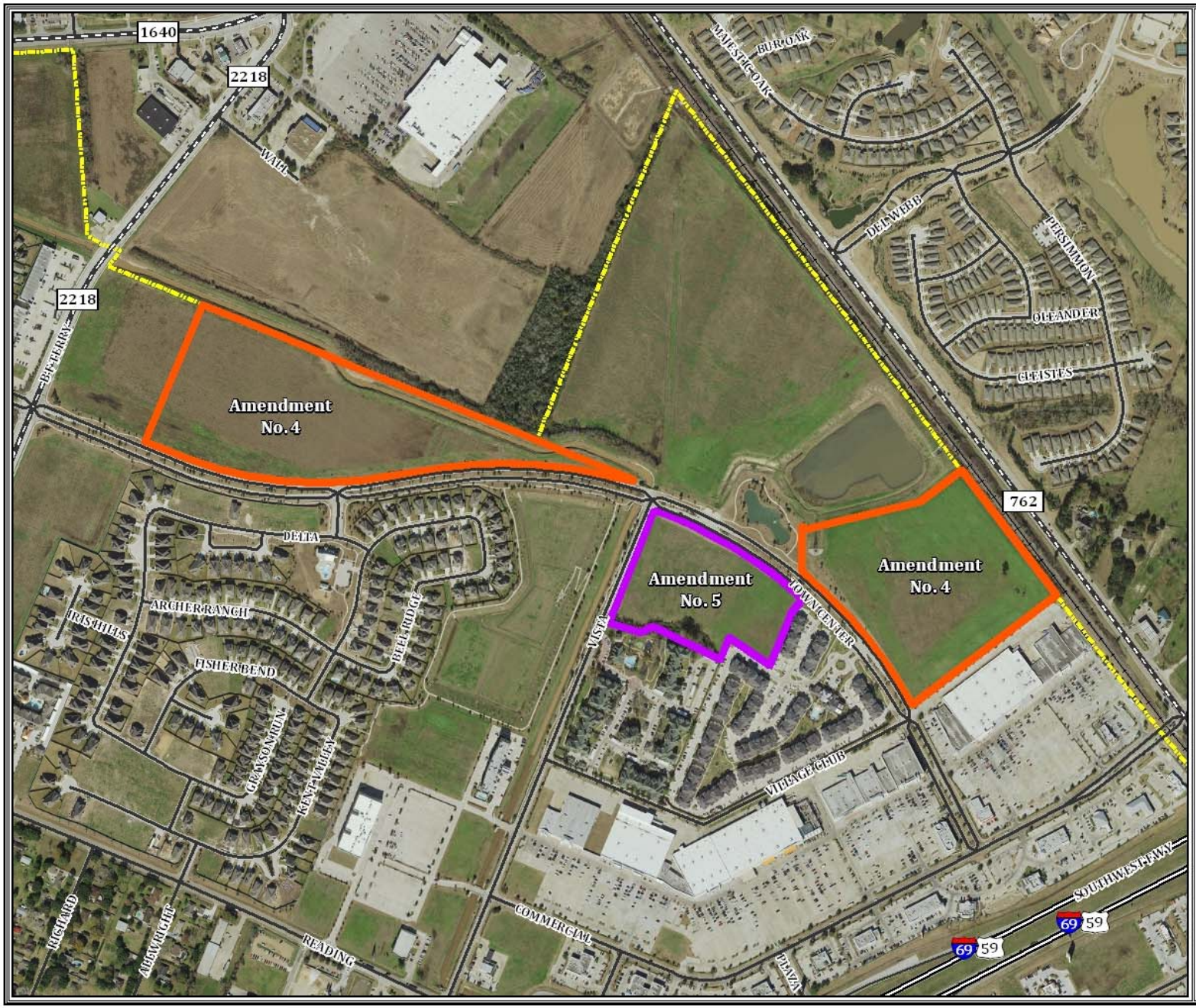
SCALE: 1" = 200'
0 100 200 400

REVISED: AUGUST 22, 2014
NOVEMBER 15, 2005
KGA# I-116A

Land Planning Consultants
23501 Cinco Ranch Blvd.
Suite A-250
Katy, Texas 77494
(281)579-0340

DISCLAIMER AND LIMITED WARRANTY
THIS LAND PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE CITY OF ROSENBERG ORDINANCE IN EFFECT AT THE TIME THIS PLAT WAS PREPARED ALONG WITH ANY VARIANCE OR VARIANCES TO THE PROVISIONS OF THE AFOREMENTIONED ORDINANCE WHICH ARE SUBSEQUENTLY GRANTED BY THE CITY OF ROSENBERG PLANNING COMMISSION. THIS LAND PLAN WAS PREPARED FOR THE LIMITED PURPOSE OF GUIDANCE IN THE PREPARATION OF ACTUAL PLATS. NO WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY BGE | KERRY R. GILBERT & ASSOCIATES, INC., NOR ANY OF ITS OFFICERS, OR DIRECTORS, OR EMPLOYEES MAKE ANY OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED CONCERNING THE DESIGN, LOCATION, QUALITY, CHARACTER OF ACTUAL UTILITIES OR OTHER FACILITIES IN, ON, OVER, OR UNDER THE PREMISES INDICATED IN THE LAND PLAN.

BGE | KERRY R. GILBERT & ASSOCIATES



Brazos Town Center Amendments 4 & 5 Aerial Map

City of Rosenberg, Texas

- Interstate
- US Highway
- State Highway
- Farm-to-Market
- Public Road
- Railroad
- Amendment No. 4
- Amendment No. 5
- Rosenberg City Limits

N
W E
S

Scale:
1:6,000
or
1 Inch = 500 Feet

0 500 1,000 1,500 Feet

The 2014 Aerial Imagery Data is the sole property of Houston-Galveston Area Council, which reserves all rights thereto. Use or reproduction of this data is strictly prohibited absent written consent from the Houston-Galveston Area Council, which may be contacted at www.h-gac.com.

Created by: City of Rosenberg GIS - Paul M. Jones
Date Created: September 17, 2014
Original Size: 11" x 17"
K:\GIS\MAPS\Planning\2014\BTC_Amendments_4and5.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.

CITY OF ROSENBERG FOUNDED 1869

PROJECT SUMMARY:

Apartments:

Type	Description	Qty.	Area
A1	One Bedroom, 1 Bath (1st Flr.)	13	702 s.f.
A2	One Bedroom, 1 Bath (1st Flr., Gar.)	13	702 s.f.
A3	One Bedroom, 1 Bath (1st Flr., Gar.)	36	763 s.f.
A4	One Bedroom, 1 Bath (2nd Flr., Gar.)	36	863 s.f.
A5	One Bedroom, 1 Bath (2nd Flr., Gar.)	26	876 s.f.
A6	One Bedroom, 1 Bath (2nd Flr.)	26	876 s.f.
Total One Bedroom Units		150 Units	
B1	Two Bedroom, 2 Bath (1st Flr., Gar.)	16	1,121 s.f.
B2	Two Bedroom, 2 1/2 Bath (2nd Flr., Gar.)	16	1,198 s.f.
B3	Two Bedroom, 2 1/2 Bath (2nd & 3rd Flr., Townhome, Gar.)	18	1,320 s.f.
B4	Two Bedroom, 2 1/2 Bath (2nd & 3rd Flr., Townhome, Gar.)	18	1,336 s.f.
Total Two Bedroom Units		68 Units	
C1	Three Bedroom, 2 1/2 Bath (2nd & 3rd Flr., Townhome, Gar.)	8	1,509 s.f.
C2	Three Bedroom, 2 1/2 Bath (2nd & 3rd Flr., Townhome, Gar.)	8	1,544 s.f.
Total Three Bedroom Units		16 Units	
Apartments Total		234 Units	231,676 s.f.
Amenity Center/Gymnasium			9,520 s.f.
Project Total			241,196 s.f.

TOWN CENTER LOFTS

A Multi-Family Community

Mucasey & Associates, Architects

August 14, 2014

0 10 25 50 100

- The tract shall have a maximum of 73 lots or 3.4 units per acre;
- The tract shall have a minimum of three (3) acres in landscape/open space reserves or .04 acres per lot; and,
- The minimum lot size shall be 7,000 square feet.

Additionally, the developer proposes to develop the 20-acre tract as twenty-four-foot (24') to twenty-eight-foot (28') townhome lots. The approved Conceptual Plan calls for the thirty-foot (30') townhome lots, and the "Subdivision" Ordinance currently requires minimum twenty-five-foot (25') lots for townhomes. To compensate for the reduction in lot size, again, pursuant to the Planned Unit Development (PUD) provisions of the "Subdivision" Ordinance, the developer proposes the following standards be added to the Development Agreement:

- Residences on said townhome lots shall be a minimum of 1,700 square feet in size;
- Residences shall have three-sided masonry exterior with a landscape buffer between buildings;
- The tract shall have a maximum of 139 units or seven (7) units per acre;
- The tract shall have a minimum of 5.5 acres in landscape/open space reserves or .04 acres per unit;
- Minimum fifty-foot (50') street right-of-way width;
- Minimum twenty-seven-foot (27') pavement width measured from inside of curb to inside of curb;
- Minimum average lot size of 2,900 square feet;
- Minimum twenty-foot (20') front building lines on all lots; and,
- A two-car garage shall be required on each lot.

At the regular meeting on September 17, 2014, the Planning Commission unanimously recommended approval to City Council of Amendment No. 4 to the Town Center, Rosenberg, Texas Development Agreement. Amendment No. 4 to the Town Center Development Agreement is attached to Resolution No. R-1859.

Key discussion points:

- Travis Tanner, Executive Director of Community Development, read the Executive Summary.
- Councilor Euton stated even though there is a change, it looks like this would be an asset to us and is a nice plan.
- Councilor Pena stated the apartments are very high end. The question has been asked who would rent them, but the developer had looked at this and no one would put money in an investment like this without knowing it is a good investment.
- Councilor Grigar stated the middle units are a better product than you would normally get. The end units will have a lot more green space and openness.
- Councilor Barta stated she doesn't mind the townhomes or subdivision but is concerned with giving variances.
- Councilor Benton stated he thinks they will be the highest quality in Rosenberg.
- Councilor McConathy stated she appreciates the upgrade being put into these apartments.

Action: Councilor Benton made a motion, seconded by Councilor Grigar to approve Resolution No. R-1859, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Amendment No. 4 to the Town Center, Rosenberg, Texas Development Agreement, by and between the City and Partner A-S 70 Hwy 59-FM 762, L.P., a Texas Limited Partnership. The motion carried by a unanimous vote.

3. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1860, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, AMENDMENT NO. 5 TO THE TOWN CENTER, ROSENBERG, TEXAS DEVELOPMENT AGREEMENT, BY AND BETWEEN THE CITY AND PARTNER A-S 70 HWY 59-FM 762, L.P., A TEXAS LIMITED PARTNERSHIP.**

Executive Summary: NewQuest Properties, the developer of Brazos Town Center, has requested a fifth amendment to their Development Agreement and Conceptual Plan. The proposed Amendment No. 5 and Revised Exhibit "B," Conceptual Plan, involves one (1) tract. An aerial/vicinity map was attached to the previous Agenda item for reference:

3. The vacant 10.8-acre tract located at the intersection of Town Center Boulevard and Vista Drive and currently designated for office development on the approved Land Plan.

The developer proposes to develop the 10.8-acre tract as 234 apartment units. City ordinances contain a number of requirements with which the project would not comply, including the number of parking spaces, density (14 units per acre maximum), maximum of 200 units, and two (2) story maximum height. To compensate for not meeting these requirements, pursuant to the Planned Unit Development (PUD) provisions of the "Subdivision" Ordinance, the developer proposes the following standards be added to the Development Agreement:

- Said multifamily development shall be at least seventy (70) percent masonry exterior;
- Said multifamily development shall be comprised of no more than two hundred thirty-four (234) units, at

least seventy-five (75) percent of which have direct attached garages, and at least sixty (60) percent of which are one-bedroom;

- Maximum density of twenty-two (22) units per acre;
- Maximum overall height of three (3) stories, and maximum height of two (2) stories for buildings fronting on Town Center Boulevard and Vista Drive rights-of-way;
- Minimum parking ratios of 1.5 spaces per one-bedroom unit, two (2) spaces per two-bedroom unit, and 2.5 spaces per three-bedroom unit; and,
- Site to consist of a minimum of fifteen (15) percent landscaping, open space, and amenities (including amenity center, gym, and pool).

At the regular meeting on September 17, 2014, by a vote of 4-2, the Planning Commission recommended approval to City Council of Amendment No. 5 to the Town Center, Rosenberg, Texas Development Agreement. Amendment No. 5 is attached as Exhibit "A" to Resolution No. R-1860.

The following speakers addressed Council, as follows:

- ***Dan Ives, 2500 Pecan Drive, Rosenberg –***
- First of all, I thank you for finally developing a comprehensive plan for our city...A roadmap for decision making...when completed, please don't put it on the shelf and forget about it.
- A primary responsibility of City Council is to take into consideration the welfare of the future of Rosenberg, not just in the short term, but in the long term as well.
- In such respect, our current multi-family ordinances were put into place a very long time ago...for the long term of Rosenberg.
- The impact of apartments on city services of fire and police is monumental. The impact on our schools hits our school tax pocketbook...Even more so, when multi-family ordinances will allow low-income housing to be built. Our five elementary schools in Rosenberg already have 80% to 90% of their children on free and reduced priced meals. It is not fair to dilute the education of the children we already have who are from low income families.
- I'm greatly concerned that the figure of 28% apartment ratio to single family dwellings is already too great of a percentage for the well-being of the future of Rosenberg. Over one-fourth is too much!! To take this issue a step further, total rental housing in Rosenberg has reached 48%. Not Good!!
- Apartment units deteriorate immensely within a twenty (20) year period. A classic example is Bayou Bend Apartments in my neighborhood...thirty years ago it was a Rosenberg jewel. Take a look at it today. Parking problems, plus. Because of the great number of police calls for city apartments, we have had to create a special police task force to monitor the apartments.
- If folks want to build more apartments in our community, that's fine, but build them with the quality standards of our current multi-family ordinances...NO VARIANCES!! Don't open the door to low income housing projects.
- I ask you to think before you vote on this one. Do you want to be another Sharpstown?
- ***Wayne Poldrack, 2514 Pecan Drive, Rosenberg –***
- He wanted to focus on the proposed project verses our ordinances. Our ordinance says a maximum of 200 units. This says 234 – 17% extra. Density – our ordinance says 14 – proposal is 22 units per acre. Stories – our ordinance says 2 – this is three stories. Parking for 1 bedroom – our ordinance says 4 (which may be a little aggressive) but they are proposing 1.5 parking spaces. Two bedrooms – our ordinance says 5 parking spaces – they are proposing 2 parking spaces. 3 bedrooms – our ordinance is 6 parking spaces – they are proposing 2.5 parking spaces. Open space they are proposing 15% and our ordinance says 30%.
- Only one size of the apartments exceeds our standards. Basically everything in this project is over our ordinance standards.
- If we grant variances do we open the door to other projects we may not want? We have had some come to Planning Commission and we have turned them down. Is it fair to other developers to not give them variances?
- We just started our long range plan and since we have such high rental and apartment occupancy in Rosenberg shouldn't we wait until the comprehensive plan is finished until we make a decision on this or any other mulit-family project? There is not a shortage of apartments in Rosenberg. It will not hurt to wait a few months to approve another project.
- I hope Council will consider and say no and shelve this project until after the comprehensive plan. At a minimum, I would hope you would consider making the developer come closer to compliance with our ordinance.

Key discussion points:

- Mayor Morales read the Agenda Item.

- Travis Tanner gave an overview of the location and what the developer is proposing. It is located at the intersection of Town Center Boulevard and Vista Drive. Their current land plan calls for this to be office development and they are proposing to open it up for multi-family development.
- He reviewed the standards the developer is proposing. Maximum of 234 units or 22 units per acre. Minimum of 70% masonry exterior on the buildings. 75% of the units will have attached garages. 60% - 1 bedroom units. The maximum overall height is three stories but the buildings fronting on Vista and Town Center Boulevard will be two story buildings. The parking ratio is 1.5 spaces per one bedroom unit, 2 per two bedroom and 2.5 for three bedroom unit. They will have a minimum of 15% landscaping, open space and amenities including their amenity center gym and pool in the development.
- A conceptual plan was shown.
- At the meeting a few weeks ago the Planning Commission recommended by a vote of 4 to 2 that City Council approve this development agreement and land plan amendment.

Questions/Comments:

- Councilor Euton stated she agreed with the comments made from the audience that we are giving up a lot of concessions. Very few of our current standards are being met. She's not sure this is the best for Rosenberg at this time. With the high rental percentage we have, she would prefer to wait on the comprehensive plan to see if they agree with our current standards or if we should relax them. She does not believe we should move forward with this at this time.
- Councilor Pena stated he would invite the developer to speak on some of the ordinances we have and how they would be met.
- Steve Alvis, Ella Lee, Houston, Texas, developer of Brazos Town Center stated he was in the workshop when the current ordinance was established. The ordinance is such that any multi-family project built is going to come before you so you have the ability to dictate architecture, parks, deed restrictions, etc. The member in the audience mentioned one of your current projects that has deteriorated. Why has it deteriorated? Well, it is not in a master planned community. He brought the recorded deed restrictions in perpetuity of this master planned community which is recorded and covers the entire 550 acres. This is the exact same document word for word as the Woodlands. In your current multi-family when it's time for a paint job or do the landscape a little nicer and maintain it to a certain quality, you as the City do not have the tools to say paint it or I'll paint it for you and charge you for it. This gives me that tool and allows that project to stay Class A in perpetuity. For twenty-seven years he has been developing these town centers and it is critical to both the Town Center itself to have a maximum density. There is $43 million of public infrastructure that was put in the ground in Brazos Town Center and was meant for very high density. Did we try to get office space in that location, yes. But no office wanted to be next to the two multi-family apartment complexes. It could have been single family, but no single family development wants to be on a ten acre tract next to the two multi-family projects. If you recall, I didn't build one apartment complex. That was built before we were there.
- He has found this is a $35 million dollar project and a normal family project is on 19 acres and $35 million. That is a lot of money per square foot. To get a yield this will be very high rent. What Rosenberg does need is the upward mobile young professional right out of school with a degree and that is why it is 60% one bedroom units. The other thing in our deed restrictions is multiple families can't reside in the same unit. You don't have that in the city. We have that in our deed restrictions. It can be only one family with two people per room. We can't have five people staying in a one-bedroom unit, which is some of the problems you have experienced in Rosenberg. It is mandated by deed restrictions and professionally run by a master association run by a management company. If there is ever a violation, we have the teeth in that document to immediately cure it. You as a city do not have that ability today.
- He encouraged Council to rethink it. Achieving critical mass in Brazos Town Center is the goose that lays the golden egg here for all of us in the city. It can't be supported by the 50,000 people in your city. It has 250,000 people that support that project to achieve those sales that does give you the income to be able to do other things in your city. It was always planned from day one in this project. If I could build a 20 story hi-rise in there and the market would bear that today I'd be asking you to approve that.
- We were very patient in that project for 8 or 9 years now to achieve the highest value – look at the single family, it was top of your market. Everything we have done in there I hope you are pleased with. I would ask if there's anything you are not pleased with. My choice with the property if I don't do this is what--does anybody have a suggestion?
- Councilor Pena stated they commented on the parking situation. As a developer is the 1.5 parking spaces amicable?

- Steve Alvis stated absolutely. The reason your ordinance is written, is no different than Pasadena's ordinance. You can decide as a Council do I want that or don't I. This is a project you should want. It is encumbered by the Master Association. It has a set of deed restrictions that far surpass anything you as a city can place on it. You have seen the two I have already built in there. I've heard not one complaint, in fact, I've heard nothing but from Council Members that are pleased with it.
- I'd encourage you to approve this project. It has a 10,000 square foot amenity center; it sits across from the large park we built and the large dog park. Maybe it doesn't have exactly the same number of green space but green space overall in the 550 acres far exceeds any ratio you have in the city. This is an extremely high-end project. This $35 million project is the same project we are building next to the ball park in Sugar Land. It is the most high-end project you will have in your city. It needs to be built, you need this type housing in your city. It is not a burden on your school district. In fact, it is probably a plus of $35 million tax value paying into the school district. There will be very few children in this project with that many one bedroom units. This is the kind of project you should approve.
- Councilor Grigar asked Travis Tanner if we have a garage requirement in our multi-family ordinance. This project has 75% with direct attached garages which is a plus, and is something a young professional looks for. When a subdivision comes in, is it mandatory that they implement deed restrictions? What about master planned communities?
- This does not apply to the existing multi-family that was there prior to this developer? We see a big difference in what was built than compared to what is out there today as far as Brazos Ranch.
- Travis Tanner said no, 30% of the parking has to be covered and that is all it speaks to. He thinks for single family it is but not for multi-family development. If there is a single family residential component we require that.
- Councilor Grigar referenced the 15% landscaping. Our ordinance has 30% for multi-family, is that correct? With the layout you have could that be increased to 20%.
- Travis Tanner said he'd have to check but thinks that is correct.
- Steve Alvis stated we have a huge dog park, the lake and park are all contiguous with it. Those are amenities to this. Brazos Town Center as a whole has far exceeded well beyond any landscape requirement of the city.
- Councilor Barta stated she has some of the same concerns that Councilor Euton and some of the citizens do. She does not like the three stories and never anything twenty stories. This is Rosenberg and not downtown Houston. It will be high-end for young professionals that will work in Sugar Land or Houston. She has concern about going against the ordinances. She would rather see it comply more with our ordinances. She would hold off on it.
- Steve Alvis stated it would never get build under your current ordinance because it would not be economically feasible. We could build Section 8 under your ordinance but we couldn't build Class A under your current ordinance.
- Councilor Barta said these ordinances were made under previous Councils for a reason.
- Steve Alvis said it was so that each and every project had to come before you for approval. No apartments will be built under your ordinance. It is not economically feasible. If you look at the perfect master plan community its commercial, multi-family, townhome/patio homes, single family. That is how this was designed. It has achieved several awards. It is now the 30th largest shopping center in the nation. What you are telling me is Steve, don't build single-family, and don't build multi-family. Go build mini-storage. That doesn't do anything for the long term stability. Retailers come and go. K-Mart is your example of that. He has to look at the center as a whole as a master plan and do what I know is right for the long term stability of the center. You are asking me to not do what is right. They are platted multi-family today. When we came in for amendment #3, we changed that because we thought we could get an office project. We could not obtain an office project. They would not go because of the multi-family next door to it. This is an orphan piece. How do you make lemonade out of lemons? You want that person making $55,000 to $70,000 annually to afford this kind of rent so we have some night life and some city center town life in that project. That is what will help make that project sustain time.
- Rosenberg desperately needs, if you want to attract some high-end industry, you have to have the labor pool locally. This is an important component to attracting high-end engineering firms.
- Councilor Benton asked about getting a commercial building there. What was the understanding with past Councils? Were any height limitations discussed then?
- Steve Alvis stated none.
- Councilor Benton stated his preference is to not have apartments. Some people like them. There is a niche for apartments. He has the same concerns that the speakers had regarding multi-story apartments. What would the rent be for a one bedroom? He shares Dr. Ives concern about our school district and the percentage of rentals in Rosenberg. He's not sure what else could be put

here other than apartments.

- Steve Alvis stated this is a $1.50 type product. Most of Rosenberg is under a $1.00 or $1.35. The monthly rent will be approximately $1,100 per month. What Town Center is lacking is a little bit of night vibrancy. He just had the chairman of Cinemark here two weeks ago trying to get him to commit to both expand and update the theater and take it to extreme digital. Part of his issues is that the demographics aren't there today. This makes a big difference in deciding to make that investment. Every tenant brought in was a higher end tenant. This is a true public/private partnership. You ask what was your Council at the time we made this public/private partnership, what was their thinking. His commitment to my partner, you as a city, was to bring the highest end residential, single-family and retail that the market could demand and to be as patient as I could be. I could have sold all of that land 5 to 10 years ago. I would have made a lot more money. Land has to double in value every 5 years to breakeven. This wasn't about making money for the balance of Town Center. This was about doing the right thing and this is the right thing for this. It is not the right thing to put in mini-storage. If this is denied he would still not do that because it is not the right thing to do. He would come back and fight another day.
- Councilor Benton stated the original use for this property was commercial.
- Steve Alvis stated the original use is it's currently and continuous to be platted to allow for multi-family. In the second or third amendment we were trying to get an office deal so we put office in the master plan. We are on site plan 425. He does not know what site plan we are on in the master plan. It evolves and changes with market conditions and opportunities. What little bit of land out there we could sell tomorrow and put uses that you and I would not like but are allowed. You all chose a partner to invest with--this is my money in this project. This isn't an institutional partner. There is nobody that has more invested financially in this city than me. The last thing I will do is put something in there that would be detrimental to the value of that property.
- Councilor Benton stated the apartment ordinances and standards have probably evolved. We don't have zoning and people thought we have too many apartments. He thinks these would be a much higher quality than what we have. Could the developer get a little closer to the standards?
- Steve Alvis stated it is not financially feasible to do that. That's the reason your ordinance is written the way that it is. Your ordinance is common to a lot of cities and it is written that way so you get a bite at every apple. All of the ratios cannot fit a Class A. You have to have a certain number of units to make a Class A financially feasible to have on-staff management.
- Councilor McConathy referenced the site plan and stated in the project summary units B4, C1 and C2 in parenthesis it says second and third floor. That means that those units will be three story, is that correct?
- Steve Alvis stated yes.
- Councilor McConathy stated there was conflicting information because Travis Tanner referenced that along Vista Drive and Town Center Boulevard they would only be two stories. But, according to your site plan the units just referenced will be three story units facing Town Center Boulevard as well as Vista Drive. The three story will not be just interior to the project.
- Steve Alvis stated this is true on the one building but those are really architectural features. That entire building is not three story.
- Councilor McConathy stated when reference was made to the master association and the deed restrictions. Is there an expiration date on those deed restrictions?
- Steve Alvis stated no.
- Councilor McConathy stated she has the same concerns a lot of Council Members have already stated as well as some of our speakers and our commissioner having sat on the Planning Commission. The City has been very generous in their variances toward this project. She does not disagree with the points made about the quality of the project. It is a quality project. When you balance out the benefits pointed out in this project versus the variances the City would be giving and by variance in the Planning Commission there's requirements and funding or financing hardship is not one of them that qualifies for a variance. She wanted to point that out. You asked earlier what you could do to make this project work. Looking ahead at the growth coming and businesses coming that are bringing jobs here apartment complexes will be in our future and this is a good one. However, to make this work make it two story. You can still produce a quality project with all the amenities pointed out and it still be a feasible thing in your master plan.
- Steve Alvis stated it is a very tight sight as it is. It is ten acres and normally a feasible site is seventeen (17) acres. Both of the others are seventeen to nineteen acres to get to a critical mass to get a Class A project to work. It simply will not work. I can build to your ordinances but it will be Section 8 housing. In order to build to your ordinance that's the only way to be cost feasible. This project is good for the City. This is 10 acres and a $35 million project. Your goose that lays the golden egg today for sales tax is that center. We need to do everything we can to keep that center

viable long term. This is an important component of it.

- Mayor Morales commented that what interests him is that it is in a master plan community area with 60% one-bedroom and with the companies on the horizon will bring single young professionals to this community. Regarding our standards, he thinks the present standards should be upheld. But, when somebody wants to invest the kind of money that has been invested in this center and it is deed restricted, we don't have a deed restricted, zoned city right now. With the 60% one bedroom and with garages makes it a high-end property.

Action: Councilor Pena made a motion, seconded by Councilor Euton to approve Resolution No.R-1860, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Amendment No. 5 to the Town Center, Rosenberg, Texas Development Agreement, by and between the City and Partner A-S 70 Hwy 59-FM 762, L.P., a Texas Limited Partnership. ***The motion failed by a vote of 3 to 4 as follows: Yeses: Mayor Morales, Councilor Pena and Grigar. Noes: Councilors McConathy, Euton and Barta. Abstention: Councilor Benton [Note: an abstention counts as a no vote].***

Further Comment:

- Councilor Benton asked Steve Alvis if he could go back to the developer. Steve Alvis stated Council has no idea how hard it was to get that many one bedrooms. The developer will not do it. They will put something else there. He is very disappointed.

4. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1861, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, BUDGET AMENDMENT 14-17 IN THE AMOUNT OF $100,000.00, FOR LEGAL SERVICES.**

Executive Summary: The City budgeted $100,000.00 for City Attorney Services in FY2014. Through June 2014, the City has spent approximately $97,000.00. The City received the first invoice from Denton Navarro Rocha Bernal Hyde & Zech, P.C., for City Attorney services for the period of June 23, 2014, through July 31, 2014, in the amount of $44,184.18. This invoice has since been adjusted by $1,118.00 for a new balance of $43,066.18. The second invoice for the month of August 2014 is $29,377.09. Copies of these invoices have been provided for your review under separate cover.

Based on these two (2) invoices and an estimated amount for the September 2014 invoice, staff is requesting an increase of $100,000 to the FY2014 Budget for City Attorney Services. Budget Amendment 14-17, attached as Exhibit "A" to Resolution No. R-1861, will move $40,000.00 from the Outside Professional Services - Legal line item and $60,000.00 will be funded with excess sales tax revenues.

Staff recommends approval of Resolution No. R-1861 as presented.

Key discussion points:

- Joyce Vasut read the Executive Summary regarding the item.

Questions/Comments:

- Councilor Benton stated he is concerned overall with the legal expenses.
- Councilor Grigar stated he has the same concern. It has gone up compared to what it used to be. Every time we increase the budget it is with excess sales tax. Are we keeping track of all of this?
- Joyce Vasut stated in FY14 sales tax was about $1 million over budget. We have only adjusted $60,000 here and less than $100,000 previously this fiscal year.

Action: Councilor McConathy made a motion, seconded by Councilor Barta to approve Resolution No. R-1861, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 14-17 in the amount of $100,000.00, for legal services. The motion carried by a unanimous vote.

5. **ADJOURNMENT.**

There being no further business Mayor Morales adjourned the meeting at 7:10 p.m.

Linda Cernosek

Linda Cernosek, TRMC, City Secretary

- Commissioner Poldrack inquired if the townhome section would have the same landscaping as BTC.
- Mr. Alvis replied that he is not certain on that yet but that it would be heavily landscaped. The master association is over the residential association for BTC. The master association will enforce proper landscape and care.
- Commissioner Poldrack inquired if each townhome have its own insured or will they be linked between units?
- Mr. Alvis did not yet have an answer to that but the townhomes will be fee simple, not like condominiums. They can likely go either way but it will be up to DR Horton to set that up.
- Commissioner Parsons inquired if the associations have any restrictions upon occupancy. Are they all deemed single family? There is an issue in Rosenberg with what was once designated single family now serving multi-family. Are there any protections against this?
- Mr. Alvis replied that they could not legislate everyone not to rent their homes, but all of BTC is single family deed restricted.

Action Taken: Commissioner Parsons moved, seconded by Commissioner Poldrack, to make a recommendation of approval to City Council of Amendment No. 4 to the Town Center, Rosenberg, Texas Development Agreement, including Developer's Conceptual; Plan, Revised Exhibit "B", Brazos Town Center, being 393.8 acres of land out of the Simon Jones Survey, A-187, Robert E. Handy Survey, A-271, and Jane Long League, A-55, City of Rosenberg, Fort Bend County, Texas. The motion carried unanimously.

3. CONSIDERATION OF AND ACTION ON AMENDMENT NO. 5 TO THE TOWN CENTER, ROSENBERG, TEXAS DEVELOPMENT AGREEMENT, INCLUDING DEVELOPER'S CONCEPTUAL PLAN, REVISED EXHIBIT "B," BRAZOS TOWN CENTER, BEING 393.8 ACRES OF LAND OUT OF THE SIMON JONES SURVEY, A-187, ROBERT E. HANDY SURVEY, A-271, AND JANE LONG LEAGUE, A-55, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS.

Executive Summary: NewQuest Properties, the developer of Brazos Town Center, has requested a fifth amendment to their Development Agreement and Conceptual Plan. The proposed Amendment No. 5 and Revised Exhibit "B," Conceptual Plan, involves one (1) tract. A vicinity map is attached for reference:

3. The vacant 10.8-acre tract located at the intersection of Town Center Boulevard and Vista Drive and currently designated for office development on the approved Land Plan

The developer proposes to develop the 10.8-acre tract as 234 apartment units. City ordinances contain a number of requirements with which the project would not comply, including the number of parking spaces, density (14 units per acre maximum), maximum of 200 units, and two (2) story maximum height. To compensate for not meeting these requirements, the developer proposes the following standards be added to the Development Agreement:

- Said multifamily development shall be at least seventy (70) percent masonry exterior;
- Said multifamily development shall be comprised of no more than two hundred thirty-four (234) units, at least seventy-five (75) percent of which have direct attached garages, and at least sixty (60) percent of which are one-bedroom;
- Maximum density of twenty-two (22) units per acre;
- Maximum overall height of three (3) stories, and maximum height of two (2) stories for buildings fronting on Town Center Boulevard and Vista Drive rights-of-way;
- Minimum parking ratios of 1.5 spaces per one-bedroom unit, two (2) spaces per two-bedroom unit, and 2.5 spaces per three-bedroom unit; and,
- Site to consist of a minimum of fifteen (15) percent landscaping, open space, and amenities (including amenity center, gym, and pool).

Staff is requesting that the Planning Commission make a recommendation to City Council on the revised Conceptual Plan and Development Agreement amendment/s, or table the item pending the provision of additional information and/or standards by the developer. A recommendation of approval would be conditioned on the above bullet points / standards. With the standards proposed, the resulting product would arguably be equal to or better than one that complies with City ordinances, but that doesn't have similar standards.

Key Discussion:

- Mr. Tanner presented the item and reviewed the Executive Summary.
- Mr. Alvis stated that he was present at the Workshop where this ordinance was created and it will not allow for a Class A project to be built. BTC is now the 30th largest shopping center in the nation according to Google, but it is a large center that pulls from a trade area of 300K people. With these larger projects, we attempt to create "critical mass" with all components and all the components other than retail were put in place, not because they were the highest and best use profit-wise for the land, but because that would

help sustain this center over time. Retailers come and go. We have lost one tenant but did replace it with a much higher-end tenant, Homegoods. It is critical for us in this public-private partnership, that we put the density there that we envisioned. My commitment to the City was to achieve the highest value single-family development. We have done that. The last time we revised the conceptual plan, we had planned to add an office space. We have tried for seven or eight years to put an office project into BTC but it is not feasible. This is a ten-acre tract that needs to be Class A multi-family. If we build this project, it will be the nicest project in Rosenberg and it will be very similar to the project we are building next to the ballpark in Sugar Land. Rent is extremely high. We do not want to do anything in the rear of the project area that may hurt the project in the long term. In his experience, the more garages, the higher the rent, and the greater the number of one-bedroom units will draw the young professionals from college and that is the workforce we need in Rosenberg which is currently lacking. A young college graduate cannot buy a $400K house but they are earning well. Of the proposed 234 units, 150 are one-bedroom and there are only 16 three-bedroom units. The other important component for the young professional is that we have a first class amenity center. This proposed center is 10K square feet of gym and amenity center. The site plan currently has 83.3% of direct attached garages, which is more than the prior two projects we have built. There will be 64% one-bedroom units. Normally, these multi-family projects are on 17-19 acres and mature at a value of about $35M. This is on ten acres at a value of $35M. Because of the nature of the tract, we feel it is the best use for this tract. The other projects he has built were constructed to extremely high standards. This is the kind of multi-family Rosenberg needs and he encourages the Commission to recommend approval to City Council.

- Commissioner Casias inquired about the definition of "Class A" project.
- Mr. Alvis replied that Class A comes into price and institutional grade in an economic unit that would be attractive. Class A does not include any HUD Section 8 or subsidized housing.
- Commissioner Casias inquired if the project would still be considered a Class A project if it were constructed to meet the City's current ordinances, such as bringing it down from three-stories to two-stories and reducing the number of units from 234 to 200.
- Mr. Alvis replied that it would not be economically feasible. But, the ordinance does allow the City to choose which horse to ride with. Is it preferable to allow a multi-family project to go in where there are no master associations or restrictions? In the future, the City would not have the authority to request improved landscaping or that the buildings be painted more often. The master association would manage that and keep the property maintained.
- Commissioner Casias inquired if the management company is working with the master association to keep the complexes looking nice. Of two complexes she can think of now, they have had frequent management changes.
- Mr. Alvis replied that the management companies are still bound by the association restrictions and the management companies maintain the properties to those standards.
- Commissioner Casias inquired when the project may break ground.
- Mr. Alvis replied that he anticipates the townhomes and single family will break ground this year and the multi-family would likely break ground sometime in February 2015.
- Commissioner Casias inquired about the major construction along I-69 and mentioned that easy access would not be available for a few years. That may have a detrimental impact in trying to fill these units.
- Mr. Alvis replied that he does not see that as an issue. Rosenberg needs this workforce now and the ability to house employees at a higher level; that is a natural progression for this project. We have met with TxDOT several times regarding the expansion and it will actually be even better for BTC. We are not concerned about access.
- Chairperson Pavlovsky inquired about the building heights.
- Mr. Tanner replied that the proposed units along Town Center and abutting the perimeter will be two-story. The interior buildings will be three-story.
- Commissioner Parsons inquired what the rental rates will be for the one, two, and three bedroom units.
- Mr. Alvis replied they would be between $1.50/ft and $1.70/ft, which is higher than the 1.34 average rent in there now. Market will dictate that but the amount of the money being spent on these apartments in order to get the proper investment return demand high rental rates. We believe that market is there.
- Commissioner Poldrack inquired what the planned square footage will be for each size unit.
- Mr. Alvis replied there will be eight three-bedroom units at 1,509/sf; eight three-bedrooms that are 1,544/sf; eighteen two-bedrooms that are 1,336/sf; eighteen two-bedrooms that are 1,320/sf; sixteen two-bedrooms that are 1,198/sf; sixteen two-bedrooms that are 1,121/sf; and 150 one-bedroom units will average about 850/sf, with the largest being 876/sf. We have always anticipated this project to have the highest density that the market would bear.

Action Taken: Commissioner Parsons moved, seconded by Commissioner Phipps, to recommend approval to City Council of Amendment No. 5 to the Town Center, Rosenberg, Texas Development Agreement, including

Developer's Conceptual Plan, Revised Exhibit "B," Brazos Town Center, being 393.8 acres of land out of the Simon Jones Survey, A-187, Robert E. Handy Survey, A-271, and Jane Long League, A-55, City of Rosenberg, Fort Bend County, Texas.

Additional Discussion:

- Commissioner Poldrack stated that he is certain that NewQuest will do a good job, but it pains him to approve more apartments when the percentage of the City's population in rental property is so high.
- Mr. Alvis replied that this project is a means to change that population. There are a tremendous number of starter homes and those homes often end up being rental properties. BTC does not have starter homes and this is very important to the viability of this project to have that kind of young, upwardly mobile professional. That new population will impact the types of retail and dining we can bring to BTC. We are in a tremendously good cycle right now and have held out from putting starter homes in BTC when it may have been economically feasible to do so but was not in the long term best interest of the project.
- Commissioner Parsons inquired if the apartments would be under the HOA.
- Mr. Alvis replied they are under the master association plan and would never be dropped to the secondary residential association.
- Commissioner Poldrack stated that this Commission has recently turned down a couple of apartment projects under the PUD standards and is concerned this may open the door to future apartment developments.
- Commissioner Parsons replied that this is a master planned community, the rental rate is much higher than the other two projects that were proposed, and they will be subject to an HOA who will enforce the one-family rule in the City. While he is not in favor of the proliferation of apartments, this project has a high enough rent and encourages shopping in the master development as well as provides a boost to the tax base.
- Commissioner Urbish inquired what the rental percentage in BTC currently is.
- Mr. Alvis replied that the project was built long ago and is no longer under his umbrella and there are two sections recently finished. Dolce Living behind Kroger was 324 units.
- Commissioner Urbish replied that he knows the City has a lot of rental and each $100K house in these neighborhoods has the potential to become rental. What is being proposed here may be good for BTC but is it right for Rosenberg? Commissioner Parsons made a point about the proliferation of apartments in our City but he sees the value in this and I tend to agree. Will the buildings be sprinkled?
- Mr. Tanner replied that they will have to meet the building code.
- Mr. Alvis reminded the Commission that this tract was originally platted as multi-family and it remains multi-family. It was not until the last few land plan revisions that we attempted to put in office space but that market is not here today. This is the right thing to do for this project.
- Chairperson Pavlovsky called for the vote.

Action Taken: Upon voting, the motion carried by a vote of four (4) "ayes" to two (2) "noes". ***Ayes: Chairperson Pavlovsky, Vice Chairperson Phipps, Commissioners Parsons and Urbish. Noes: Commissioners Casias and Poldrack***

4. CONSIDERATION OF AND ACTION ON A PRELIMINARY PLAT OF STONECREEK ESTATES SECTION ONE, BEING 70.8 ACRES OF LAND CONTAINING 184 LOTS (60' X 120') (65' X 125') (75' X 130' TYP.) AND SEVEN RESERVES IN NINE BLOCKS OUT OF THE WILEY MARTIN LEAGUE, A-56, FORT BEND COUNTY, TEXAS.

Executive Summary: The proposed Preliminary Plat of Stonecreek Estates Section One adjoins the Berdett Road right-of-way immediately south of Dry Creek. The subdivision is located in Fort Bend County Municipal Utility District No. 184, for which the Development and Utility Agreements were recently approved by City Council on August 26, 2014. The Planning Commission had recommended approval of the Development Agreement and Land Plan on August 20. The Plat is located in the Extraterritorial Jurisdiction (ETJ) with the exception of a portion of the City Limits abutting Dry Creek.

The Plat consists of 70.8 acres and 184 single-family residential lots. Additionally, the Plat contains 3.25 acres in landscape reserves and a 5.12-acre recreation center site that will receive credit toward meeting parkland dedication requirements. All proposed lots are a minimum of sixty feet (60') in width with some lots being substantially larger.

The proposed Preliminary Plat is in conformance with the approved Land Plan and with applicable City ordinances. Staff recommends approval of the Preliminary Plat of Stonecreek Estates Section One.

Key Discussion:

- Mr. Tanner presented the item and reviewed the Executive Summary.
- Commissioner Poldrack inquired what is planned for the two tracts that say non-residential.

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
4	**Ordinance No. 2015-02 - MUD No. 184 Disannexation**

ITEM/MOTION

Consideration of and action on Ordinance No. 2015-02, an Ordinance providing for the disannexation from the corporate boundaries of the City of that certain 82.7 acres, more or less, in the Wiley Martin Survey, Abstract 56, Fort Bend County, Texas (Fort Bend County Municipal Utility District No. 184), pursuant to the petition for disannexation; adjusting the boundaries of Council District No. 4 to exclude the tract disannexed hereby, containing certain findings, providing for non-severability; and establishing an effective date.

FINANCIAL SUMMARY

Annualized Dollars:

[ ] One-time
[ ] Recurring
[X] N/A

Budgeted:

[ ] Yes [ ] No [X] N/A

Source of Funds: N/A

ELECTION DISTRICT

[ ] District 1
[ ] District 2
[ ] District 3
[X] District 4
[ ] City-wide
[ ] N/A

MUD #: 184 (Stonecreek Estates)

SUPPORTING DOCUMENTS:

1. Ordinance No. 2015-02
2. Vicinity Map

APPROVALS

Submitted by:

Travis Tanner

Travis Tanner
Executive Director of
Community Development

Reviewed by:

[X] Exec. Dir. of Administrative Services
[X] Asst. City Manager of Public Services
[X] City Attorney ***DNRBHZ/rl***
[X] City Engineer ***CAK/rl***
[ ] (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

On August 26, 2014, City Council consented to the creation of Fort Bend County Municipal Utility District No. 184. Related Development and Utility Agreements were approved on the same date. City Council will recall that, while the majority of the 500+ acre tract is located in the Extraterritorial Jurisdiction (ETJ), there is a 500' strip of the City Limits that runs through the property along Dry Creek. The strip was annexed in 1985.

The developer has approached City staff (see attached petition) regarding the City disannexing all but a 10' strip of the City Limits in their development. This is best depicted in the attached vicinity map. Much of the property is in the creek and therefore in the floodplain and/or floodway. It also appears based on staff's research that the City's portion of the taxes levied on this tract for 2014 is only approximately $108. The advantage to the developer of the City disannexing the majority of the tract is that the District can sell bonds more quickly to reimburse the developer because the Texas Commission on Environmental Quality (TCEQ) will not consider the City's tax rate on top of the District's tax rate when they approve bond issuance.

It is also advantageous to both the City and the developer to not have lots and streets in the development in multiple jurisdictions. This would otherwise have the potential to cause confusion as to what entity (City or County) is responsible for maintenance, emergency response, and other issues. Additionally, keeping 10' of City Limits, as opposed to releasing the City Limits altogether, avoids the potential for our ETJ being reduced now or at any point in the future.

Finally, in many cases, disannexation may result in the City having to refund taxes collected to the landowner per Chapter 43 of the Texas Local Government Code. However, in this case, the landowner has acknowledged through their petition that "the amount of property taxes and fees collected by the City during the time the land

has been located within the City is less than or equal to the amount of money that the City has spent for the direct benefit of the land during that same period."

City staff has reviewed the requested disannexation and has no objections. Therefore staff recommends approval of Ordinance No. 2015-02.

ORDINANCE NO. 2015-02

AN ORDINANCE OF THE CITY OF ROSENBERG, TEXAS, PROVIDING FOR THE DISANNEXATION FROM THE CORPORATE BOUNDARIES OF THE CITY OF ROSENBERG, TEXAS, OF THAT CERTAIN 82.7 ACRES, MORE OR LESS, IN THE WILEY MARTIN SURVEY, ABSTRACT 56, FORT BEND COUNTY, TEXAS (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 184), PURSUANT TO THE PETITION FOR DISANNEXATION; ADJUSTING THE BOUNDARIES OF COUNCIL DISTRICT NO. 4 TO EXCLUDE THE TRACT DISANNEXED HEREBY; CONTAINING CERTAIN FINDINGS; PROVIDING FOR NON-SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Texas Local Government Code Section 43.142 provides that a home-rule municipality may dis-annex an area in the municipality according to rules as may be provided by the charter of the municipality and not inconsistent with the procedural rules prescribed by Chapter 43; and,

WHEREAS; Section 1.04 of the City Charter provides that the City may dis-annex territory by ordinance; and,

WHEREAS, the City Council of the City of Rosenberg, Texas, has received a Petition for Disannexation (the "Petition") regarding 82.7 acres, more or less, in the Wiley Martin Survey, Abstract 56, Fort Bend County, Texas, from the owner of such tract; and,

WHEREAS, the City Council hereby finds and determines that all requisites for dis-annexation pursuant to the applicable provisions of the Texas Local Government Code and the Home Rule Charter of the City have been followed; and,

WHEREAS, the petitioner acknowledges, and City Council finds, that the amount of property taxes and fees collected by the City during the time the land was located within the City is less than or equal to the amount of money that the City has spent for the direct benefit of the land during the that period; and,

WHEREAS, the petitioner acknowledges, and City Council finds, that the petition waives any remedies or rights in law or equity pertaining to recovery of property taxes and fees collected by the City; and, therefore, the City shall not be required to refund any taxes or fees to the petitioner; and,

WHEREAS, the petitioner acknowledges, and City Council finds, that the petition does not allege that the City Council failed or refused to provide services or to cause services to be provided within the territory with a period required by statute or specified in a service plan prepared for the territory; and, therefore, the dis-annexation does not fall under the purview of Texas Local Government Code Section 43.141; and,

WHEREAS, the petitioner acknowledges, and City Council finds, that the territory

to be dis-annexed does not include the dis-annexation of a road or highway; and,

WHEREAS, the City Council hereby further finds and determines that the dis-annexation of the 82.7 acres is necessary and appropriate and in the best interests of the City; now, therefore,

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

Section 1. The above findings are hereby incorporated for all purposes as if each word was set out herein**;** the petition for dis-annexation is attached hereto as **Exhibit "A"** and is hereby incorporated for all purposes as if it were set out fully herein; and, the map of the territory to be dis-annexation is attached hereto as **Exhibit "B"** and is hereby incorporated for all purposes as if it were set out fully herein.

Section 2. As of the effective date of this Ordinance, the land and territory shown on **Exhibit "B"** is hereby dis-annexed from the corporate limits of the City of Rosenberg, Texas, and said territory as described shall hereafter be removed from the boundary limits of said City, and the present boundary limits of said City are altered and amended so as to remove the territory from the corporate limits of the City of Rosenberg, Texas.

Section 3. The City Council hereby finds and determines that the property herein disannexed should be excluded from Council District No. 4 and, in this regard, hereby approves the exclusion of such tract and parcel of property from Council District No. 4, and directs that the City's official map depicting the boundaries of the City's four (4) single-member district be modified, amended, and redrawn to reflect such exclusion.

Section 4. As of the effective date of this Ordinance, the land and territory so described and so amended shall no longer be part of the City of Rosenberg, Texas and the land and territory shall no longer bear any of the taxes levied by the City of Rosenberg, Texas and the future inhabitants thereof shall no longer be entitled to any rights or privileges as citizens; nor shall they be bound by the acts, ordinances, resolutions, and regulations of the City of Rosenberg, Texas, as such shall be limited in application to the citizens and corporate limits of said City.

Section 5. The City Secretary be, and she is hereby, authorized and directed to forthwith cause a certified copy of this Ordinance to be delivered to the County Clerk of Fort Bend County, Texas, as required by § 41.0015, TEXAS LOCAL GOVERNMENT CODE.

Section 6. This Ordinance is not severable.

Section 7. This Ordinance shall be effective immediately from and after passage.

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 _____ 2015.

ATTEST:

_____
Linda Cernosek**, City Secretary**

APPROVED:

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

APPROVED AS TO FORM:

_____
Scott Tschirhart, **City Attorney**
Denton Navarro Rocha Bernal Hyde & Zech, P.C.

PETITION FOR DISANNEXATION FROM THE CITY OF ROSENBERG

THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS:

The undersigned, Dry Creek (Houston) ASLI VII, LLC, a Delaware limited liability company (the "Petitioner"), acting pursuant to the provisions of Chapter 43, Texas Local Government Code, particularly Section 43.145 of that Code, together with all amendments and additions thereto, respectfully petition the City Council of the City of Rosenberg, Texas (the "City"), for the disannexation of the tract of land described by metes and bounds in Exhibit "A" (the "Land"). In support of this petition, the undersigned would show the following:

I.

The Petitioner holds fee simple title to the Land sought to be disannexed and there are no lienholders on the Land.

II.

Petitioner desires that the Land be disannexed in accordance with Section 43.145 of the Texas Local Government Code and not for failure to provide services as that process is set forth in Section 43.141, Texas Local Government Code.

III.

Petitioner acknowledges that the amount of property taxes and fees collected by the City during the time the Land has been located within the City is less than or equal to the amount of money that the City has spent for the direct benefit of the Land during that same period.

IV.

Petitioner waives any remedies or rights as set forth in law or equity pertaining to recovery of property taxes and fees collected by the City relative to the Land.

V.

Petitioner hereby represents and certifies that the Land is composed of at least three contiguous acres that are unimproved and is adjoining the boundaries of the City.

EXECUTED this 4 day of December, 2014.

DRY CREEK (HOUSTON) ASLI VII, LLC
a Delaware limited liability company

By: Avanti Strategic Land Investors VII, L.L.L.P.
a Delaware limited liability limited partnership
Its sole member

By: Avanti Properties Group II, L.L.L.P.
a Delaware limited liability limited partnership
its managing general partner

By: Avanti Management Corporation
a Florida corporation
Its sole general partner

By: _____
Andrew Dubill
Vice President

THE STATE OF FLORIDA §
§
COUNTY OF ORANGE §

This instrument was acknowledged before me on the 4 day of December, 2014, by Andrew Dubill, Vice President of Avanti Management Corporation, a Florida corporation and sole general partner of Avanti Properties Group II, L.L.L.P., a Delaware limited liability limited partnership and managing general partner of Avanti Strategic Land Investors VII, L.L.L.P., a Delaware limited liability limited partnership and sole member of **DRY CREEK (HOUSTON) ASLI VII, LLC,** a Delaware limited liability company, on behalf of said partnerships, company and corporation.

Notary Public State of Florida
Nancy Matteson
My Commission EE 214056
Expires 08/08/2016

Nancy Matteson
Notary Public, State of FLORIDA

(NOTARY SEAL)

517891

Exhibit A

A **METES & BOUNDS** description of an 84.4 acre tract of land, more or less, in the Wiley Martin Survey, Abstract 56, Fort Bend County, Texas, being over, through, and across that certain called 371.8877 acre tract recorded under County Clerk's File Number 2013131554, Official Public Records, Fort Bend County, Texas, and that certain called 130.5756 acre tract recorded under County Clerk's File Number 2013129252, Official Public Records, Fort Bend County, Texas, with all bearings based upon the Texas Coordinate System, South Central Zone, NAD83, based upon GPS observations.

Commencing at a ¾ inch iron rod with cap marked "EHR&A" found in the northwesterly right-of-way line of Berdett Road for the south corner of said called 371.8877 acre tract, said point also being in the southwest line of said Wiley Martin Survey, Abstract 56, same being the northeast line of the adjoining Henry Wilcox Survey, Abstract 342, and the northeast line of an adjoining called 607.75 acre tract recorded in Volume 64, Page 109, Deed Records, Fort Bend County, Texas;

Thence North 21 degrees 34 minutes 18 seconds East (called North 21 degrees 34 minutes 18 seconds East) along the southeast line of said called 371.8877 acre tract, same being the northwest right-of-way line of Berdett Road, approximately 1,739 feet to the south corner of the existing City of Rosenberg City Limits (Annexation Number 21, Sec. 5-46), for the south corner and **Place of Beginning** of the herein described tract;

Thence North 21 degrees 34 minutes 18 seconds East (called North 21 degrees 34 minutes 18 seconds East) along the southeast line of said called 371.8877 acre tract and said existing City of Rosenberg City Limits, same being the northwest right-of-way line of Berdett Road, at approximately 250 feet pass the centerline of Dry Creek, and continuing for a total distance of approximately 500 feet to the east corner of the herein described tract and the east corner of said existing City of Rosenberg City Limits;

Thence northwesterly along the northerly line of said existing City of Rosenberg City Limits, being a line 250-feet northerly of the centerline of Dry Creek, approximately 7,340 feet to a point on said line at its intersection with the northwest line of the aforementioned called 130.5756 acre tract, same being the southeast line of an adjoining called 21.29 acre tract recorded under County Clerk's File Number 2008017096, Official Public Records, Fort Bend County, Texas, for the north corner of the herein described tract, from which point a ½ inch iron pipe found at the intersection of the northwest line of said called 130.5756 acre tract and the southwest right-of-way line of A. Meyers Road bears approximately North 22 degrees 20 minutes 28 seconds East, 1,017 feet;

Thence South 22 degrees 20 minutes 28 seconds West (called South 22 degrees 20 minutes 28 seconds West) along the northwest line of said called 130.5756 acre tract, same being the southeast line of said adjoining called 21.29 acre tract, at approximately 257 feet pass the centerline of Dry Creek, and continuing for a total distance of approximately 529 feet to a point on said line at its intersection with the southerly line of the aforementioned existing City of Rosenberg City Limits for the west corner of the herein described tract, said point being in the southeast line of the adjoining residue of a called 400.814 acre tract recorded under County Clerk's File Number 2006019259, Official Public Records, Fort Bend County, Texas;

Thence southeasterly along the southerly line of said existing City of Rosenberg City Limits, being a line 250-feet southerly of the centerline of Dry Creek, approximately 7,264 feet to the **Place of Beginning** and containing 84.4 acres of land, more or less.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

SAVE AND EXCEPT

A **METES & BOUNDS** description of a 1.7 acre tract of land, more or less, in the Wiley Martin Survey, Abstract 56, Fort Bend County, Texas, being over, through, and across that certain called 371.8877 acre tract recorded under County Clerk's File Number 2013131554, Official Public Records, Fort Bend County, Texas, and that certain called 130.5756 acre tract recorded under County Clerk's File Number 2013129252, Official Public Records, Fort Bend County, Texas, with all bearings based upon the Texas Coordinate System, South Central Zone, NAD83, based upon GPS observations.

Commencing at a ¾ inch iron rod with cap marked "EHR&A" found in the northwesterly right-of-way line of Berdett Road for the south corner of said called 371.8877 acre tract, said point also being in the southwest line of said Wiley Martin Survey, Abstract 56, same being the northeast line of the adjoining Henry Wilcox Survey, Abstract 342, and the northeast line of an adjoining called 607.75 acre tract recorded in Volume 64, Page 109, Deed Records, Fort Bend County, Texas;

Thence North 21 degrees 34 minutes 18 seconds East (called North 21 degrees 34 minutes 18 seconds East) along the southeast line of said called 371.8877 acre tract, same being the northwest right-of-way line of Berdett Road, approximately 1,984 feet to a point in a line being southerly 5-feet perpendicular from and parallel to the centerline of Dry Creek for the south corner and **Place of Beginning** of the herein described tract;

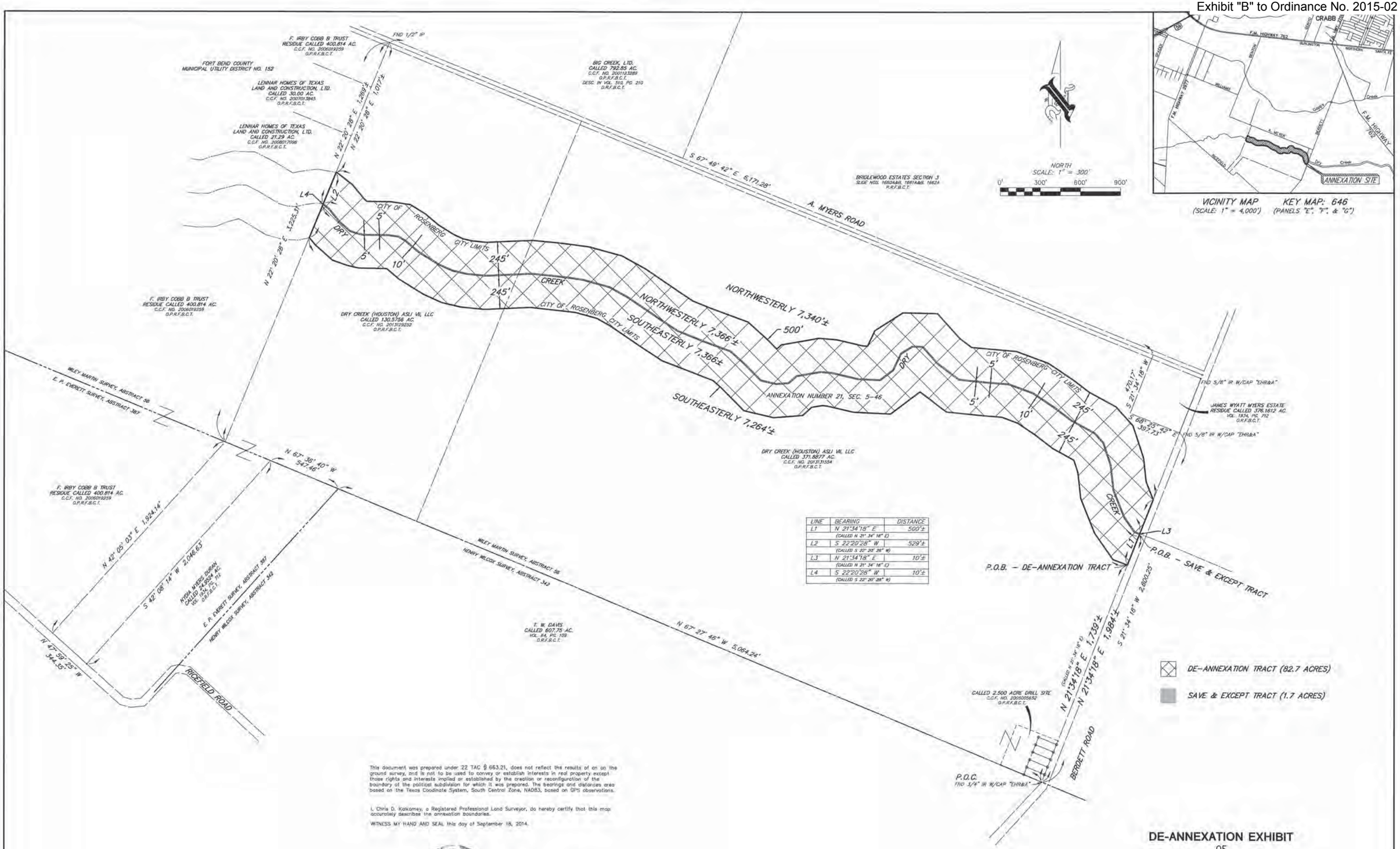
Thence North 21 degrees 34 minutes 18 seconds East (called North 21 degrees 34 minutes 18 seconds East) along the southeast line of said called 371.8877 acre tract, same being the northwest right-of-way line of Berdett Road, at approximately 5 feet pass the centerline of Dry Creek, and continuing for a total distance of approximately 10 feet to the east corner of the herein described tract;

Thence northwesterly along the northerly line of the herein described tract, being a line northerly 5-feet perpendicular from and parallel to the centerline of Dry Creek, approximately 7,366 feet to a point on said line at its intersection with the northwest line of the aforementioned called 130.5756 acre tract, same being the southeast line of an adjoining called 21.29 acre tract recorded under County Clerk's File Number 2008017096, Official Public Records, Fort Bend County, Texas, for the north corner of the herein described tract, said point being in an easterly line of the City of Rosenberg City Limits, from which point a ½ inch iron pipe found at the intersection of the northwest line of said called 130.5756 acre tract and the southwest right-of-way line of A. Meyers Road bears approximately North 22 degrees 20 minutes 28 seconds East, 1,269 feet;

Thence South 22 degrees 20 minutes 28 seconds West (called South 22 degrees 20 minutes 28 seconds West) along the northwest line of said called 130.5756 acre tract, same being the southeast line of said adjoining called 21.29 acre tract, and being along the City of Rosenberg City Limits, at approximately 5 feet pass the centerline of Dry Creek, and continuing for a total distance of approximately 10 feet to a point on said line at its intersection with a line being southerly 5-feet perpendicular from and parallel to the centerline of Dry Creek or the west corner of the herein described tract, said point being in the southeast line of the adjoining residue of a called 400.814 acre tract recorded under County Clerk's File Number 2006019259, Official Public Records, Fort Bend County, Texas;

Thence southeasterly along the southerly line of the herein described tract, being a line southerly 5-feet perpendicular from and parallel to the centerline of Dry Creek, approximately 7,366 feet to the **Place of Beginning** and containing 1.7 acres of land, more or less.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



LINE	BEARING	DISTANCE
L1	N 21°34'18" E	500'±
	(CALLED N 21° 34' 18" E)	
L2	S 22°20'28" W	529'±
	(CALLED S 22° 20' 28" W)	
L3	N 21°34'18" E	10'±
	(CALLED N 21° 34' 18" E)	
L4	S 22°20'28" W	10'±
	(CALLED S 22° 20' 28" W)	

This document was prepared under 22 TAC § 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared. The bearings and distances area based on the Texas Coodinate System, South Central Zone, NAD83, based on GPS observations.

I, Chris D. Kalkomey, a Registered Professional Land Surveyor, do hereby certify that this map accurately describes the annexation boundaries.

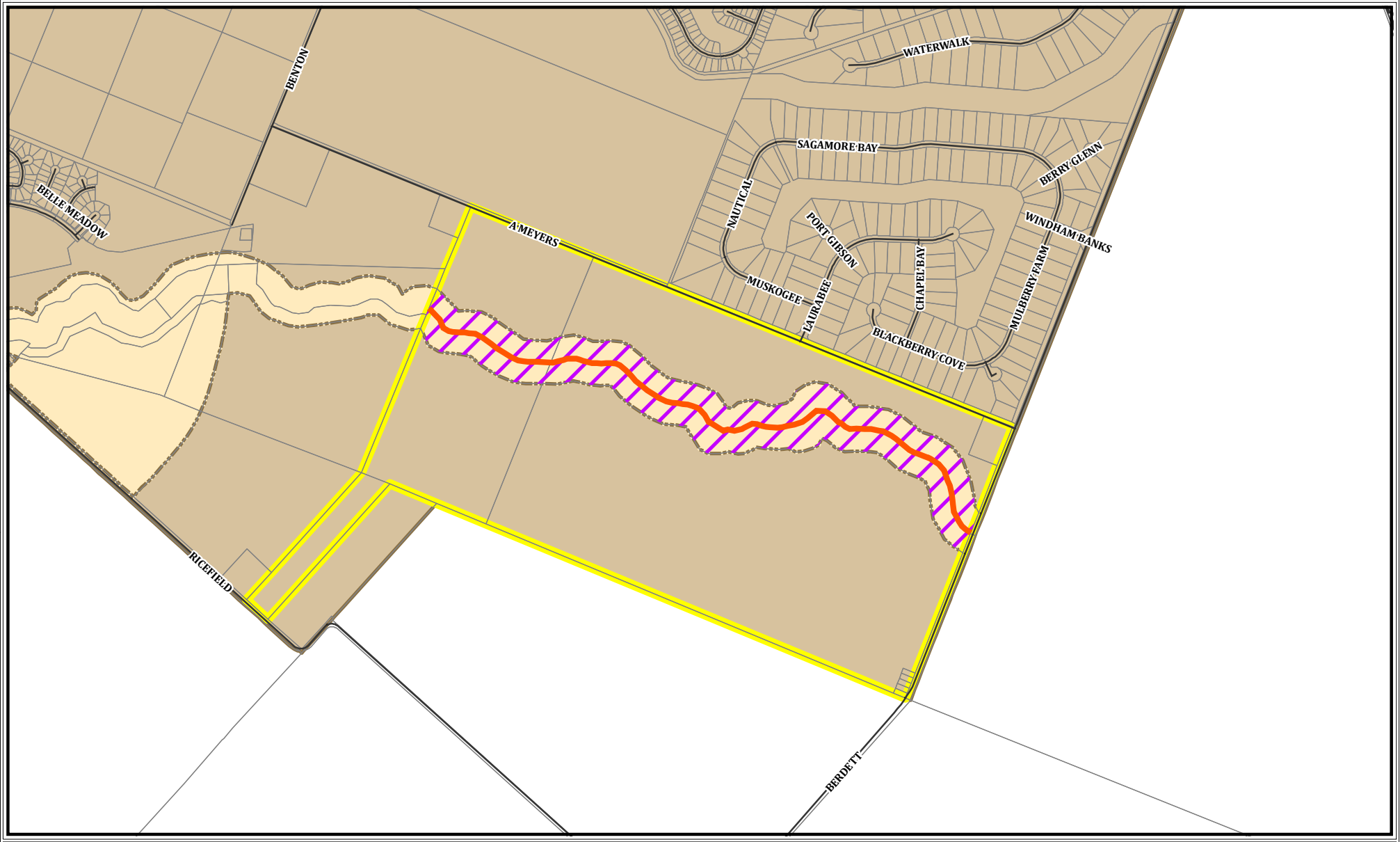
WITNESS MY HAND AND SEAL this day of September 18, 2014.

STATE OF TEXAS REGISTERED CHRIS D. KALKOMEY 5869 PROFESSIONAL LAND SURVEYOR

Chris D. Kalkomey
Registered Professional Land Surveyor
No. 5869

DE-ANNEXATION EXHIBIT
OF
82.7 ACRES
OUT OF THE
WILEY MARTIN SURVEY, ABSTRACT 56
FORT BEND COUNTY, TEXAS
DECEMBER 2014

P:\PROJECTS\PF000\4309 -00 Stone Creek Estates\Survey\Dwg Files\ANNEXATION TRACTS.dwg Jan 15,2015 - 2:58pm GK



Disannexation Associated with MUD 184
City of Rosenberg, Texas

- Interstate
- US Highway
- State Highway
- Farm-to-Market
- Public Road
- Area of Disannexation
- 10 ft Strip Not to be Disannexed
- MUD 184
- FBCAD 2014 3rd Quarter Parcels
- Rosenberg City Limits
- Rosenberg ETJ

Scale:
1:18,000
or
1 inch = 1,500 feet

0 500 1,000 2,000 3,000 4,000 Feet

N W E S

Created by: City of Rosenberg GIS - Paul M. Jones
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CITY OF ROSENBERG
FOUNDED 1883

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
5	**Resolution No. R-1898 – Old Richmond Road Reconstruction Engineering Services Agreement**

ITEM/MOTION

Consideration of and action on Resolution No. R-1898, a Resolution authorizing the City Manager to negotiate and execute, for and on behalf of the City, an Agreement for Engineering Design Services for the Old Richmond Road and Jennetta Street Reconstruction Project, by and between the City and CivilCorp, LLC, in the amount of $177,262.00.

FINANCIAL SUMMARY

Annualized Dollars:

[X] One-time
[ ] Recurring
[ ] N/A

Budgeted:

[X] Yes [ ] No [ ] N/A

Source of Funds:

422-0000-550-7034
(CP 1305)

ELECTION DISTRICT

[X] District 1
[ ] District 2
[ ] District 3
[ ] District 4
[ ] City-wide
[ ] N/A

MUD #: N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1898
2. Resolution No. R-1705 – 10-15-13
3. Resolution No. R-1693 – 09-17-13
4. City Council Meeting Minute Excerpt – 10-15-13
5. City Council Meeting Minute Excerpt – 09-17-13
6. City Council Meeting Minute Excerpt – 10-24-12

APPROVALS

Submitted by:

John Maresh
Assistant City Manager of Public Services

Reviewed by:

[X] Exec. Dir. of Administrative Services
[ ] Asst. City Manager of Public Services
[ ] City Attorney
[ ] City Engineer
[X] Project Director

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

The FY2014 Capital Improvement Project list approved by City Council on September 17, 2013, included the reconstruction of Old Richmond Road. On October 15, 2013, City Council approved Resolution No. R-1705, which approved the reconstruction of Old Richmond Road and Jennetta Street, including necessary drainage improvements with the participation of Fort Bend County Road and Bridge. To date, the Public Works Department has replaced all drainage culverts and is in the process of cleaning the drainage ditches. However, Fort Bend County Road and Bridge has not been able to schedule the roadway reconstruction due to their workload.

In an effort to move the project forward, staff has obtained an Engineering Services Proposal from CivilCorp, LLC, which is the firm initially selected by City Council on October 24, 2012, to design this project. Per the proposed Engineering Services Agreement (Agreement), the existing roadways will be reconstructed by removing the existing asphalt pavement and base material. Flexible base material will be placed on a treated subgrade, with a hot mix asphalt overlay to create a 22 to 24 feet wide pavement section. An alternate bid will also be received for the use of concrete pavement in-lieu of the flexible base and asphalt. The design phase will also evaluate the addition of left-turn lanes at select intersections and the potential need for additional right-of-way in order to construct turn lanes. Drainage system improvements for the dead end portion of Avenue F, east of Jennetta Street are currently not included in this engineering scope of services, but could be added at a later date by amending the scope of services,

or by entering into a separate agreement.

The 2013 Certificates of Obligation allocated $500,000.00 for this Project, which is sufficient to fully fund the drainage work being performed by Public Works and the engineering design. Remaining funds could be used toward the construction phase. The preliminary construction cost estimate is $1.8 million and it is anticipated the Rosenberg Development Corporation (RDC) will provide the remaining funding required for construction of said improvements.

Staff is recommending approval of Resolution No. R-1898. The Resolution will authorize the City Manager to negotiate and execute an Engineering Services Agreement for the Old Richmond Road and Jennetta Street Reconstruction Project, by and between the City and CivilCorp, LLC, in the amount of $177,262.00.

RESOLUTION NO. R-1898

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, AN AGREEMENT FOR ENGINEERING DESIGN SERVICES FOR THE OLD RICHMOND ROAD AND JENNETTA STREET RECONSTRUCTION PROJECT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND CIVILCORP, LLC, IN THE AMOUNT OF $177,262.00.

* * * * *

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

Section 1. The City Manager is hereby authorized to negotiate and execute an Agreement for Engineering Design Services (Agreement) for the Old Richmond Road and Jennetta Street Reconstruction Project, by and between the City of Rosenberg, Texas, and CivilCorp, LLC, in an amount up to $177,262.00. 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 _____ 2015.

ATTEST: **APPROVED:**

_____ _____

Linda Cernosek, **City Secretary** Vincent M. Morales, Jr., **Mayor**

PO# ____

AGREEMENT FOR
ENGINEERING DESIGN SERVICES
Old Richmond Road and Jenetta Street Reconstruction

STATE OF TEXAS §

COUNTY OF FORT BEND §

THIS AGREEMENT, entered into and executed by and between the CITY OF ROSENBERG, a home rule municipality under the laws of the State of Texas, hereinafter called "CITY", and CivilCorp, LLC hereinafter called "ENGINEER".

WHEREAS, the ENGINEER represents that it is fully capable of making and qualified to provide assistance to the CITY and ENGINEER desires to perform the same;

NOW, THEREFORE, the CITY and the ENGINEER, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

SECTION 1
SCOPE OF AGREEMENT

The ENGINEER agrees to provide the services as defined in Attachments "A" and "A-1" and any Amendments attached hereto and made a part hereof, and for having provided said services, the CITY agrees to pay the ENGINEER compensation as stated in the sections to follow. This Agreement takes precedence over all attachments in the event of conflicting terms and conditions.

SECTION 2
CHARACTER AND EXTENT OF WORK

The ENGINEER shall provide the services as defined in Attachments "A" and "A-1" and any Amendments attached hereto. The CITY shall be under no obligation to pay for services rendered without prior authorization.

SECTION 3
TIME FOR PERFORMANCE

The work shall be performed in accordance with Attachments "A" and "A-1". Upon written request of the ENGINEER, the CITY may grant time extensions to the extent of any delays caused by the CITY or other agencies with which the work must be coordinated and over which the ENGINEER has no control.

SECTION 4
COMPLIANCE AND STANDARDS

ENGINEER agrees to provide services hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the ENGINEER's trade or profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of the Agreement, including, without limitation, worker's compensations laws, minimum and maximum salary and wage statutes and regulations and licensing laws and regulations. When required, the Engineer shall furnish the City with satisfactory proof of compliance.

SECTION 5
CHANGES TO THE PROJECT; ADDITIONAL WORK

Engineer shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the City finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Engineer shall make such revisions if requested and as directed by the City and such services will be considered as additional work and paid for as specified under following paragraph.

The City retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and not does not otherwise constitute special services under this Agreement must be approved in writing by the City by supplemental agreement before the additional work is undertaken by the Engineer. If the Engineer is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Engineer shall promptly notify the City of that opinion, in writing. If the City agrees that such work does constitute additional work, then the City and the Engineer shall execute a supplemental agreement for the additional work and the City shall compensate the Engineer for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement

SECTION 6
INDEMNIFICATION

ENGINEER shall and does hereby agree to indemnify and hold harmless the CITY, and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities, from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the services or goods performed or provided by Engineer – expressly including those arising through strict liability or under the constitutions of the United States or Texas – BUT ONLY TO THE EXTEND ALLOWABLE BY SEC. 271.904 (a) OF THE TEXAS LOCAL GOVERNMENT CODE.

SECTION 7
FORCE MAJEURE

Force Majeure. Neither ENGINEER, its suppliers nor CITY will be liable for any failure or delay in this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the negligence or willful misconduct of ENGINEER), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If ENGINEER is unable to provide services for a period of ten (10) consecutive days as a result of a continuing force majeure event, CITY may cancel the services order without penalty.

SECTION 8
THE ENGINEER'S COMPENSATION

For and in consideration of the services rendered by the ENGINEER pursuant to this Agreement, the CITY shall pay the ENGINEER the amount of $177,262.00 for "Basic Services" and up to an additional $0.00 for "Additional Services" which shall be considered as the total maximum fee. The limit of appropriation is addressed in Section 9.

SECTION 9
TIME OF PAYMENT

Payment by the CITY to the ENGINEER shall be made as follows: ENGINEER shall be provided a purchase order number from the CITY and such number shall be referenced on all invoices submitted to the CITY. Upon completion of the work, ENGINEER shall submit to the City Manager or designee an invoice, in a form acceptable to the CITY, setting forth the charges for the services provided which were delivered during such billing period, and the compensation which is due for same. If the project work shall take in excess of thirty (30) calendar days, then such invoice shall be submitted to the CITY on or about the first of each month. The City Manager shall review the same and approve it with such modifications, as deemed appropriate. The CITY shall pay each invoice as approved by the City Manager within thirty (30) days after receipt of a true and correct invoice by the CITY. The approval or payment of any such invoice shall not be considered to be evidence of performance by the ENGINEER to the point indicated by such invoice or of the receipt of or acceptance by the CITY of the services covered by such invoice. Invoices shall be submitted to the following address:

City of Rosenberg Attn:
Project Director
P.O. Box 32
2110 4th Street Rosenberg, Texas
77471

Invoices submitted without a purchase order number will be returned unpaid. Failure to submit invoices to the above address will delay payment. DO NOT submit invoices to any other address for payment. The City's payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code.

SECTION 10
TIME OF COMPLETION

The prompt completion of the services under which the Scope of Work relates is critical to the City. Unnecessary delays in providing services under the Scope of Work shall be grounds for dismissal of the Engineer and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Engineer prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Engineer shall have completed all tasks and services described in the Scope of Work.

SECTION 11
TERMINATION

This Agreement may be terminated:

(1) By the mutual agreement and consent of both Engineer and City;

(2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;

(3) By the City, immediately upon notice in writing to the Engineer, as consequence of the failure of Engineer to perform the services contemplated by this Agreement in a timely or satisfactory manner;

(4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Engineer.

(5) If the City terminates this Agreement pursuant to Section 10 above, or subsection 11 (2) or (3), above, the Engineer shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Engineer considering the actual costs incurred by the Engineer in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another engineer to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination not the fault of the Engineer, the Engineer shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.

SECTION 12
ADDRESS AND NOTICES AND COMMUNICATIONS

The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to the other by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (i) by delivering the same in person, (ii) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, or (iii) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified, (iv) by sending the same by telefax with

confirming copy sent by mail, or (v) by sending the same by electronic mail with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed by providing written notice in accordance hereunder, shall be as follows:

All notices and communications under this Agreement shall be mailed to the ENGINEER at the following address:

CivilCorp, LLC
Attention: Thomas C. Kuykendall, Jr.
2825 Wilcrest Dr.; Suite 460
Houston, TX 77042
Telephone: 832-252-8100
Email: tkuykendall@civilcorp.us

All notices and communications under this Agreement shall be mailed to the CITY at the following address:

City of Rosenberg
Attn: Robert Gracia, City Manager
P.O. Box 32
2110 4th Street
Rosenberg, Texas 77471
(832) 595-3310
robertg@ci.rosenberg.tx.us

SECTION 13
LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, ENGINEER has been advised by the CITY and ENGINEER clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the CITY shall have available the amount budgeted for this project to discharge any and all liabilities which may be incurred by the CITY pursuant to this Agreement and that the total maximum compensation that the ENGINEER may become entitled to hereunder and the total maximum sum that the CITY shall become liable to pay to ENGINEER hereunder shall not under any conditions, circumstances, or interpretations, hereof, exceed the said total maximum sum provided for in this section without prior written permission from the CITY.

SECTION 14
SUCCESSORS AND ASSIGNS

The CITY and the ENGINEER bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the CITY nor the ENGINEER shall assign, sublet or transfer its or his interest in this Agreement without the written consent of the other, which consent will not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in subletting of any work shall not relieve the Engineer of any responsibility for work done by such subcontractor. Nothing

herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto.

SECTION 15
OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents prepared by the Engineer or furnished to the Engineer by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE ENGINEER FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE ENGINEER. Where applicable, Engineer shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant the City a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purpose for which the information was provided. The Engineer may, at Engineer's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement.

SECTION 16
ENGINEER'S SEAL

The Engineer shall place the Texas Professional Engineer's seal of endorsement of the principal engineer on all documents and engineering data furnished by the Engineer to the City. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the engineering profession. The plans, specifications and engineering data provided by Engineer shall be adequate and sufficient to enable those performing the actual construction of the work to perform the work as and within the time contemplated by the City and Engineer. The City acknowledges that Engineer has no control over the methods or means of construction nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of construction costs by the Engineer are for informational purposes only and are not guarantees.

SECTION 17
INDEPENDENT CONTRACTOR

Engineer acknowledges that Engineer is an independent contractor of the City and is not an employee, agent, official or representative of the City. Engineer shall not represent, either expressly or through implication, that Engineer is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Engineer.

SECTION 18
NON-COLLUSION

Engineer represents and warrants that Engineer has not given, made, promised or paid, nor offered to give,

make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Engineer further agrees that Engineer shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Engineer under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Engineer, Engineer shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Engineer under or pursuant to this Agreement.

SECTION 19
MEDIA

Contact with the news media shall be the sole responsibility of the CITY. ENGINEER shall under no circumstances release any material or information developed in the performance of its work hereunder without the express written permission of the CITY.

SECTION 20
AUTHORITY OF CITY MANAGER

All work to be performed by the ENGINEER hereunder shall be performed to the satisfaction of the City Manager. The City Manager shall decide any and all questions, which may arise as to the quality, or acceptability of the work performed by the ENGINEER and the decisions of the City Manager in such cases shall be final and binding on both parties. However, nothing contained herein shall be construed to authorize the City Manager to alter, vary or amend this Agreement.

SECTION 21
INSURANCE REQUIREMENTS

A current certificate of insurance with the City named as an additional insured is required to be submitted to the Purchasing Office before the City will enter into a contract with a vendor.

A. POLICY REQUIREMENTS

Prior to the approval of this contract by the City, Engineer shall furnish a completed insurance certificate to the Purchasing Office, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. *CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY*, and no officer or employee of the City shall have authority to waive this requirement.

B. INSURANCE COVERAGE REQUIRED

Worker's Compensation - Statutory and Employers Liability with minimum limits of $500,000 each accident and $1,000,000 each employee; Commercial General (public) Liability insurance minimum

limits of $1,000,000 each occurrence including coverage Comprehensive Automobile Combined single limit for liability insurance, including bodily injury and property coverage of $1,000,000 each accident.

C. ADDITIONAL POLICY ENDORSEMENTS

CITY shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by CITY, ENGINEER shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

D. REQUIRED PROVISIONS

ENGINEER agrees with the respect to the above required insurance, all insurance contracts and certificate(s) of insurance *will contain and state, in writing, on the certificate or its attachment, the following required provisions:*

1. Name the City of Rosenberg and its officers, employees, and elected representatives as an additional insured;
2. Provide for notice to City upon cancellation;
3. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Rosenberg where CITY is an additional insured shown on the policy;
4. Provide for notice to the City at the address shown;
5. ENGINEER agrees to waive subrogation against the City of Rosenberg, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;

E. NOTICES

ENGINEER shall notify CITY in the event of any change in coverage and shall give such notices not less than 30 days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE. All notices shall be given to CITY at the following address:

City of Rosenberg
Attn: Robert Gracia
P.O. Box 32
2110 4th Street
Rosenberg, Texas 77471

F. APPROVAL

Approval, disapproval, or failure to act by CITY regarding any insurance supplied by ENGINEER shall not relieve ENGINEER of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate ENGINEER from liability.

SECTION 22
MODIFICATIONS

This instrument, including Attachments "A" and "A-1" and any Amendments attached hereto contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. In the event of any conflict between this instrument and/or Attachments "A" and "A-1", the CITY acting through the City Manager at his sole discretion shall determine which provision prevails. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

SECTION 23
FISCAL FUNDING

The CITY's fiscal year is October 1st through September 30th. If this contract extends beyond September 30, 201__, there shall be a fiscal funding out. If, for any reason, funds are not appropriated to continue the contract in the new fiscal year, said contract shall become null and void on the last day of the current appropriation of funds. Contract will then be terminated without penalty of any kind or form to the CITY.

SECTION 24
CHOICE OF LAW

This Agreement and all the transactions contemplated herein shall be governed by the laws of the State of Texas. Exclusive venue for any action arising out this Agreement shall be in Fort Bend County, Texas and ENGINEER hereby consents to such jurisdiction and venue.

SECTION 25
SEVERABILITY

In the event that any provision(s) of this Agreement shall for any reason be held invalid, illegal, or unenforceable, the invalidity, illegality or unenforceability of that provision(s) shall not affect any other provision(s) of this Agreement, and it shall further be construed as if the invalid, illegal, or unenforceable provision(s) had never been a part of this Agreement. This document and included Attachments is the entire Agreement and recites the full consideration between the parties, there being no other written agreement.

SECTION 26
CUMULATIVE REMEDIES

In the event of default by any party herein, all other parties shall have all rights and remedies afforded to it at law or in equity to recover damages and to interpret or enforce the terms of this Agreement. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

SECTION 27
WAIVER

The failure on the part of any party herein at any time to require the performance by any other party of any portion of this Agreement shall not be deemed a waiver of, or in any way affect that party's rights to enforce such provision or any other provision. Any waiver by any party herein of any provision hereof shall not be taken or held to be a waiver of any other provision hereof or any other breach hereof.

IN WITNESS WHEREOF, said City of Rosenberg has lawfully caused these presents to be executed by the City Manager of said CITY and the said ENGINEER, acting by its thereunto duly authorized representative, does now sign, execute and deliver this instrument.

Authorized by the City of Rosenberg, Texas on the ____day of_____201_,

CivilCorp, LLC

_____
Name: Thomas C. Kuykendall, Jr.
Title: Vice President

_____
Date

CITY OF ROSENBERG

_____
Robert Gracia
City Manager

_____
Date

Attest:

_____
Linda Cernosek
City Secretary

ATTACHMENT A

CivilCorp
ENGINEERS • SURVEYORS

2825 Wilcrest Dr., Suite 460
Houston, Texas 77042
Telephone: (832) 252-8100
E-Mail: tkuykendall@civilcorp.us

January 15, 2014

Mr. John Maresh
Assistant City Manager
City of Rosenberg
2110 Fourth Street
Rosenberg, TX 77471

RE: Old Richmond Road and Jennetta Street Reconstruction
Professional Civil Engineering and Surveying Services Proposal (Revision 1)

Dear Mr. Maresh:

CivilCorp, LLC. would like to thank the City of Rosenberg for the opportunity to work and partner with the City on this project. In accordance with your request and scoping meeting, CivilCorp submits this proposal to the City of Rosenberg for Professional Civil Engineering and Surveying Services for the reconstruction of Old Richmond Road and Jennetta Street.

PROJECT DESCRIPTION

The Old Richmond Road reconstruction project will extend from 8th Street to the concrete roadway section approximately 850' west of the intersection of Old Richmond Road and Avenue H (Approx. 9600 LF). The Jennetta Street reconstruction will extend from Old Richmond Road to Avenue H (Approx. 1300 LF). Both existing rural two lane roadways with open ditches have experienced deterioration and pavement failures in recent years due to existing traffic patterns and loading. The City recently began drainage improvements along Old Richmond Road to upgrade culverts and clean out the existing ditches to provide positive drainage. No further drainage improvements are planned in the scope of this project.

The project scope includes reconstructing the existing two-lane asphalt road with roadside ditches. The existing 20' to 24' width of "scrubber" base and asphaltic surfacing will be removed and replaced with a proposed pavement section. Construction bids will be solicited for a 22' to 24' wide pavement utilizing flexible base with a hot mix asphalt surface for the base bid and an alternative bid item consisting of a concrete pavement section. Additional pavement width for adding left turn lanes at select locations will be evaluated during design and will be added to the reconstruction design within the approved basic scope of services, for locations approved by the City. Plans will be prepared in accordance with the City of Rosenberg Design Standards.

SCOPE OF SERVICES: OLD RICHMOND ROAD AND JENNETTA STREET RECONSTRUCTION

CivilCorp will provide the City of Rosenberg with the following surveying, engineering, project management, construction and geotechnical services for the project:

Surveying

- Tie to City of Rosenberg or TxDOT control monumentation for horizontal and vertical controls, if available.

- Set horizontal and vertical control near project site.
- Activate One-Call and have existing utilities marked
- Perform surveying to facilitate Engineering including:
    - Topographic survey along Old Richmond Road and Jennetta Street to include existing features (driveways, side streets, curbs, gutters, signs, culverts, inlets, utilities, power poles, guy wires, and pavement markings)
    - Tie utility markings provided by utility owners
    - Tie soil boring locations
- Research and establish right-of-way
- Perform all work in accordance with any applicable standards

Geotechnical Investigation (Provided by Terracon Consultants, Inc.)

- Provide soil borings at approximately 500' spacing and 5' depth
- Determine existing pavement depths
- Prepare soil boring logs
- Provide report with recommendations for subgrade preparation and pavement design guidelines
- Additional detailed information can be found in Attachment "B"

Engineering

- Obtain and review existing information.
- Prepare Title Sheet for Project.
- Prepare Index of Sheets (Show on Title Sheet).
- Prepare General Notes sheet and include notes applicable for grading, paving, drainage, and utilities.
- Prepare existing typical section of Old Richmond Road and Jennetta Street.
- Prepare proposed typical sections of Old Richmond Road and Jennetta Street that show lane configuration and pavement structure.
- Prepare quantity summary sheets for the project including driveway log and demolition plan.
- Prepare sequence of construction with general traffic control plan layout. Identify and modify as necessary standard construction and barricade detail sheets.
- Prepare Overall Project Layout (1" = 400' – Full Size).
- Prepare demolition plan layout sheets (1"=40' double banked).
- Prepare roadway plan and profile sheets for Old Richmond Road and Jennetta Street (1" = 40' H, 1" = 4' V – Full Size) showing horizontal and vertical geometric designs.
- Prepare storm water pollution prevention plans (SW3P) (1" = 40' double bank – Full Size) showing temporary control measures.
- Develop striping details (Show on roadway plan and profile sheets).
- Develop miscellaneous detail sheets using City of Rosenberg standard details when available.
- Develop earthwork cross-sections (1" = 40' H, 1" = 10' V) showing existing and proposed roadway sections at 100' intervals for the proposed roadway.
- Compute and tabulate construction quantities and prepare estimate. Estimates will be prepared and submitted with each review submittal at 30%, 60%, 90% and 100%.
- Prepare construction bid package to include Notice to Bidders, Instruction and Information to Bidders, Bid Proposal Form, Standard Form of Agreement, Bond Forms, General Conditions, Special Conditions if any, Technical Specifications and Construction Plans, in accordance with City of Rosenberg standards.

Project Management

- Develop and Maintain
  - Project Schedules
  - Budgets
  - Monthly Progress Reports and Invoices
- Meet with the City staff on a regular basis to review project progress and prepare meeting minutes.
- Coordinate and review the work produced to comply with the City and County policies and procedures, and to deliver that work on time. Comply with all applicable laws, ordinances and codes of the State and local governments.
- Prepare Presentation (1 estimated) for the project to be presented to City Council.
- Field Reconnaissance. Travel to the project to inspect features along and adjacent to the roadway to assist in making decisions concerning roadway design, drainage design, sequence of construction, and ROW acquisition.
- Develop and implement Quality Control and Quality Assurance program.

Direct Expenses

- Photocopies
- Deliveries
- Mileage
- GPS Equipment

DELIVERABLES: OLD RICHMOND ROAD AND JENNETTA STREET RECONSTRUCTION

CivilCorp will provide the City of Rosenberg with the following deliverables for each outlined milestone:

Preliminary Design Meeting

- Preliminary pavement design recommendations
- Completed field surveying and topography
- Preliminary project layout
- Review and discuss proposed turn lane locations
- Preliminary cost estimate

50% Submittal (3-22"x34" sets, 1-11"x17" set, and 1- PDF set)

- Completed 3-d DTM (digital terrain model for profiles and cross sections)
- Incorporate Preliminary City Design Meeting comments
- Title sheet with Index of Sheets
- Existing and proposed typical sections
- Preliminary traffic control sequencing with general traffic control plan layout
- 60% Completed Plan and Profile Sheets
- Preliminary design cross sections

90% Submittal (3-22"x34" sets, 1-11"x17" set, and 1- PDF set)

- Incorporate City review comments from 50% submittal
- Title Sheet with Index of Sheets
- Project General Notes
- Existing and proposed typical sections
- Quantity Summary Sheets (Roadway, driveways, traffic control, striping and SW3P)
- Traffic Control Plans with Sequence of Construction

- Overall Project Layout Sheet (including survey control data)
- Roadway Plan and Profile Sheets (including striping details, as necessary)
- Storm Water Pollution Prevention Plans (SW3P)
- Miscellaneous Roadway Detail Sheets (Adjust manholes, pavement junctures, driveways, etc.)
- Roadway Design Cross section Sheets (100' intervals)
- Cost estimate including concrete pavement alternate bid items

City Council Presentation

- Develop PowerPoint presentation including project data to effectively communicate the project design to the Mayor, City Manager and City Council

Final Submittal (3-22"x34" sets, 1-11"x17" set, and 1- PDF set)

- Items included in the 90% submittal with City Council and City Staff comments addressed
- Proposal (Notice to Bidders, Instruction and Information to Bidders, Bid Proposal From, Standard Form of Agreement, Bond Forms, General Conditions, Special Conditions, and Technical Specifications)
- Updated Cost Estimate

Bid Phase

- Attend and facilitate Pre-Bid Meeting
- Answer questions
- Issue Addenda and post to CivCast, if necessary
- Attend bid opening
- Tabulate bids
- Prepare recommendation of bid award

Construction Phase

- Provide Addenda posted construction drawings
- Update final project manual to include:
    - Addenda bound in front
    - Insert signed contracts and bonds
    - Insert contractor's bid form
    - Insert contractor's insurance
    - Insert geotechnical report
- Facilitate pre-construction meeting and issue contractor's "Notice to Proceed"
- Respond to RFI's (Requests for Information)
- Review and approve monthly pay estimates
- Review and approve change orders
- Review shop drawings and submittals
- Attend monthly progress meetings and prepare minutes (9 Months Estimated)
- Conduct final inspection and prepare punch list
- Prepare record as-built drawings and provide the City with 3-full size sets and 2-CD's

INFORMATION PROVIDED BY THE CITY OF ROSENBERG

The City of Rosenberg will provide CivilCorp with the following information and assistance.

1. Survey control monument data, if available
2. As-Built construction plans, if available
3. Existing utility plans or other data applicable to the project
4. Timely review and decisions to maintain project schedule
5. Traffic data for pavement design and turn lane location analysis

SERVICES NOT INCLUDED WITHIN THE SCOPE OF SERVICES:

The following services have not been included within the above scope of services:

1. Utility relocation plans
2. Utility agreements or cost estimates
3. Right-of-Way Maps
4. Environmental document preparation

CivilCorp, LLC could provide these services to the City of Rosenberg, if desired. These services would be developed under a separate proposal.

SCHEDULE

Project development and design will begin upon notice to proceed from the City of Rosenberg anticipated to be on January 20, 2015.

MILESTONE	DATE
• Survey Complete	2/17/15
• Preliminary Design Mtg	3/3/15
• 50% Submittal	3/23/15
• City of Rosenberg Comments	4/1/15
• 90% Submittal	4/20/15
• Final Submittal	5/11/15

*CivilCorp is not responsible for delays beyond its control.

COMPENSATION

Payment and compensation for the above Scope of Services is to be on a lump sum basis. CivilCorp will prepare monthly invoices for services rendered. A budget in the amount of **$ 177,262.00** is established for this agreement and will not be exceeded without prior authorization by the City of Rosenberg.

Old Richmond Road and Jennetta Street Reconstruction

Services	Cost
Surveying	$ 31,313.00
Geotechnical Investigation	$ 14,600.00
Engineering	$ 90,170.00
Project Management	$ 11,400.00
Construction Phase	$ 27,355.00
Direct Expenses	$ 2,424.00
Total Fee:	***$ 177,262.00***

All work will be closely coordinated with the City of Rosenberg. Thank you for the opportunity to submit this proposal. If you are in agreement with the services and related fee contained in this proposal and wish to proceed, please sign on the space provided and return an executed copy to my attention that will serve as the Notice to Proceed.

If you have any questions or require additional information, please don't hesitate to call me. We are looking forward to working with you on this project.

Very truly yours,

CivilCorp, LLC

Thomas C. Kuykendall, Jr., PE
Vice President

City of Rosenberg

By: _____

Title: _____

Date: _____

FEE SCHEDULE - EXHIBIT D

PROJECT NAME: OLD RICHMOND ROAD & JENETTA ST

METHOD OF PAY: LUMP SUM

PRIME PROVIDER NAME: CIVILCORP, LLC

1/15/2015

FEE SUMMARY		
OLD RICHMOND ROAD & JENETTA ST		
TASKS	CIVILCORP, LLC	TERRACON
SURVEYING	$31,313.00	
GEOTECHNICAL		$14,600.00
ENGINEERING	$90,170.00	
CONSTRUCTION	$27,355.00	
PROJECT MANAGEMENT	$11,400.00	
Direct Expenses	$2,424.00	
TOTALS	$162,662.00	$14,600.00
TOTAL	$177,262.00	

PERCENT FEE	91.8%	8.2%	100.0%
CONSTRUCTION COST ESTIMATE		$1,800,000.00	
SURVEYING %		1.74%	
ENGINEERING %		5.78%	
CONSTRUCTION PHASE %		1.52%	
GEOTECH %		0.81%	
TOTAL %		9.85%	

Attachment A-1

SCOPE OF SERVICES TO BE PROVIDED BY THE ENGINEER

Scope of Services to Perform Final Design and Prepare Plans, Specifications, and Estimate

Old Richmond Road from 8th Street to 850' West of Avenue H (Approx. 9600 LF) and Jennetta Street from Old Richmond Road to Avenue H (Approx. 1300 LF)

GENERAL SCOPE OF PROJECT

The work to be performed by the Engineer under this contract consists of providing final design services for the project, coordination with the City of Rosenberg, and preparation of construction documents containing plans, specifications and details pertaining to paving, grading, drainage, storm water pollution prevention, pavement markings, demolition, sequence of construction and traffic control plans, construction cost estimate and time of construction estimate. Topographic survey and Geotechnical investigation will also be provided by the Engineer.

PROJECT DESCRIPTION: OLD RICHMOND ROAD AND JENNETTA STREET RECONSTRUCTION

The Old Richmond Road reconstruction will extend from 8th Street to 850' West of Avenue H (US Highway 90A). The Jennetta Street reconstruction will extend from Old Richmond Road to Avenue H (US Highway 90A). The project scope will be a two-lane asphalt road with roadside ditches. Additional pavement width for adding left turn lanes at select locations along Old Richmond Road will be evaluated during design. Plans will be prepared in accordance with the City of Rosenberg Design Standards.

SCOPE OF SERVICES

The Engineer will provide the following surveying, geotechnical investigation, engineering, construction and project management services for the project:

I. Surveying

A. Tie to City of Rosenberg or TxDOT control monumentation for horizontal and vertical controls, if available.

B. Set horizontal and vertical control near project site

C. Activate One-Call and have existing utilities marked

D. Perform surveying to facilitate Engineering including:
- Topographic survey along Old Richmond Road and Jennetta Street to include existing features (driveways, side streets, curbs, gutters, signs, culverts, inlets, utilities, power poles, guy wires, and pavement markings)
- Tie utility markings provided by utility owners
- Tie soil boring locations

E. Research and establish existing right-of-way

F. Perform all work in accordance with any applicable standards

II. Geotechnical Investigation (Provided by Terracon Consultants, Inc.)

A. See "Attachment B"

III. Engineering

A. Obtain and review existing information.

B. Prepare Title Sheet for Project.

C. Prepare Index of Sheets (Show on Title Sheet).

D. Prepare General Notes sheet and include notes applicable for grading, paving, drainage, and utilities.

E. Prepare existing typical section of Old Richmond Road and Jennetta Street.

F. Prepare proposed typical sections of Old Richmond Road and Jennetta Street that show lane configuration and pavement structure.

G. Prepare quantity summary sheets for the project.

H. Prepare sequence of construction with general traffic control plan layout. Identify and modify as necessary standard construction and barricade detail sheets.

I. Prepare Overall Project Layout (1" = 400' – Full Size).

J. Prepare roadway plan and profile sheets for Old Richmond Road and Jennetta Street (1" = 40' H, 1" = 4' V – Full Size) showing horizontal and vertical geometric designs.

K. Prepare storm water pollution prevention plans (SW3P) (1" = 40' double bank – Full Size) showing temporary control measures.

L. Develop striping details (Show on roadway plan and profile sheets).

M. Develop miscellaneous detail sheets.

N. Develop earthwork cross-sections (1" = 40' H, 1" = 10' V) showing existing and proposed roadway sections at 100' intervals for the proposed roadway.

O. Compute and tabulate construction quantities and prepare estimate. Estimates will be prepared and submitted with each review submittal at 30%, 60%, 90% and 100%.

P. Prepare construction bid package to include Notice to Bidders, Instruction and Information to Bidders, Bid Proposal Form, Standard Form of Agreement, Bond Forms, General Conditions, Special Conditions if any, Technical Specifications and Construction Plans, in accordance with City of Rosenberg standards.

IV. Construction

A. Complete Bid Tabulation and Engineers Recommendation.

B. Address Request for Information (RFI) from Contractor.

C. Review Change Orders.

V. Project Management

A. Develop and Maintain

1. Project Schedules
2. Budgets
3. Monthly Progress Reports and Invoices

B. Meet with the City staff on a regular basis to review project progress.

C. Coordinate and review the work produced to comply with the City and County policies and procedures, and to deliver that work on time. Comply with all applicable laws, ordinances and codes of the State and local governments.

D. Prepare Presentation (1 estimated) for the project to be presented to City Council.

E. Field Reconnaissance. Travel to the project to inspect features along and adjacent to the roadway to assist in making decisions concerning roadway design, drainage design, sequence of construction, and ROW acquisition.

F. Develop and implement Quality Control and Quality Assurance program.

VI. Direct Expenses

A. Photocopies

B. Deliveries

C. Mileage

D. GPS Equipment

INFORMATION PROVIDED BY THE CITY OF ROSENBERG

The City of Rosenberg will provide CivilCorp with the following information and assistance:

1. Survey control monument data, if available.
2. As-Built construction plans, if available.
3. Existing utility plans or other data applicable to the project.
4. Timely review and decisions to maintain the project schedule.
5. Traffic data for pavement design and turn lane location analysis

SERVICES NOT INCLUDED WITHIN THE SCOPE OF SERVICES

The following services have not been included within the above scope of services:

1. Utility relocation plans.
2. Utility agreements or cost estimates.
3. Right-of-Way maps.
4. Environmental document preparation.

CivilCorp, LLC could provide these services to the City of Rosenberg, if desired. These services would be developed under a separate proposal.

ATTACHMENT B

Terracon

December 12, 2014

CivilCorp, LLC
2825 Wilcrest Dr., Suite 460
Houston, TX 77042

Attn: Thomas C. Kuykendall, Jr., PE
Vice President

Re: Cost Estimate for Geotechnical Engineering Services
Old Richmond Road and Jennetta Street Reconstruction
Between 8th Street and Avenue H
Richmond, Texas
Terracon Document No. P92142275

Dear Mr. Kuykendall:

Terracon Consultants, Inc. (Terracon) understands we have been selected based on qualifications to provide geotechnical engineering services for the above referenced project in Houston, Texas. This letter outlines our understanding of the scope of services to be performed by Terracon for this project and provides an estimate of the cost of our services.

1.0 PROJECT INFORMATION

Item	Description
Site location	The proposed Old Richmond Road reconstruction is between 8th Street and approximately 800 feet from Avenue H and the proposed Jennetta Street reconstruction is between Old Richmond Road and Avenue G in Richmond, Texas.
Existing conditions[1]	Old Richmond Road and Jennetta Street consist of asphaltic-concrete pavement.
Proposed improvements[1]	▪ Reconstruction of approximately 9,700 linear feet of Old Richmond Road and 1,300 linear feet of Jennetta Street. ▪ Typical pavement section planned is 2-inch hot-mixed asphaltic concrete (HMAC), prime coat, limestone base, and chemically treated subfrade.
Planned traffic loading	No traffic information was provided at the time of this cost estimate.

[1] Information provided by CivilCorp, LLC.

If our understanding of the project is not accurate, please let us know so that we may adjust our scope of services and estimated cost, if necessary.

2.0 SCOPE OF SERVICES

A brief summary of the services to be provided by Terracon is presented in the following paragraphs.

Field Program. The field program is planned to consist of drilling 25 test borings to depths of 5 feet along the alignment of the proposed roadway reconstruction. The total drilling footage is planned to be 125 feet.

An experienced Terracon geotechnical technician will be assigned to the field program for this project. Our technician will be on-site with the drilling crew to coordinate the drilling activities, collect soil samples, and log each boring.

The borings will be located in the field by using hand measuring equipment and estimating angles and distances from and on-site features shown on the proposed boring plan with the assistance of hand-held GPS devices which are capable of locating the exploration points with an accuracy of about ± 25 feet. Therefore, the layout of the borings and test locations will be approximate. Boring depths will be measured from existing grade (top of pavement).

Traffic control consisting of cones, signs, and flaggers is planned for our field program at the boring locations along the existing roadway. The drilling services for this project will be performed by a drilling subcontractor or Terracon's in-house drillers. During drilling, soil samples will generally be collected utilizing either open-tube samplers or the Standard Penetration Test. Once the samples have been collected and classified in the field, they will be properly prepared and placed in appropriate sample containers for transport to our laboratory. Upon completion of our field program, the borings will be backfilled with soil cuttings and patched at the surface with an asphalt product.

This document assumes that the site can be accessed with standard truck-mounted drilling equipment (Monday through Friday) and does not include services associated with surveying of boring locations, location of underground utilities, or use of special equipment for unusually soft or wet surface conditions. If such conditions are known to exist on the site, Terracon should be notified so that we may adjust our scope of services and estimated fees, if necessary.

Terracon will notify Texas811, a free utility location service, prior to our drilling program to help locate utilities within dedicated public utility easements. If underground utilities are known to exist on the site, Terracon should be notified so that we may review utility plans to help avoid the existing lines. Terracon cannot be responsible for utilities for which we are unaware or that are improperly located in the field.

Laboratory Testing. The sample classifications will be reviewed and a laboratory testing program will be assigned which will be specific to the project requirements and the subsurface conditions observed. The testing program could include, but may not be limited to, moisture contents, unit dry weights, Atterberg Limits, compressive strength tests, and grain-size analyses.

Engineering Report. The results of our field and laboratory programs will be evaluated by a professional geotechnical engineer licensed in the State of Texas. Based on the results of our evaluation, an engineering report will be prepared which details the results of the testing performed and provides Boring Logs and a Boring Location Plan. The report will also provide geotechnical engineering recommendations which will address the following:

- Site and subgrade preparation; and
- Pavement design guidelines.

Schedule. We can initiate our field program within about seven to nine days following authorization to proceed, if site access and weather conditions will permit. We anticipate completion of our services and submittal of our final report within about three weeks after completion of our field services. In situations where information is needed prior to submittal of our report, we can provide verbal information or recommendations for specific project requirements directly after we have completed our field and laboratory programs.

3.0 COMPENSATION

For the scope of services outlined in this document, we estimate a cost of $14,600. This cost includes $1,000 per day for traffic control (Assuming two days of drilling). The cost of our services will not exceed these amounts without prior approval of the client.

Additional consultation (such as attendance on a project conference call, engineering analysis, etc.) requested will be performed on a time-and-materials basis according to the unit rates provided below. The fee to provide additional consultation services will be in excess of the above provided fee to complete the geotechnical services and will not be incurred without prior approval of the client.

Unit Rates		
Description	**Unit**	**Unit Price**
Principal	Hour	$180
Project Manager	Hour	$150
Project Engineer	Hour	$135
Staff Engineer	Hour	$110
Geotechnical technician with truck, portal to portal	Hour	$80
Clerical Staff	Hour	$50

4.0 AUTHORIZATION

Environmental Considerations. In an effort to reduce the potential for cross-contamination of subsurface media and exposure of site workers to contaminants that might be present at the site, Terracon requests that prior to mobilization to the site, the Client inform Terracon of known or suspected environmental conditions at or adjacent to the site. If adverse environmental conditions are present, additional expenses may be necessary to properly protect site workers and abandon borings that penetrate affected groundwater-bearing units.

If Terracon is not informed of potentially adverse environmental conditions prior to the geotechnical services, Terracon will not be responsible for cross-contamination of groundwater aquifers, soil contamination, or any modification to the environmental conditions to the site that may occur during our geotechnical services. The geotechnical scope of services described above is based on our assumption that the site does not pose environmental risks to the personnel conducting the geotechnical exploration services.

Agreement for Services. We have included a copy of our "Agreement for Services." If you agree to the conditions set forth in this document, please sign and return a copy of the accompanying Agreement for Services and an Access Agreement, if applicable, to our office. If you have any questions regarding the terms and conditions in the agreement, or any other aspect of this document, please feel free to contact us.

We appreciate the opportunity to provide this cost estimate and look forward to the opportunity of working with you.

Sincerely,
Terracon Consultants, Inc.
(Texas Firm Registration No. F-3272)

Brett A. Pope, P.E.
Project Manager

Lauren Williamson, P.E.
Project Engineer

Todd E. Swoboda, P.E.
Geotechnical Services Manager

Attachment: Agreement for Services

Terracon

Reference Number: P92142275

AGREEMENT FOR SERVICES

This **AGREEMENT** is between CivilCorp, LLC ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Old Richmond Road and Jennetta Street Reconstruction project ("Project), as described in the Project Information section of Consultant's Proposal dated December 12, 2014 ("Proposal") unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

1. **Scope of Services.** The scope of Consultant's services is described in the Scope of Services section of the Proposal ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. If Terracon subcontracts to other individuals or companies, then Terracon will collect from Client on the subcontractors' behalf. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.

2. **Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.

3. **Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.

4. **Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the Proposal unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.

5. **Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties. For a limited time period not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with Client, however Client understands that such reliance will not be granted until those parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee.

6. **LIMITATION OF LIABILITY.** CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF $50,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE INSURANCE COVERAGE, CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.

7. **Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of services on the project.

8. **Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. **Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance ($1,000,000); (ii) commercial general liability insurance ($1,000,000 occ / $2,000,000 agg); (iii) automobile liability insurance ($1,000,000 B.I. and P.D. combined single limit); and (iv) professional liability insurance ($1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

10. **CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.**

11. **Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.

12. **Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.

13. **Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client agrees to the level or amount of testing performed and the associated risk. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by services not performed due to a failure to request or schedule Consultant's services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods.

14. **Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Material unless specifically provided in the Services, and that Client is responsible for directing such disposition. In the event that test samples obtained during the performance of Services (i) contain substances hazardous to health, safety, or the environment, or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay Consultant the fair market value of this equipment and reasonable disposal costs. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site. Accordingly, Client waives any claim against Consultant and agrees to indemnify and save Consultant, its agents, employees, and related companies harmless from any claim, liability or defense cost, including attorney and expert fees, for injury or loss sustained by any party from such exposures allegedly arising out of Consultant's non-negligent performance of services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.

15. **Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.

16. **Utilities.** Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.

17. **Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site.

Consultant:	**Terracon Consultants, Inc.**	Client:	**CivilCorp, LLC**
By:	Brett Pope Date: **12/12/2014**	By:	Date:
Name/Title:	**Brett Pope, P.E.** **Project Engineer**	Name/Title:	
Address:	**11555 Clay Road, Suite 100** **Houston, Texas 77043**	Address:	
Phone:	**713.690.8989** Fax: **713.690.8787**	Phone:	Fax:

Reference Number: P92142275

RESOLUTION NO. R-1705

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, APPROVING THE RECONSTRUCTION OF OLD RICHMOND ROAD AND JENNETTA STREET, INCLUDING DRAINAGE IMPROVEMENTS, AND AUTHORIZING THE INTERIM CITY MANAGER TO SUBMIT A REQUEST FOR ASSISTANCE TO FORT BEND COUNTY AND TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, ALL NECESSARY DOCUMENTATION REGARDING SAME IN AN AMOUNT NOT TO EXCEED $500,000.00.

* * * * *

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

Section 1. The City Council of the City of Rosenberg hereby approves the reconstruction of Old Richmond Road from the approximate limits of 8th Street to east of Hardcastle Street and Jennetta Street from the approximate limits of Old Richmond Road to Avenue H, including drainage improvements. Additional drainage system improvements for the dead end portion of Avenue F, east of Jennetta Street are also authorized, if funding is available.

Section 2. The City Council of the City of Rosenberg hereby authorizes the Interim City Manager to submit a request for assistance to Fort Bend County and to negotiate and execute, for and on behalf of the City, all necessary documentation regarding same in an amount not to exceed $500,000.00.

PASSED, APPROVED, AND RESOLVED this 15th day of October 2013.

ATTEST:

Linda Cernosek, **CITY SECRETARY**

CITY OF ROSENBERG, TEXAS

APPROVED:

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

RESOLUTION NO. R-1693

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, APPROVING THE FY2014 CAPITAL IMPROVEMENT PLAN.

* * * * *

WHEREAS, the City Council of the City of Rosenberg has identified its priorities for Capital Improvement Projects; and,

WHEREAS, the Interim City Manager has recommended twenty-nine (29) Capital Improvement Projects to be addressed in FY2014; and,

WHEREAS, the FY2014 Budget includes funding for some of the recommended Capital Improvement Projects and recommendations for funding other projects; now, therefore,

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

Section 1. City Council hereby approves the FY2014 Capital Improvements Plan for the City of Rosenberg which is attached hereto as Exhibit "A" .

Section 2. A preliminary funding allocation for specific Capital Improvement Projects is attached hereto as Exhibit "B".

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

ATTEST:

Linda Cernosek, **City Secretary**

APPROVED:

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

CITY OF ROSENBERG • ROSENBERG, TEXAS •

FY2014 CAPITAL IMPROVEMENT PROJECTS

GENERAL PROJECTS

City Radio/Communication System Replacement

Parking Facilities in Downtown

Renovate Downtown Building

Replace 1995 Gradall

STREETS AND DRAINAGE PROJECTS

Airport Avenue Project – Phase One

Bamore Road – Phase Three

Bamore Road – Phase Four

Bryan Road – Phase One

Drainage Improvements East of Lane Drive

Dry Creek Drainage Improvements

FM 2218 from US Highway 59 to State Highway 36 (TxDOT)

Old Richmond Road Reconstruction

One-Way Pairs Project – Avenue H and Avenue I (TxDOT)

Seabourne Creek Drainage – Phase Three

Sidewalks – Replace/Removal of Existing

Spur 10 Extension to State Highway 36 (TxDOT)

Street Overlay and Reconstruction Program

US Highway 59 Expansion from FM 762 to Spur 10 (TxDOT)

WATER AND WASTEWATER PROJECTS

Alternate Water Project

Backup and Portable Generators for Utility System

FM 2977 Water Line Extension

North Side Sanitary Sewer Improvements - Phase Nine

Spacek Road Sewer Lift Station

Spacek Road Sewer Line

Terry High School Reclaimed Water Project

Utility Adjustments for US 59/I-69 Project (TxDOT)

Utility Extensions to serve FM 2218 Rosenberg Business Park

Utility Replacement/Relocation for Avenue H, Avenue I and Downtown

Water Plant No. 5 Improvements

FUNDING ALLOCATION FOR FY2014 CAPITAL IMPROVEMENT PROJECTS

Projects with Available Funding

General Projects:

City Radio/Communications System Replacement -
$2,700,000 – 2012A COs, 2013 COs, Homeland Security Grant

Parking Facilities in Downtown -
$250,000 – RDC Funding

Renovate Downtown Building -
$900,000 – 2010B COs, RDC Funding

Replace Gradall -
$260,000 – Fleet Replacement Fund

Street and Drainage Projects:

Airport Avenue Project – Phase One –
$2,712,280 – 2013 COs, County Mobility Project Fund

Bamore Road – Phase Three -
$2,444,274 – 2007 COs, 2013 COs, County Mobility Project Fund

Bamore Road – Phase Four -
$1,662,024 – 2013 COs, County Mobility Projects Fund, RDC Funds

Dry Creek Drainage Improvements (Phased) -
$1,593,000 – 2007 Bond Funds, 2014 Bond Funds

FM 2218 from US Highway 59 to State Highway 36 –
TxDOT Funding

Old Richmond Road Reconstruction –
$500,000 – 2013 COs

One-Way Pairs Project – Avenue H and Avenue I –
TxDOT Funding

Seabourne Creek Drainage – Phase Three –
$342,700 – 2010 COs, 2012 COs, 2013 COs, FY2012 Street Program, FY2013 Street Program

Sidewalks – Replace/Removal of Existing -
$250,000 - 2013 COs

Spur 10 Extension to State Highway 36 –
TxDOT Funding

Street Overlay and Reconstruction Program –
$300,000 – FY2013 Operating Budget

US Highway 59 Expansion from FM762 to Spur 10 –
TxDOT Funding

Water and Wastewater Projects:

Backup and Portable Generators for Utility System –
$800,000 – 2012 COs, Fort Bend County Grant, Water /Wastewater Supplemental Fund

FM 2977 Water Line Extension –
$700,000 – FM 2977 Water Improvement Fund, Impact Fee Fund

North Side Sanitary Sewer Improvements - Phase Nine -
$288,800 – Community Development Block Grant, Water/Wastewater Fund

Spacek Road Sewer Lift Station –
$300,000 – Bryan/Spacek Road Impact Fee Fund

Terry High School Reclaimed Water Project –
$1,555,000 – 2010B COs, 2012 COs

Utility Adjustments for US 59/I-69 Project –
TxDOT Funding

Utility Replacement/Relocation for Avenue H, Avenue I, and Downtown (Sewer) –
$1,145,355 – 2013 COs

Water Plant No. 5 Improvements –
$3,500,000 – 2012 COs, 2013 COs, Impact Fee Fund

Projects Not Funded or Partially Funded

Street and Drainage Projects:

Bryan Road – Phase One

Drainage Improvements East of Lane Drive

Water and Wastewater Projects:

Alternate Water Project

Spacek Road Sewer Line

Utility Replacement/Relocation for Avenue H, Avenue I, and Downtown (Water)

Utility Extensions to serve FM 2218 Rosenberg Business Park

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 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.
There were no comments from the audience.

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 MEETING MINUTES FOR AUGUST 27, 2013, AND REGULAR MEETING MINUTES FOR SEPTEMBER 03, 2013, AND REGULAR MEETING MINUTES FOR SEPTEMBER 17, 2013.**

B. **CONSIDERATION OF AND ACTION ON AUTHORIZATION TO SELL THE PROPOSED LIST OF SURPLUS PROPERTY ITEMS TO BE INCLUDED IN THE ON-LINE AUCTION.**
Executive Summary: For City Council's consideration, staff has provided items on the attached list to be included in the City-wide auction to retire surplus equipment, confiscated items, and other salvaged property. The on-line auction is ongoing with PropertyRoom.Com.

Staff recommends approval of the surplus list as presented.

C. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1704, A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, AN AGREEMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR SANITARY SEWER IMPROVEMENTS – PHASE IX, BY AND BETWEEN THE CITY AND FORT BEND COUNTY, IN THE AMOUNT OF $177,401.00.**
Executive Summary: On March 19, 2013, City Council approved the Community Development Block Grant (CDBG) Fund application for the design and construction of a sanitary sewer improvement project named North Side Sanitary Sewer Improvements – Phase IX (Project). On August 20, 2013, City Council approved Resolution No. R-1683 amending the Project budget. CDBG is providing $177,401.00 for the construction of the Project and the City will provide local matching funds in the amount of $111,400.00 for construction, engineering services and contingencies. The Project will address an ongoing infrastructure deficiency and will alleviate inflow and infiltration and overcapacity issues in the existing sanitary sewer infrastructure for the entire northern portion of the City. The executed Agreement will be returned to the Fort Bend County Community Development Department for submission to Commissioners Court for approval and execution.

The Agreement is the standard Agreement issued by CDBG, and staff recommends approval of Resolution No. R-1704 providing authorization for the Interim City Manager to execute the Agreement.

D. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1705, A RESOLUTION APPROVING THE RECONSTRUCTION OF OLD RICHMOND ROAD AND JENNETTA STREET, INCLUDING DRAINAGE IMPROVEMENTS, AND AUTHORIZING THE INTERIM CITY MANAGER TO SUBMIT A REQUEST FOR ASSISTANCE TO FORT BEND COUNTY AND TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY, ALL NECESSARY DOCUMENTATION REGARDING SAME IN AN AMOUNT NOT TO EXCEED $500,000.00.**
Executive Summary: The FY2014 Capital Improvement Project list approved by City Council on September 17, 2013, includes the reconstruction of Old Richmond Road. This item has been placed on the agenda to offer City Council the opportunity to consider a Resolution approving the reconstruction of both Old Richmond Road and Jennetta Street; and requesting assistance from Fort Bend County Road and Bridge. The existing roadways

would be reconstructed by pulverizing the existing pavement, adding and compacting base material, followed by a hot-mix asphalt overlay. Drainage improvements consisting of the replacement of existing culvert pipes and ditch cleaning in areas where necessary would also be included. The project scope includes Old Richmond Road from 8th Street to east of Hardcastle Street and Jennetta Street from Old Richmond Road to Avenue H. Drainage system improvements for the dead end portion of Avenue F, east of Jennetta Street would also be included, if funding allows.

The 2013 Certificates of Obligation allocated $500,000.00 for this project.

Staff recommends the approval of Resolution No. R-1705, approving the reconstruction of Old Richmond Road and Jennetta Street, including said drainage improvements and authorizing the Interim City Manager to submit a request for assistance to Fort Bend County and to negotiate and execute, all necessary documentation in an amount not to exceed $500,000.00.

E. CONSIDERATION OF AND ACTION ON ORDINANCE NO. 2013-41, AN ORDINANCE AMENDING THE CODE OF ORDINANCES BY DELETING SECTIONS 6-29, 6-82, 6-126, AND 6-135 OF CHAPTER 6 THEREOF ENTITLED "BUILDINGS AND BUILDING REGULATIONS", AND ESTABLISHING THEREFOR NEW SECTIONS 6-29, 6-82, 6-126, AND 6-135 OF CHAPTER 6 REGARDING ADOPTION OF INTERNATIONAL EXISTING BUILDING CODE, 2012 EDITION, DWELLING OUTLETS, ADOPTION OF THE NATIONAL ELECTRICAL CODE, 2011 EDITION, CONDUCTORS, AND DEFINITION AND REMOVAL OF TEMPORARY SERVICE POLES; DELETING ARTICLE VII OF CHAPTER 6 AND ESTABLISHING THEREFOR A NEW ARTICLE VII ENTITLED "SWIMMING POOL AND SPA CODE"; DELETING ARTICLE XIV OF CHAPTER 6 THEREOF IN ITS ENTIRETY AND ESTABLISHING THEREFOR A NEW ARTICLE XIV THEREOF ENTITLED "RESERVED"; AND DELETING ARTICLE III OF CHAPTER 16 ENTITLED "RESERVED" AND ESTABLISHING THEREFOR A NEW ARTICLE III, ENTITLED "CONTRACTOR REGISTRATION", ESTABLISHING REQUIREMENTS FOR REGISTRATION OF CONTRACTORS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

Executive Summary: Staff presented the final code adoptions and amendments to City Council at the September 24, 2013, City Council Workshop meeting. This included:

1. The 2012 International Existing Building Code, 2012 International Swimming Pool and Spa Code, and the 2011 National Electrical Code.
2. The Building and Standards Board's recommendation to delete in its entirety the 2006 International Property Maintenance Code (IPMC), thus deleting the IPMC from our ICC group of Codes. Along with Code adoption recommendations, and
3. Two (2) amendments to Article III, titled "Electricity" Sections 6-82 (b)(1), Section 6-135 (f), and replacing Article III of Chapter 16 with a new Article III, Section 16-61, titled "Contractor Registration".

Staff recommends approval of Ordinance No. 2013-41 as presented.

F. CONSIDERATION OF AND ACTION ON A FINAL PLAT OF RIVER RUN AT THE BRAZOS SECTION FIVE, BEING A SUBDIVISION OF 8.3492 ACRES OUT OF THE WM. LUSK SURVEY, A-276, IN FORT BEND COUNTY, TEXAS, (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 158); 39 LOTS, 2 BLOCKS.

Executive Summary: The proposed Final Plat of River Run at the Brazos Section Five is located off of Valley Ridge Drive at Messina Lane, in the southern part of the River Run at the Brazos development. It is in the City's Extraterritorial Jurisdiction (ETJ) and in Fort Bend County Municipal Utility District No. 158 (MUD No. 158).

The approved Land Plan calls for fifty-foot (50') lots in this part of the development. The proposed Plat contains thirty-nine (39) single-family residential lots. All of the lots are a minimum of fifty feet (50') or greater in width in accordance with the approved Land Plan. In fact, approximately half of the lots in the proposed subdivision are sixty feet (60') or greater in width. The proposed Plat is above and beyond the minimum requirement of fifty foot (50') lots. At build-out, River Run at the Brazos will consist of 287 lots that are sixty feet (60') or

greater in width and as many as 279 lots that are fifty feet (50') or greater in width. This is in compliance with the Ordinance at the time the development was initiated and, so far, all subdivisions in the development have been in accordance with the approved Land Plan.

The proposed Final Plat is consistent with the approved Land Plan and with the "Subdivision" Ordinance of the City of Rosenberg. The Preliminary Plat of this subdivision was approved by the Planning Commission on July 24, 2013. The Planning Commission recommended the Final Plat for approval to City Council on September 25, 2013. Staff recommends approval of the Final Plat of River Run at the Brazos Section Five.

G. CONSIDERATION OF AND ACTION ON A FINAL PLAT OF STRIPES ON SOUTHGATE, A SUBDIVISION OF 6.835 ACRES OR 297,731 SQUARE FEET OF LAND BEING A PARTIAL REPLAT OF LOTS 1 AND 2 AND THE EAST 100 FEET OF LOT 3, KOVAR SUBDIVISION, RECORDED UNDER VOL. 196, PG. 36, PLAT RECORDS OF FORT BEND COUNTY, IN THE HENRY SCOTT LEAGUE, ABSTRACT NO. 81, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS; 1 BLOCK, 2 RESERVES.

Executive Summary: The Final Plat of Stripes on Southgate is a proposed replat of Lots 1, 2, and 3 of Kovar Subdivision. The property was originally platted in 1941. The Plat is located in the City, at the intersection of Southgate and State Highway 36. It consists of two (2) proposed reserves and 6.8 acres. The purpose of the Plat is to develop a convenience store with fueling stations on Reserve "A" at the southwest corner.

While a convenience store with fueling stations can be developed on this tract, it must comply with all applicable regulations including, but not limited to, parking, parking setbacks, landscaping, building setbacks, etc. It is important to note, however, that this Agenda item is for the approval of the subdivision and not any subsequent development. The Plat and creation of two (2) reserves will also require the extension of a water line from State Highway 36 to Reserve "B".

The proposed Plat complies with all applicable regulations of the City of Rosenberg. A Preliminary Plat of this subdivision was approved by the Planning Commission on July 24, 2013, following a public hearing, as required by State law. The Planning Commission subsequently recommended approval to City Council of the Final Plat on September 25, 2013. Staff recommends approval of the Final Plat of Stripes on Southgate.

H. CONSIDERATION OF AND ACTION ON THE REMOVAL OF THE CITY RECYCLING CENTER, GENERALLY LOCATED AT 3720 AIRPORT AVENUE.

Executive Summary: At the September 24, 2013 Workshop session, the City Council directed staff to remove the Recycling Center at 3720 Airport Avenue. The City Attorney recommended staff bring this item before the City Council in regular session in order for official action to be taken.

I. CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1703, A RESOLUTION PROVIDING ENDORSEMENT OF A GRANT APPLICATION AND AUTHORIZATION FOR THE MAYOR TO EXECUTE, FOR AND ON BEHALF OF THE CITY, ACCEPTANCE OF THE HOMELAND SECURITY GRANT PROGRAM (HSGP)-STATE HOMELAND SECURITY PROGRAM (SHSP) AWARD TO THE CITY IN THE TOTAL AMOUNT OF $77,204.00.

Executive Summary: The Homeland Security Grant Program (Grant) provides funds to address the needs of local emergency responders. The City of Rosenberg Police Department made application earlier this year to expand the communications system. This Grant will be used to purchase additional radio equipment and to expand the current capabilities in radio communications. This Grant includes two (2) 'suitcase' type radio repeaters that Fire and Police personnel can deploy at crime scenes, fire scenes, big box stores and warehouses to ensure that field units have clear radio communications and that the building structure does not interfere with their communications. There is a need to add this capability with the growing number of large buildings being planned and built in the City. These large metal buildings can greatly weaken the radio signals of the field units; the addition of field deployable radio repeater units will ensure that communications are not lost. The City has been awarded $77,204.00 for this communications improvement project.

Staff recommends approval of Resolution No. R-1703, providing endorsement of a grant application and authorization for the Mayor to execute acceptance of the Homeland Security

Grant Program (HSGP)-State Homeland Security Program (SHSP) Award to the City in the total amount of $77,204.00.

Action: Councilor McConathy made a motion, seconded by Councilor Benton to approve Items A, B, E, F, H and I on the Consent Agenda and pull Items C, D, and G and put those Consent Agenda Items on the Regular Agenda for discussion. The motion carried by a unanimous vote of those present.

REGULAR AGENDA

2A. ***This item was previously Item C on the Consent Agenda.***
CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1704, A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, AN AGREEMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR SANITARY SEWER IMPROVEMENTS – PHASE IX, BY AND BETWEEN THE CITY AND FORT BEND COUNTY, IN THE AMOUNT OF $177,401.00.
Executive Summary: On March 19, 2013, City Council approved the Community Development Block Grant (CDBG) Fund application for the design and construction of a sanitary sewer improvement project named North Side Sanitary Sewer Improvements – Phase IX (Project). On August 20, 2013, City Council approved Resolution No. R-1683 amending the Project budget. CDBG is providing $177,401.00 for the construction of the Project and the City will provide local matching funds in the amount of $111,400.00 for construction, engineering services and contingencies. The Project will address an ongoing infrastructure deficiency and will alleviate inflow and infiltration and overcapacity issues in the existing sanitary sewer infrastructure for the entire northern portion of the City. The executed Agreement will be returned to the Fort Bend County Community Development Department for submission to Commissioners Court for approval and execution.

The Agreement is the standard Agreement issued by CDBG, and staff recommends approval of Resolution No. R-1704 providing authorization for the Interim City Manager to execute the Agreement.

Key discussion points:

- John Maresh, Assistant City Manager read the Executive Summary regarding Resolution No. R-1704.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to approve Resolution No. R-1704, a Resolution authorizing the Interim City Manager to execute, for and on behalf of the City, an Agreement for Community Development Block Grant Funding for Sanitary Sewer Improvements – Phase IC, by and between the City and Fort Bend County, in the amount of $177,401.00.

Questions/Comments:

- Councilor Benton stated this is good news for the people in District 1 on the north side of Rosenberg. He wanted the people to know about this project.

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

2B. ***This item was previously Item D on the Consent Agenda.***
CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1705, A RESOLUTION APPROVING THE RECONSTRUCTION OF OLD RICHMOND ROAD AND JENNETTA STREET, INCLUDING DRAINAGE IMPROVEMENTS, AND AUTHORIZING THE INTERIM CITY MANAGER TO SUBMIT A REQUEST FOR ASSISTANCE TO FORT BEND COUNTY AND TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY, ALL NECESSARY DOCUMENTATION REGARDING SAME IN AN AMOUNT NOT TO EXCEED $500,000.00.
Executive Summary: The FY2014 Capital Improvement Project list approved by City Council on September 17, 2013, includes the reconstruction of Old Richmond Road. This item has been placed on the agenda to offer City Council the opportunity to consider a Resolution approving the reconstruction of both Old Richmond Road and Jennetta Street; and requesting assistance from Fort Bend County Road and Bridge. The existing roadways would be reconstructed by pulverizing the existing pavement, adding and compacting base material, followed by a hot-mix asphalt overlay. Drainage improvements consisting of the replacement of existing culvert pipes and ditch cleaning in areas where necessary would also be included. The project scope includes Old Richmond Road from 8th Street to east of Hardcastle Street and Jennetta Street from Old Richmond Road to Avenue H. Drainage system improvements for the dead end portion of Avenue F, east of Jennetta Street would

also be included, if funding allows.

The 2013 Certificates of Obligation allocated $500,000.00 for this project.

Staff recommends the approval of Resolution No. R-1705, approving the reconstruction of Old Richmond Road and Jennetta Street, including said drainage improvements and authorizing the Interim City Manager to submit a request for assistance to Fort Bend County and to negotiate and execute, all necessary documentation in an amount not to exceed $500,000.00.

Key discussion points:

- John Maresh read the Executive Summary regarding Resolution No. R-1705.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to approve Resolution No. R-1705, a Resolution approving the reconstruction of Old Richmond Road and Jennetta Street, including drainage improvements, and authorizing the Interim City Manager to submit a request for assistance to Fort Bend County and to negotiate and execute, for and on behalf of the City, all necessary documentation regarding same in an amount not to exceed $500,000.00.

Questions/Comments:

- Councilor Benton asked if funds were available would the bore go under the storage or behind Fiesta and will the road be widened? Will the drainage improve?
- Charles Kalkomey stated it would go under Fiesta and go by Silverado into the big storm drainage.
- John Maresh stated the road might be a couple of feet wider but will remain essentially the same. The drainage along Old Richmond Road will improve. There are some collapsed pipes.
- Councilor Pena stated the road needs to be fixed and we know there is a water issue there. He thanked John Maresh, Charles Kalkomey and Commissioner Morrison for their assistance in getting this project done.
- Councilor McConathy thanked Councilor Pena for spearheading the project.

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

2C. ***This item was previously Item G on the Consent Agenda.***

CONSIDERATION OF AND ACTION ON A FINAL PLAT OF STRIPES ON SOUTHGATE, A SUBDIVISION OF 6.835 ACRES OR 297,731 SQUARE FEET OF LAND BEING A PARTIAL REPLAT OF LOTS 1 AND 2 AND THE EAST 100 FEET OF LOT 3, KOVAR SUBDIVISION, RECORDED UNDER VOL. 196, PG. 36, PLAT RECORDS OF FORT BEND COUNTY, IN THE HENRY SCOTT LEAGUE, ABSTRACT NO. 81, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS; 1 BLOCK, 2 RESERVES.

Executive Summary: The Final Plat of Stripes on Southgate is a proposed replat of Lots 1, 2, and 3 of Kovar Subdivision. The property was originally platted in 1941. The Plat is located in the City, at the intersection of Southgate and State Highway 36. It consists of two (2) proposed reserves and 6.8 acres. The purpose of the Plat is to develop a convenience store with fueling stations on Reserve "A" at the southwest corner.

While a convenience store with fueling stations can be developed on this tract, it must comply with all applicable regulations including, but not limited to, parking, parking setbacks, landscaping, building setbacks, etc. It is important to note, however, that this Agenda item is for the approval of the subdivision and not any subsequent development. The Plat and creation of two (2) reserves will also require the extension of a water line from State Highway 36 to Reserve "B".

The proposed Plat complies with all applicable regulations of the City of Rosenberg. A Preliminary Plat of this subdivision was approved by the Planning Commission on July 24, 2013, following a public hearing, as required by State law. The Planning Commission subsequently recommended approval to City Council of the Final Plat on September 25, 2013. Staff recommends approval of the Final Plat of Stripes on Southgate.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to approve a Final Plat of Stripes on Southgate, a subdivision of 6.835 acres or 297,731 square feet of land being a partial replat of Lots 1 and 2 and the east 100 feet of Lot 3, Kovar Subdivision, recorded under Vol. 196, Pg. 36, Plat Records of Fort Bend County, in the Henry Scott League, Abstract No. 81, City of Rosenberg,

Sec. 11.06. - Sale or lease of city property.

(a) Before the city makes any sale or lease or contract for the sale or lease of any property belonging to the city, either in the form of land, real estate or other properties, having an estimated value of one thousand dollars or less, opportunity shall be given for open competition under such rules and regulations as the city council may prescribe.

(b) In the sale or lease of property having an estimated value of more than one thousand dollars, the property shall be advertised for sale or lease and bids advertised in a newspaper of general circulation published in the City of Rosenberg; the contract of sale or lease shall be awarded to the highest responsible bidder, either at auction or upon sealed bids, or upon such other terms and conditions not inconsistent with express provisions of law and this Charter, as the city council shall order; provided the city council shall have the power to reject all bids and advertise again. These same procedures shall be used whenever the city council acts as transfer agent.

Therefore, in order for the City Council to consider the sale, and in accordance with requirements of the Texas Local Government Code, staff is recommending the following: (1) have the sites appraised to determine their fair market value; (2) prepare and publish a Notice of Sale (to be published at least twice in a paper of general circulation) to allow all interested parties the opportunity to bid on the properties; (3) hold a public bid opening as advertised; and, (4) offer the bids for formal acceptance and approval by City Council at least fourteen (14) days after the date of the second publication of the Notice of Sale.

Staff has reviewed the potential sale of the lots and finds nothing in the acquisition process that would prevent their sale. In addition, the City has not demonstrated a future need for the lots. The sale of the lots would, in fact, reduce the City's property maintenance costs.

Staff estimates that this process could take approximately ninety (90) days, and is seeking direction from City Council with regard to the proposed sale.

Key discussion points:

- Matt Fielder, Economic Development Director gave an overview of the item as stated in the Executive Summary and outlined the procedure of the property sale.

Questions/Comments:

- Councilor Benton asked if there would be room for TxDOT to widen the bridge in the future if it was built up to the bridge.
- Charles Kalkomey, City Engineer stated there should be room to do that but he was not sure.
- Mayor Morales requested the information brought back to keep the process moving.
- Councilor McConathy asked staff to provide a cost savings for mowing when the item is brought back to Council.
- Councilor Euton asked about possible expansion of the right of way to not require the City to reacquire property.
- Councilor Pena stated this would be a good project and would help the area and he hopes Council considers moving forward on the project.

Action: Councilor Benton made a motion, seconded by Councilor Bolf to accept the recommendation contingent on the concerns and the answers to those concerns and staff to provide pricing information on the bridge widening and mowing cost. The motion carried by a unanimous vote of those present.

5. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1693, A RESOLUTION APPROVING THE FY2014 CAPITAL IMPROVEMENT PLAN.**

Executive Summary: During the FY2014 Budget process, City Council determined its priorities for Capital Improvement Projects (CIP). Staff is recommending that a total of twenty-nine (29) projects be addressed in FY2014. Exhibit "A" to Resolution No. R-1693 lists the twenty-nine (29) individual projects.

There are existing funds for twenty-four (24) of the capital projects that will be addressed in FY2014. The remaining capital projects are not funded or not completely funded. Funding for these projects may include the issuance of Certificates of Obligation, use of fund balance, use of remaining funds from other projects as they are completed, or other funding sources. Funding for these projects will

be addressed during FY2014. Exhibit "B" provides the allocation of funds for specific projects and the projects that need additional funding.

Approval of Resolution No. R-1693 will establish the City's FY2014 Capital Improvements Plan. Staff recommends approval of Resolution No. R-1693.

Key discussion points:

- Joyce Vasut gave an overview of the item regarding Resolution No. R-1693.

Action: Councilor McConathy made a motion, seconded by Councilor Euton to approve Resolution R-1693, a Resolution approving the FY2014 Capital Improvement Plan.

Questions/Comments:

- Councilor Euton stated on the utility replacement relocation for Avenue H, Avenue I and downtown, it is showing that it is partially funded. What is left?
- Joyce Vasut stated the sewer portion is in the top list and is funded. The water portion is in the non-funded list. That will depend on whether the entire one way pairs project moves forward and then Fort Bend County will reimburse us for the sewer replacements and we could use that reimbursement to do the water lines, if not we would have to look for other funding for the water lines.
- Councilor Benton asked if Council has the opportunity to vote up or down on these items as the funding is allocated.
- Joyce Vasut stated the projects that have available funding, which is the majority, you will not be voting on again because the funding is already in place. If any type of contract needed to be approved for that project that would come back to Council.
- Councilor Benton asked if sidewalk replacement and removal would come back.
- Joyce Vasut stated there is a plan for the first phase of sidewalks and $250,000 in place for the first phase. That would come back when we move forward with the project and get bids for that.
- Councilor Benton referenced the renovation of the downtown building.
- Joyce Vasut stated that project is divided into phases and City Council previously approved that the City could move forward. Phase 1 is underway and we would continue with the other phases.
- Councilor Benton asked what Phase 1 was.
- Joyce Vasut stated Phase 1 includes interior demolition and roof repair.
- Councilor McConathy stated the architect was supposed to come back with an assessment of the demolition.
- Mayor Morales stated after the demolition and the roof repair they will come back and do an assessment. Funds are available to move forward depending on the cost.
- Councilor Benton stated he wants to make sure we have that oversight and are not writing blank checks and we are afforded the opportunity to discuss some of the items again.
- Joyce Vasut clarified that Council is approving the list and these are the items we will work on during FY2014. Before we spend monies we have to do that in accordance with policies and state law and for contracts to be approved it all has to come back to Council.
- Councilor Pena referenced Old Richmond Road and asked how the $500,000 is being allocated to the project.
- Joyce Vasut explained that originally for the Old Richmond Road reconstruction project there was $500,000 in the 2013 bond funds. The plan at that time was that $500,000 was just for engineering to reconstruct the entire road. We have since rethought because we do not have any funds for the construction of that road. Based on staff discussion and other input, we have decided that the $500,000 would be used toward reconstructing the existing asphalt and improving the current road with the $500,000 we have and not put it on hold until additional funding is available. Fort Bend County Road and Bridge would assist in that project.
- Councilor McConathy stated there is a fresh overlay over a portion of Old Richmond Road starting about where Sydney Street is going to a portion of the road behind Fiesta. Will there be a continuation of that or is that just a patch?
- John Maresh explained that was just a patch where the shoulders were breaking off and it was a traffic hazard. We had the County add in some asphalt to level it up.
- Mayor Morales asked if there are funds in the overlay to address some type of drainage improvement.

- John Maresh stated he and Charles Kalkomey, City Engineer have looked at the area around Jennetta Street and the dead end of Avenue F and we have serious drainage issues there. We believe if County Road and Bridge were willing to assist us with the reconstruction of the project going back with an asphalt road we would have to add some base material. We believe there would be some money available to try to do some drainage improvements. We may not be able to completely solve all of it but we would like to try to do as much as we can in that area with available funds.
- Mayor Morales stated the he thinks this Council realizes that what we are doing is a temporary fix. It is funding at this time.
- John Maresh stated if we do what we are looking at doing that should be fairly long term.
- Councilor Benton asked if Old Richmond Road would be removed from the bond election list.
- Mayor Morales stated that is being reviewed by the bond committee.
- Robert Gracia, Interim City Manager stated that is correct. As we mentioned at a Council Workshop Meeting we have delayed the bond issue. We are doing a complete assessment of the needs and will report back to City Council with our recommendation.
- Councilor Benton asked about Phase 1 of Bryan Road and what that means.
- John Maresh stated that is engineering and some funds for construction. That is something we need to study and bring information back to Council for further consideration. There are some Mobility Funds from 2007 already allocated to Phase 1 of that project and there are some additional County Mobility Funds in what is proposed for the referendum the County will have in 2013.
- Councilor Benton asked if Bamore Road will be finished in the next twelve months.
- John Maresh stated that Phase 3 is under construction. Phase 4 engineering is being worked on. There are some drainage easements that have to be acquired in order to drain the last phase. If the easements can be acquired we may not be complete but well under construction.
- Councilor Pena stated as bad as we need parking downtown and we will need Old Richmond Road for access to downtown and other businesses; how did we allocate the money to renovate a building downtown that is not really something with real value in spending $900,000. He has a problem understanding how it got in the list.
- Joyce Vasut explained it is in the list because it was a project that was approved and already funded in the 2010 bond funds. At that time it was a priority of council and was included in a bond issue; therefore, the funding is available. We have had the funding for three years. One of our big goals in this list is to complete all the projects that have been started and not completed. We have twenty-four that are funded and need to be completed. That was one of our priorities when we put this list together. Bonds were issued for that project and we have money designated for that project and that is why it is in this list.
- Councilor Benton stated the project was started and asked if the demolition was the start of that project. The demolition was exploratory, is that correct.
- Matt Fielder, Economic Development Director explained the history of the project as he knows it was that several years ago a determination was made that the City currently leases the fire administration offices and they would be moved to that building. Bonds were sold for that purpose, however; after doing so City Council changed their mind and renewed the lease on the fire administration offices for several more years. We had the money and the building. At that time one of the RDC members suggested it would be a good place for RDC to office and that is how it came together and was put on the list.
- Mayor Morales suggested the breakdown be given on the bond in 2010 and that $500,000 was allocated for that building and it is to be used on that building.
- Joyce Vasut stated when we issued the 2010 bonds that was one of the projects included on that list. At that time, it was intended for fire administration. The usage of that building has changed. That is what the bonds were issued for and that is what we have the money for. When Council approves the notice of intent to issue bonds it is stated what the bonds will be used for. We have to follow the notice of intent and the actual bond ordinance.
- Mayor Morales stated the demolition and roof we are doing now is part of the bond money being used for that which was approved by Council.
- Councilor McConathy asked if it would matter, as in the case of Bryan Road, in 2007 when the project was part of the County's Mobility Election it was described as a project to convert a two lane to a three lane. On our project list today it is a four lane. Does that make a difference?
- Joyce Vasut stated she does not know and would have to check with our legal bond counsel.
- Mayor Morales reiterated that if Council approves the renovation for the demolition and the

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.

CITY OF ROSENBERG
SPECIAL CITY COUNCIL MEETING MINUTES

On this the 24th day of October 2012, the City Council of the City of Rosenberg, Fort Bend County, Texas, met in a Special Session, at the Rosenberg Civic Center located at 3825 Highway 36 South, Rosenberg, Texas.

PRESENT

Vincent M. Morales, Jr.	Mayor
William Benton	Councilor at Large, Position 1
Cynthia McConathy	Councilor at Large, Position 2
Juan Salazar	Councilor, District 1
Joe G. Segura	Councilor, District 2
Dwayne Grigar	Councilor, District 3
Tom Suter	Councilor, District 4

STAFF PRESENT

Jack Hamlett	City Manager
Cyndy Powell	Assistant to the City Manager
Melissa Pena	Project Director
Tiffany Ybarra	Administrative Assistant

CALL TO ORDER
Mayor Morales called the meeting to order at 6:10 p.m.

AGENDA

1. **HEAR PRESENTATIONS ON ENGINEERING SERVICES FOR THE AIRPORT AVENUE, BRYAN ROAD, AND OLD RICHMOND ROAD PROJECTS FROM:**
   1) **CivilCorp, LLC,**
   2) **IDS Engineering Group, and**
   3) **Landtech Consultants, Inc.**

   Key discussion points:
   Representatives from all three (3) firms gave their presentations regarding the firm's qualifications and experience. After each the presentation, representatives answered questions and provided additional information to the City Council. All three (3) firms were given the same twelve (12) questions.

   Action: No action taken.

   RECESS SPECIAL SESSION, RECONVENE SESSION.
   Council recessed the Special Session at 8:55 p.m. and reconvened the Session at 9:01 p.m.

2. **CONSIDERATION OF AND ACTION ON SELECTION OF ENGINEERING FIRMS FOR THE AIRPORT AVENUE, BRYAN ROAD, AND OLD RICHMOND ROAD PROJECTS.**

   Key discussion points:
   After a brief discussion regarding how each firm ranked, Council would choose the top three (3) firms for the road projects.

   Councilor Suter made a motion, seconded by Councilor Segura to select Costello Inc., for the Airport Avenue Project, Landtech Consultants, Inc., for the Bryan Road Project, and CivilCorp, LLC for the Old Richmond Road Project.

The motion passed 6-1 as follows: ***Yeses: Mayor Morales, Councilor McConathy, Councilor Salazar, Councilor Segura, Councilor Grigar, and Councilor Suter. Abstention: Councilor Benton.***

Mr. Hamlett will negotiate contracts with each firm and bring the contracts back to City Council for approval.

3. ADJOURNMENT.

There being no further business, Mayor Morales adjourned the meeting at 9:07 p.m.

Tiffany Ybarra, Administrative Assistant

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
6	**Resolution No. R-1899 - Awarding Bid No. 2014-16 for Sanitary Sewer Improvements along US Highway 59/I-69**

ITEM/MOTION

Consideration of and action on Resolution No. R-1899, a Resolution awarding Bid No. 2014-16 for construction of the Sanitary Sewer Improvements along US Highway 59/I-69; and authorizing the City Manager to negotiate and execute, for and on behalf of the City, appropriate documents and/or agreements regarding same.

FINANCIAL SUMMARY

Annualized Dollars:

[X] One-time
[ ] Recurring
[ ] N/A

Budgeted:

[X] Yes [ ] No [ ] N/A

Source of Funds:

515-0000-600-7031 (CP1508)

ELECTION DISTRICT

[ ] District 1
[X] District 2
[ ] District 3
[ ] District 4
[ ] City-wide
[ ] N/A

MUD #: N/A

SUPPORTING DOCUMENTS:

1. Bid Summary Form
2. Proposal
3. Kalkomey Correspondence w/out Attachment – 12-08-14
4. Resolution No. R-1899
5. Project Location Map
6. Resolution No. R-1801 – 06-17-14
7. City Council Meeting Minute Excerpt – 06-17-14

APPROVALS

Submitted by:

John Maresh
Assistant City Manager of Public Services

Reviewed by:

[X] Exec. Dir. of Administrative Services
[ ] Asst. City Manager of Public Services
[ ] City Attorney
[ ] City Engineer
[ ] (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

Bids were received on Wednesday, November 05, 2014, for construction of the Sanitary Sewer Improvements along US 59/I-69, necessary to relocate an existing sanitary sewer line between Bamore Road and Fairgrounds Road that is in conflict with the US 59/I-69 expansion project. A total of four (4) bids were opened and tabulated as indicated on the attached bid summary form.

Staff recommends Bid No. 2014-16 be awarded to Triple B Services, L.L.P., for the Base Bid amount of $250,000.00. The attached correspondence from Charles Kalkomey, City Engineer, recommends same. Should the bid be awarded as recommended, the proposal from Triple B Services, L.L.P., will be attached and serve as Exhibit “A” to Resolution No. R-1899. The contract time is 90 calendar days.

The US 59/I-69 Utility Adjustments are included in the FY2015 Capital Improvement Plan approved by City Council on June 17, 2014. The Texas Department of Transportation (TxDOT) Utility Agreements previously approved by City Council will allow for full reimbursement of the costs related to relocation of said sanitary sewer line.

Staff recommends approval of Resolution No. R-1899 which will award Bid No. 2014-16 and provide authorization for the City Manager to negotiate and execute all required documents necessary to facilitate the Agreement.

BID SUMMARY
Bid No. 2014-16
SANITARY SEWER IMPROVEMENTS ALONG US HWY 59
FROM BAMORE ROAD TO FAIRGROUNDS ROAD

BID NO.	COMPANY	TOTAL BID	CALENDAR DAYS
1.	Triple B Services, LLP 820 Old Atascocita Road Huffman, Texas 77336	$250,000.00	90
2.	Gonzalez Construction Enterprise, Inc 3114 Blackwood Road Rosenberg, Texas 77471	$251,202.51	90
3.	JTM Construction, LLC P.O. Box 1756 Rosenberg, Texas 77471	$259,886.00	90
4.	Horseshoe Construction, Inc. 2309 S. Battleground Road LaPorte, Texas 77571	$490,772.00	90

COPY

ADDENDUM NO. 1

BID FORM

DATE: Nov. 5, 2014

Bid of Triple B Services, L.L.P. an individual proprietorship, a corporation organized and existing under laws of the State of Texas, a partnership of Charles, Keith + Kevin Burke for Construction of Sanitary Facilities in Sanitary Sewer Improvements Along US Highway 59 from Bamore Road to Fairgrounds Road.

To: The City of Rosenberg
P.O. Box 32
Rosenberg, Texas 77471
Attention: Mr. Vincent M. Morales Jr., Mayor

Ladies and Gentlemen:
The undersigned bidder has carefully examined the Instructions to Bidders, this Proposal, the General Conditions of Agreement, the Technical Specifications and the drawings for the work herein above described and referred to in the Invitation to Bid and has carefully examined the site of the work and will provide all necessary labor, superintendence, machinery, equipment, tools, materials, services and other means of construction to complete all the work upon which he bids, as called for in the Contract, the Specifications and shown on the drawings, and in the manner prescribed therein and according to the requirements of the Engineer as therein set forth for the amounts below.

Item No.	Description of Item with Unit Bid Price in Written Words.	Unit	Approx. Quantity	Unit Amount	Total Price
1.	Cement stablized sand backfill for sanitary sewer line and manholes, complete in place. @ forty nine dollars + zero cents Per Cubic Yard	C.Y.	278	$ 49.00	$ 13622.00
2.	Trench safety system for 1-24" pipe, all depths. @ zero dollars + ten cents Per Linear Foot	L.F.	2,012	$ 0.10	$ 201.20

Item No.	Description of Item with Unit Bid Price in Written Words.	Unit	Approx. Quantity	Unit Amount	Total Price
3.	Move-in and start-up, including performance and payment bonds for 100 percent (100%) of the contract amount. @fifty five thousand two hundred six dollars + eighty cents Per Lump Sum	L.S.	1	$ 55206.80	$ 55206.80
4.	8-inch PVC SDR26 sanitary sewer pipe,all depths, (including air testing, mandrel testing, bedding and backfill), complete in place. @ twenty five dollars + zero cents Per Linear Foot	L.F.	88	$ 25.00	$ 2200.00
5.	12-inch PVC SDR 26 sanitary sewer pipe, all depths, (including air testing, bedding and backfill), complete in place. @ thirty five dollars + zero cents Per Linear Foot	L.F.	1,540	$ 35.00	$ 53900.00
6.	24-inch PVC PS115 (ASTM F679) sanitary sewer pipe, all depths, (including air testing, mandrel testing, bedding and backfill), complete in place. @ ninety dollars + zero cents Per Linear Foot	L.F.	337	$ 90.00	$ 30330.00
7.	12-inch C-900 PVC force main, all depths (including bends, fittings, bedding, backfill, and testing), complete in place. @ ninety five dollars + zero cents Per Linear Foot	L.F.	47	$ 95.00	$ 4465.00

Item No.	Description of Item with Unit Bid Price in Written Words.	Unit	Approx. Quantity	Unit Amount	Total Price
8.	Sanitary sewer manhole, all depths, complete in place. @ forty nine hundred dollars & zero cents Per Each	EA.	5	$ 4900.00	$ 24500.00
9.	Sanitary sewer drop manhole, all depths, with PVC liner, complete in place. @ three hundred dollars & zero cents Per Each	EA.	1	$ 300.00	$ 300.00
10.	Abandon 12-inch sanitary sewer line, all depths, complete in place. @ eleven thousand dollars & zero cents Per Each	EA.	1	$ 11000.00	$ 11000.00
11.	Abandon 24-inch sanitary sewer line, all depths, complete in place. @ thirteen thousand dollars & zero cents Per Each	EA.	1	$ 13000.00	$ 13000.00
12.	Cut, cap, and abandon sanitary sewer manhole, complete in place. @ four thousand dollars & zero cents Per Each	EA.	6	$ 4000.00	$ 24000.00
13.	Connect existing sanitary sewer to proposed sanitary sewer manhole, all depths, all sizes, complete in place. @ three thousand dollars & zero cents Per Each	EA.	2	$ 3000.00	$ 6000.00

Item No.	Description of Item with Unit Bid Price in Written Words.	Unit	Approx. Quantity	Unit Amount	Total Price
14.	Remove existing sanitary sewer manhole, all depths, complete in place. @ four hundred dollars + zero cents Per Each	EA.	1	$ 400.00	$ 400.00
15.	20-inch steel split casing on 12-inch PVC force main, all depths (including bending, fittings, bedding, backfill, and testing), complete in place. @ one hundred forty five dollars + zero cents Per Linear Foot	L.F.	75	$ 145.00	$ 10875.00

TOTAL BASE BID $ 250000.00

CALENDAR DAYS 90 Days

The total value of the work equals the total of the following items, each of which shall be billed separately by Contractor to Owner:

a.	Incorporated Material	$	76121.78
b.	Non-Incorporated Material	$	9271.56
c.	All Other Costs and Fees	$	164606.66
	TOTAL BASE BID	$	250000.00

(Must equal Total Base Bid above)

The amounts set forth above are current estimates by Contractor of the amounts that will be determined during the progress of the Work. The separated progress billings from Contractor to the Owner/Engineer shall reflect the actual amounts expended for the items enumerated in (a), (b), and (c), above.

SUBSTITUTIONS: If necessary, attach detailed explanation to proposal.

1. Na (Add) (Deduct) $ 0.00

2. Na (Add) (Deduct) $ 0.00

It is understood and agreed that the work shall be complete in full within 90 calendar days after the date on which work is to be commenced as established by the Contract Documents.

It is agreed that the contract price may be increased or decreased to cover work added or deleted by order of the Engineer, in accordance with the provisions of the General Conditions of Agreement.

The award may be made on the Base Bid alone or the Base Bid and any or all of the Items listed under Alternates or Substitutions, if any.

The undersigned agrees that the amounts bid in this proposal will not be withdrawn or modified for 90 days following date of bid opening.

It is understood that the bid security accompanying this proposal shall be returned to the undersigned unless, in case of the acceptance of this proposal the undersigned should fail to enter into a construction contract and execute bonds as provided in the specifications. In the event the undersigned should fail to enter into a construction contract and execute bonds as required within 14 calendar days after the Engineer has given unsigned contracts to the Contractor, it is understood and agreed that the bid security shall be forfeited to the Owner and shall be considered as payment for damages due to delay and other inconveniences suffered by the Owner as a result of such failure on the part of the undersigned.

It is understood that the Owner reserves the right to reject any and all bids.

In the event of Award of the Contract to the undersigned, the undersigned agrees to furnish Performance and Payment Bonds as provided in the Specifications.

The undersigned certifies that the bid prices contained in this proposal have been carefully checked and are submitted as correct and final.

Date Nov 5, 2014

Signed Triple B Services, L.L.P.
(Company)

By Donna Burke
Donna Burke (Title) Sr Project Admin
820 Old Atascocita Rd
Huffman Tx 77336
(Address)
281 324 3264
(Telephone Number)

(Witness)

SEAL (if Bidder is a Corporations)

Acknowledge reciept of Addenda Below:

Addendum No.	1				
Date Received	10/30				

--o0o--

Liberty Mutual.

Interchange Corporate Center
450 Plymouth Road, Suite 400
Plymouth Meeting, PA. 19462-1644
Ph. (610) 832-8240

BID BOND

Bond Number: N/A

KNOW ALL MEN BY THESE PRESENTS, that we
TRIPLE B SERVICES, LLP
, as principal (the "Principal"),
and LIBERTY MUTUAL INSURANCE COMPANY, a Massachusetts stock insurance company, as surety (the "Surety"), are held and firmly bound unto
CITY OF ROSENBERG
, as obligee (the "Obligee"), in
the penal sum of
FIVE PERCENT OF THE GREATEST AMOUNT BID
Dollars ($ 5% GAB),
for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for:
US 59 BAMORE ROAD TO FAIRGROUND SANITARY SEWER IMPROVEMENTS

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal within the period specified therein, or, if no period be specified, within sixty (60) days after opening, and the Principal shall enter into a contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or contract documents, or in the event of the failure of the Principal to enter into such contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference in money not to exceed the penal sum hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void; otherwise to remain in full force and effect. In no event shall the liability hereunder exceed the penal sum hereof.

PROVIDED AND SUBJECT TO THE CONDITION PRECEDENT, that any claim by Obligee under this bond must be submitted in writing by registered mail, to the attention of the Surety Law Department at the address above, within 120 days of the date of this bond. Any suit under this bond must be instituted before the expiration of one (1) year from the date of this bond. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall apply.

DATED as of this 4TH day of NOVEMBER, 2014.

WITNESS / ATTEST:

TRIPLE B SERVICES, LLP
(Principal)
By: _____ (Seal)
Name: Donna Burke
Title: Sr Project Admin.

LIBERTY MUTUAL INSURANCE COMPANY
(Surety)
By: _____ (Seal)
Attorney-In-Fact
Robert M. Overbey, Jr.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.
This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6669529

American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Carol E. Hock; Robert M. Overbey, Jr.; Suzonne D. Lawrence

all of the city of Houston, state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 1st day of August, 2014.

American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 1st day of August, 2014, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 4th day of November, 2014

By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 AM and 4:30 PM Eastern Time on any business day.

Liberty Mutual.
SURETY

Important Notice

TO OBTAIN INFORMATION OR TO MAKE A COMPLAINT:

You may write to Liberty Mutual Surety at:

Liberty Mutual Surety
Interchange Corporate Center
450 Plymouth Road, Suite 400
Plymouth Meeting, PA 19462-8284

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: http://www.tdi.state.tx.us
E-mail: ConsumerProtection@tdi.state.tx.us

Premium or Claim Disputes

Should you have a dispute concerning a premium, you should contact the agent first. If you have a dispute concerning a claim, you should contact the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

Attach This Notice To Your Policy:

This notice is for information only and does not become a part or condition of the attached document.

Liberty Mutual

NOTIFICACION IMPORTANTE

PARA OBTENER INFORMACION O REALIZAR UNA QUEJA:

Usted puede escribir la notificación y dirigirla a Liberty Mutual Surety en la siguiente dirección:

Liberty Mutual Surety
Interchange Corporate Center
450 Plymouth Road, Suite 400
Plymouth Meeting, PA 19462-8284

Usted puede contactar al Departamento de Seguros de Texas para obtener informacion acerca de las compañías, coberturas, derechos o quejas:

1-800-252-3439

Usted puede escribir al Departamento de Seguros de Texas a la siguiente dirección:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: http://www.tdi.state.tx.us
E-mail: ConsumerProtection@tdi.state.tx.us

Disputas acerca de primas o reclamos

En caso de que usted quiera elevar una disputa concerniente al tema de primas, por favor contacte en primer lugar a su agente. Si el tema de la disputa es relativo a un reclamo, por favor contacte a la compañía de seguros en primer término. Si usted considera que la disputa no es apropiadamente resuelta en estas instancias, entonces usted puede contactar al Departamento de Seguros de Texas..

Adjunte esta notificacion a su póliza:

Esta notificación es a los solos fines de su información y la misma no forma parte o condiciona de manera alguna el documento adjunto.

JONES & CARTER, INC.
ENGINEERS • PLANNERS • SURVEYORS

6415 Reading Road
Rosenberg, Texas 77471-5655

TEL 281 342 2033
FAX 281 232 9909

ROSENBERG
SAN ANTONIO
THE WOODLANDS
BRYAN/COLLEGE STATION
AUSTIN
DALLAS
HOUSTON
BRENHAM
GREENSPOINT

Texas Board of Professional Engineers Registration No. F-439

December 8, 2014

Mr. John Maresh, Assistant City Manager
City of Rosenberg
P. O. Box 32
Rosenberg, Texas 77471

Re: Construction of Sanitary Sewer Improvements along US Highway 59
from Bamore Road to Fairgrounds Road
Rosenberg Bid Number 2014-16

Dear Mr. Maresh:

We received bids for the referenced contract in the City of Rosenberg Council Chambers on November 5, 2014 at 10:00 A.M. Bids were publicly opened and read at that time.

Four (4) contractors submitted proposals for this work. A summary tabulation and a detailed tabulation of the bids are enclosed for your review. Triple B Services, L.L.P. from Huffman, Texas submitted the lowest Base Bid proposal in the amount of $250,000.00.

We have worked with Triple B Services, L.L.P. in the past and find them to be an acceptable contractor. We recommend that the referenced contract be awarded to Triple B Services, L.L.P. on the basis of the Base Bid for a total amount of $250,000.00, and a contract time of 90 calendar days. Please call should you have any questions.

If you agree with this award, please execute all copies of this letter and return them to our office for further processing.

Sincerely,

Charles A. Kalkomey, P.E., RPLS, CFM
Vice President

Approved By: _____

Date: _____

CAK\dme
P:\PROJECTS\R0001 - City of Rosenberg\0136-01 - Sanitary Sewer Easement Relocation\Construction\Letters\ROA SS Relocation 120514.doc
Enclosures
cc: Triple B Services, L.L.P.

RESOLUTION NO. R-1899

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AWARDING BID NO. 2014-16 FOR CONSTRUCTION OF THE SANITARY SEWER IMPROVEMENTS ALONG US HIGHWAY 59/I-69; AND, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, APPROPRIATE DOCUMENTS AND/OR AGREEMENTS REGARDING SAME.

* * * * *

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

Section 1. The approval and award of Bid No. 2014-16 to _____, in the amount of $_____ for construction of the Sanitary Sewer Improvements along US Highway 59/I-69, as necessary to relocate an existing sanitary sewer line that is in conflict with the US Highway 59/I-69 expansion project.

Section 2. The City Manager is hereby authorized to negotiate and execute any documentation necessary to facilitate said project.

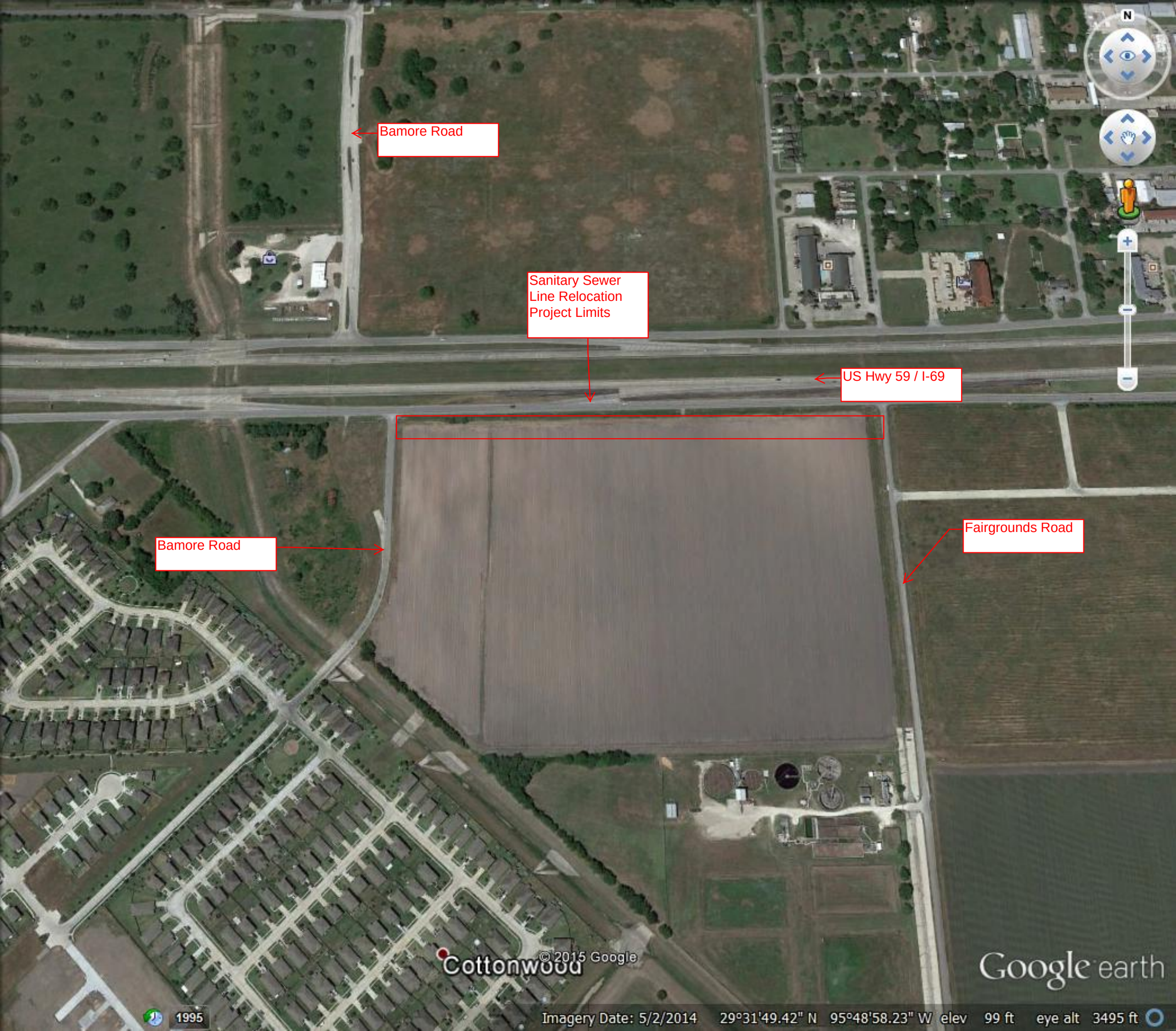
Section 3. A copy of the Proposal is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this _____ day of _____ 2015.

ATTEST: **APPROVED:**

_____ _____

Linda Cernosek, TRMC, **City Secretary** Vincent M. Morales, Jr., **Mayor**


Bamore Road
Sanitary Sewer
Line Relocation
Project Limits
US Hwy 59 / I-69
Bamore Road
Fairgrounds Road
Cottonwood
© 2015 Google
Google earth
1995
Imagery Date: 5/2/2014 29°31'49.42" N 95°48'58.23" W elev 99 ft eye alt 3495 ft

RESOLUTION NO. R-1801

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, APPROVING CAPITAL IMPROVEMENT PLAN PRIORITIES FOR FY2015.

* * * * *

WHEREAS, the City staff of the City of Rosenberg has identified its priorities for Capital Improvement Projects; and,

WHEREAS, the City Manager has recommended twenty-five (25) Capital Improvement Projects to be addressed in FY2015; and,

WHEREAS, the FY2015 Budget will include funding for the majority of the recommended Capital Improvement Projects and recommendations for funding other projects; now, therefore,

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

Section 1. City Council hereby approves the FY2015 Capital Improvements Plan for the City of Rosenberg which is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this 17th day of June 2014.

ATTEST:

Linda Cernosek, **City Secretary**

APPROVED:

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

CITY OF ROSENBERG • ROSENBERG, TEXAS •

FY2015 CAPITAL IMPROVEMENT PROJECTS

GENERAL/STREETS AND DRAINAGE PROJECTS

1. Airport Avenue – Phase Two
2. Bamore Road – Phase Four
3. Bryan Road
4. Drainage Improvements East of Lane Drive
5. Dry Creek Drainage Improvements
6. FM 2218 from US Highway 59 to State Highway 36 (TxDOT)
7. Road Extension and Drainage - Rosenberg Business Park – Phase I
8. Seabourne Creek Drainage – Phase Three
9. Sidewalks – Replace/Removal of Existing
10. Spacek Road Improvements – Phase II
11. Traffic Signal at Reading Road and Town Center Boulevard
12. Traffic Signal for Reading Road at Spacek Road
13. US Highway 59/I-69 Expansion from FM 762 to Spur 10 (TxDOT)

WATER AND WASTEWATER PROJECTS

14. Alternate Water Project (GRP)
15. Backup and Portable Generators for Utility System
16. FM 2977 Water Line Extension (GRP)
17. FM 2977 Water Storage Tank (GRP)
18. Lift Station No. 11 Replacement
19. North Side Water Improvements – Phase Two
20. Sanitary Sewer Pipe Bursting Project
21. Spacek Road Sewer Lift Station
22. Spacek Road Sewer Line
23. Utility Adjustments for US 59/I-69 Project (TxDOT)
24. Utility Extensions to serve FM 2218 Rosenberg Business Park – Phase I
25. Utility Replacement/Relocation for Avenue H, Avenue I and Downtown

- The general consensus of Council was to proceed with the request by staff to add one (1) Technology Specialist position at this time.

Action: Councilor Bolf made a motion, seconded by Councilor Grigar to approve one Information Technology Specialist position. The motion carried by a unanimous vote of those present.

7. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1804, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, BUDGET AMENDMENT 14-15 IN THE AMOUNT OF $15,079.00 FOR THE ADDITION OF AN INFORMATION TECHNOLOGY SPECIALIST.**
Executive Summary: In the previous Agenda item, Executive Director of Information Services, Angela Fritz, requested the addition of an Information Technology Specialist. If City Council authorizes the position, a Budget Amendment is needed to fund this position for the remainder of FY2014.

Budget Amendment 14-15, in the amount of $15,079.00 will provide funding for an Information Technology Specialist for the remainder of FY2014.

Budget Amendment 14-15 is included as Exhibit "A" to Resolution No. R-1804. In order to add this position in FY2014, staff recommends approval of Resolution No. R-1804 as presented.

Key discussion points:
- Joyce Vasut read the Executive Summary regarding Resolution No. R-1804.

Action: Councilor Grigar made a motion, seconded by Councilor Euton to approve Resolution No. R-1804, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 14-15 in the amount of $15,079.00 for the addition of an Information Technology Specialist. The motion carried by a unanimous vote of those present.

8. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1801, A RESOLUTION APPROVING CAPITAL IMPROVEMENT PLAN PRIORITIES FOR FY2015.**
Executive Summary: During the FY2015 Budget process, staff reviewed the current Capital Improvement Plan (CIP) and is recommending that a total of twenty-five (25) projects be addressed in FY2015. Exhibit "A" to Resolution No. R-1801 lists the twenty-five (25) individual projects. The Planning Commission met on May 21, 2014, and also recommended approval of the projects proposed for the FY2015 CIP. These projects were also presented to City Council at the May 27, 2014 City Council Workshop.

Existing or proposed funding is available for all or a portion of twenty (20) of the Capital Projects that will be addressed in FY2015. There are two (2) projects for which funding needs have not been determined. The three (3) remaining Capital Projects are not completely funded. Funding for these projects may include the issuance of Certificates of Obligation or other funding sources. Funding for these projects will be addressed during FY2015.

Approval of Resolution No. R-1801 will establish the City's FY2015 Capital Improvements Plan and allow for the projects to be properly included in the proposed FY2015 Budget. Staff recommends approval of Resolution No. R-1801.

Key discussion points:
- Joyce Vasut gave an overview of the item regarding Resolution No. R-1801 and the City's FY 2015 Capital Improvements Plan.

Questions:
- Councilor Benton expressed concern with #11 – Traffic signal Reading Road at Town Center Boulevard and asked how urgent it is.
- John Maresh explained that is tied to a development agreement. The developer that is working on the project from Fire Station 2 will trigger when they have to put up fifty percent (50%) of the money for that traffic signal. There is a timeframe by which the City has to come up with the remaining fifty percent (50%). They are getting close to the triggering point.
- Councilor Grigar asked if the items are the twenty-five in each of the two areas that surfaced to the top.
- Joyce Vasut explained staff looked at the 2014 list and any projects that were not complete or not substantially complete by September 30th were left on the list. Staff then looked at 2015 in the five year plan and pulled those out that staff felt needed to rise to the top. A lot of these are projects that are started that we need to complete that we have County mobility funding. We need to move on that project so we do not lose the funding. #11 that was referred to is based on the development agreement

that we think will need action during FY2015. The developer will pay one-half and we have requested the other half from the RDC.

- Items 15, 16, and 17 are all GRP projects that are part of the Subsidence mandate we need to get done. At this time, all except three are funded in one way or another with available funds. The other three, which is Airport Road and Bryan Road that was discussed at the Workshop meeting. Airport Road and Bryan Road will need additional funding and we discussed certificates of obligation and Council felt they could agree to that. Staff will bring back those options along with the budget. The majority of these will be funded in the fiscal year.

Action: Councilor Grigar made a motion, seconded by Councilor Euton to approve Resolution No. R-1801, a Resolution approving Capital Improvement Plan Priorities for FY2015. The motion carried by a unanimous vote of those present.

9. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1802, A RESOLUTION APPROVING CAPITAL IMPROVEMENT PLAN PRIORITIES FOR FY2016 TO FY2019.**

Executive Summary: Pursuant to the City Charter which requires a five-year Capital Improvement Plan (CIP), staff has prepared a proposed schedule for Capital Projects in FY2016, FY2017, FY2018 and FY2019. The development of the CIP for FY2016 to FY2019 is based on several factors, including but not limited to:

- Deadline for compliance with the Fort Bend Subsidence District mandate,
- Availability of Fort Bend County Mobility Funds,
- Possibility of a City Bond Election in 2015,
- Results of the City Facilities Assessment, and
- Needs Identified in the Five Year Strategic Plan.

The proposed FY2016-FY2019 CIP was attached to Resolution No. R-1802 as Exhibit "A" and will allow City Council to approve the proposed FY2016-FY2019 Capital Improvement Plan for the City of Rosenberg. Staff recommends approval of Resolution No. R-1802.

Key discussion points:

- Joyce Vasut gave an overview of the item regarding Resolution No. R-1802. Exhibit A to Resolution No. R-1802 was included in the agenda packet.

Questions:

- Councilor Euton – FY2017 Streets and Drainage – 3rd Street at Intersection with Avenue E – what does that entail?
- John Maresh stated this is a carryover project that has been on the CIP for several years and has never been ranked high enough to be funded. It is at the intersection of 3rd Street where there is a rise in the street and a hump as you approach Avenue N. It would be to cutout that section of 3rd Street and reconstruct it.
- FY2018 – Brooks Avenue what is the plan?
- This is a long range future project that was placed on the list recently. That would be an improvement project to reconstruct that street with curb and gutter.
- FY 2019 – Klauke Road extension – is that still on our radar?
- It is long range for 2019. There have been discussions about addressing some connectivity and other ways.
- FY2018 – Brazos River Trail Project – Councilor Euton stated she objected to that project because some of the residents would be displaced in the north area of town.
- Darren McCarthy, Director of Parks and Recreation stated it has nothing to do with residential displacement. It is a paddle trail utilizing the resources of the Brazos River. Fort Bend Green at the direction of Judge Hebert just completed a three year master plan study of that. Councilor McConathy was part of the group in the Rosenberg segment. That will be coming to Council in a future Workshop after the budget is complete. Mayor Morales, Councilor McConathy and Robert Gracia have copies of that master plan. Staff plans to distribute to Council when it is brought to Council in a Workshop.
- Councilor Grigar – FY2018 – Streets and Drainage – Avenue C Extension; Avenue D Street Paving and Drainage – is that in connection to get an east/west connection because of railroad crossing closures?
- John Maresh stated that is specifically the crossing and east to Rawson Road and would connect there. That is the only access in and out over that grade crossing that would provided that connectivity.
- Avenue D – this is long range. We have been focusing with our CDBG funds to try to get the infrastructure of the sanitary sewer replaced. The application we have before the County now is for waterline replacements. We hope to complete that in the next 3 to 5 years and then we could do some street and sidewalk improvements.

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
7	**Resolution No. R-1901 – Awarding Bid No. 2015-04 for Street Sweeping Services**

ITEM/MOTION

Consideration of and action on Resolution No. R-1901, a Resolution awarding Bid No. 2015-04 for Street Sweeping Services; and, authorizing the City Manager to negotiate and execute, for and on behalf of the City, a General Services Contract related thereto, and/or all necessary documentation regarding same.

FINANCIAL SUMMARY

Annualized Dollars:

[ ] One-time
[X] Recurring
[ ] N/A

Budgeted:

[X] Yes [ ] No [ ] N/A

Source of Funds:

101-5022-530-5710

ELECTION DISTRICT

[ ] District 1
[ ] District 2
[ ] District 3
[ ] District 4
[X] City-wide
[ ] N/A

MUD #: N/A

SUPPORTING DOCUMENTS:

1. Bid Summary Form
2. Kustom Sweeping, LLC – Proposal
3. Street Sweeping Map
4. Resolution No. R-1901

APPROVALS

Submitted by:

John Maresh
Assistant City Manager of Public Services

Reviewed by:

[X] Exec. Dir. of Administrative Services
[ ] Asst. City Manager of Public Services
[ ] City Attorney
[ ] City Engineer
[ ] (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

On Wednesday, January 07, 2015, bids were received and opened for the City of Rosenberg (City) Street Sweeping Services Contract. One (1) bid was received. The bid documents were published in the newspaper, placed on the City's website and staff also emailed bid documents to six (6) contractors.

A summary of the bid is attached for your review. Kustom Sweeping, LLC, submitted the only bid in the base amount of $75,256.92 for twelve (12) monthly street sweeping cycles covering 102.81 curb miles at $61.00 per curb mile and an alternate bid item in the amount of $23,223.00 for four (4) additional street sweeping cycles during the months of November through February covering 77.41 curb miles at $75.00 per curb mile. The total bid including the alternate sweeping is $98,479.92 for a one-year term. Kustom Sweeping, LLC, is currently providing the street sweeping services for the City at a base rate of $55.00 per curb mile and the work is being performed in an acceptable manner. The FY2015 Budget allocated $104,045.00 for the Street Sweeping Services Contract.

Staff recommends approval of Resolution No. R-1901, awarding Bid No. 2015-04 to Kustom Sweeping, LLC, in the amount of $98,479.92 for the Street Sweeping Services Contract, base bid and alternate bid for a one (1) year term effective February 01, 2015; and authorizing the City Manager to negotiate and execute all required documentation.

BID SUMMARY
Bid No. 2015-04
STREET SWEEPING SERVICES

BID NO.	COMPANY	TOTAL BASE BID	ALTERNATE BID ITEM 1	TOTAL BID	CALENDAR DAYS
1.	Kustom Sweeping, LLC PO Box 580591 Houston, TX 77258	$75,256.92	$23,223.00	$98,479.92	Annual

BID DOCUMENTS & TECHNICAL SPECIFICATIONS

City of Rosenberg Street Sweeping Services

BID NUMBER: 2015-04

Pre-Bid Conference: Wednesday, December 17, 2014 at 10:00 a.m.
Bid Opening: Wednesday, January 7, 2015 at 10:00 a.m.

Linda Cernosek, City Secretary, TRMC
P. O. Box 32
2110 4th Street
Rosenberg, Texas 77471-0032
(832) 595-3340

Mayor Vincent Morales

COUNCILPERSONS
William T. "Bill" Benton
Cynthia McConathy
Dwayne Grigar
Amanda Barta
Susan Kroll-Euton
Jimmy Peña

INVITATION TO BID INSTRUCTIONS
AND TERMS OF CONTRACT

City of Rosenberg Street Sweeping Services
Bid No. 2015-04

The City of Rosenberg will receive sealed bids for:

Street Sweeping Services Contract
for the City of Rosenberg

TO PROVIDE FOR: the annual contract commencing February 01, 2015 and continuing for a twelve-month period. City Council reserves the option to extend this contract upon the same terms and conditions, including prices established hereunder, for one (1) additional one-year period by notifying the bidder in writing of the extension at least thirty (30) days prior to the date the contract would otherwise terminate.

IT IS UNDERSTOOD that the City Council of the City of Rosenberg reserves the right to reject any or all bids for any or all products and/or services covered in this bid request and to waive informalities of defects in such bids.

BIDS must be submitted on the pricing forms included for that purpose in this packet. Each bid shall be placed in a separate sealed envelope and **manually signed by a person having the authority to bind the firm in a contract** and marked clearly on the outside as shown below. FACSIMILE TRANSMITTALS SHALL NOT BE ACCEPTED.

A pre-bid meeting will be held on **Wednesday, December 17, 2014, 10:00 A.M.** at the City Hall Council Chamber, 2110 4th Street, Rosenberg, Texas 77471.

SUBMISSION OF BIDS: Sealed bids, in triplicate, shall be submitted to:

City of Rosenberg
City Secretary's Office
2110 4th Street
Rosenberg, Texas 77471

Not later than 10:00 A.M., on Wednesday, January 7, 2015.

MARK ENVELOPE: "BID NO. 2015-04/Street Sweeping Services Contract for the City of Rosenberg"

GENERAL INSTRUCTIONS: Bidders should carefully examine all terms, conditions, specifications and related documents. Should a bidder find discrepancies in or omissions from the specifications or related documents, or should there be doubt as to their meaning, the City should be notified immediately for clarification prior to submitting the bid. In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City of Rosenberg's interpretation shall govern.

FUNDING: Funds for payment have been provided through the City of Rosenberg budget approved by the City Council for this fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current City of Rosenberg fiscal year shall be subject to budget approval.

LATE BIDS: Bids received in the City Secretary's office after submission deadline will be considered void and unacceptable. City of Rosenberg is not responsible for lateness or non-delivery of mail, carrier, etc., and the date/time stamp in the City Secretary's office shall be the official time of receipt.

ALTERING BIDS: Bids cannot be altered or amended after submission dead line. Any alterations or erasures made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.

WITHDRAWAL OF BIDS: Any bid may be withdrawn prior to the scheduling time for opening. Notice to withdraw the bid must be in writing and submitted to the City prior to the scheduled time for opening bids. Any bid withdrawal notice, which is received after the deadline for receiving bids, shall not be considered.

SALES TAX: City of Rosenberg is exempt by law from payment of Texas Sales Tax and Federal Excise Tax. **Do not include tax in bid.**

PRICING: Bidders are instructed to bid the total unit price on the item(s) specified where indicated on Tabulation sheet and to extend and show the total. In case of errors in extension, UNIT prices shall govern. Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the bid sheet. **Prices shall be all inclusive.** No price changes, additions or subsequent qualifications will be honored during the course of the contract. Additional charges not shown on the bid will not be honored. All prices must be in ink.

DELIVERY: All delivery and freight charges (FOB City of Rosenberg designated location) are to be included in the bid price.

BID AWARD: If a contract is awarded, it will be awarded to the lowest responsible bidder meeting or exceeding the terms, conditions and specifications of the bid. The City has the right to award a contract upon the conditions, terms and specifications contained in a bid submitted to the City for a period of up to ninety (90) days following the date specified for the opening of bids. In awarding a contract, the City may waive minor technicalities and informalities in the bid process and bids received if they are not material to or alter any of the conditions, terms or specifications contained in the invitation to bid or a qualifying bid.

In determining the lowest responsible bidder, the City may consider:

1. Whether the bidder has adequate financial resources to comply with the contract awarded;

2. Whether the bidder has a satisfactory record of performance with the City or other entities;

3. Any other factors that could be material to the bidder's ability to comply with the contract.

REJECTION OF BIDS: The City Council may choose to reject all bids and not award any contract. If the City Council does not award a contract within ninety (90) days following the date specified for the opening of bids, all bids are deemed to be rejected by the City Council.

PURCHASE ORDER: City of Rosenberg shall generate a purchase order to the successful bidder. The purchase order number must appear on all invoices, packing lists and all related correspondence. City of Rosenberg will not be responsible for any orders placed and/or delivered without a valid Purchase order number.

REFERENCES: City of Rosenberg requests bidder to supply, with this ITB, a list of three (3) references where like products or services have been supplied by their firm. Include name of firm, address, telephone number and contact name.

INSURANCE: The successful bidder shall provide and maintain the minimum insurance coverages set forth in the City of Rosenberg **"Policy for Bidding Projects" - Exhibit "A" Section 2. <u>Purchase Subject to Competitive Bidding Subsections</u> (b-e).**

A valid certificate of insurance verifying each of the coverages required shall be submitted with the Invitation to Bid documents. The successful bidder shall submit a valid certificate of insurance with the City of Rosenberg named as an additional insured with respect to General Liability and Automobile Liability policies, prior to execution of the General Services Contract by the City.

CONFLICT OF INTEREST: No public official shall have interest in this contract accept in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171.

ETHICS: The bidder shall not offer or accept gifts or anything of value or enter into any business arrangement with any employee, official or agent of the City of Rosenberg. More than one proposal on any one contract from a firm or individual under different names shall be grounds for rejection of all proposals in which the firm or individual has an interest. One or all proposals will be rejected if there is any reason to believe that collusion exists between bidders.

DESCRIPTIONS: Specifications <u>may</u> reference any catalog, brand name or manufacturer's model numbers. It is the intent of the City of Rosenberg to be **DESCRIPTIVE - NOT RESTRICTIVE** and to establish a desired quality level of merchandise or to meet a pre-established standard of quality. Bidders may offer items of equal quality; and the burden of proof of such quality rests with them. The City of Rosenberg shall act as sole judge in determining quality and acceptability of products offered.

ADDENDA: Any interpretations, corrections or changes to this Invitation to Bid (ITB) and Specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the City of Rosenberg purchasing department. Addenda will be mailed to all who are known to have received a copy of this Invitation to Bid. Bidders shall acknowledge receipt of all addenda.

BIDS MUST COMPLY with all federal, state, county and local laws concerning this type of good or service.

DOCUMENTATION: Bidder shall provide with this bid response, all documentation required by this ITB. Failure to provide this information may result in rejection of bid.

INDEMNIFICATION: The bidder shall indemnify, defend, and hold the City, its officers, agents, and employees, harmless from any claim, loss, damage, suit, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising from or caused by any act or omission of bidder, its officers, employees, agents, or subcontractors, in performing its obligations under this Contract.

TERMINATION OF CONTRACT: The City of Rosenberg reserves the right to terminate the contract immediately in the event the successful bidder:

1. Fails to meet delivery schedules;
2. Defaults in the payment of any fees;
3. Otherwise fails to perform in accordance with this contract;
4. Becomes insolvent and/or files for protection under the bankruptcy laws.

Such termination is in addition to and not in lieu of any other remedies that City of Rosenberg may have in law or equity. Bidder, in submitting this bid, agrees that City of Rosenberg shall not be liable to prosecution for damages in the event that the City of Rosenberg declares the bidder in default.

NOTICE: Any notice provided by this bid or required by law to be given to the successful bidder by City of Rosenberg 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 successful bidder at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

PATENTS / COPYRIGHTS: The successful bidder agrees to protect City of Rosenberg from claims involving infringements of patents and/or copyrights.

INVOICES submitted for payment shall be addressed to City of Rosenberg, Accounts Payable and shall reference the City of Rosenberg approved purchase order number. Periodic payments will be made within thirty (30) days of invoice date or satisfactory delivery of the product or service, whichever is later, provided that all other requirements as detailed in the contract have been fulfilled.

QUALITY CONTROL: Goods supplied under this contract shall be subject to approval as to quality and must conform to the highest standards of manufacturing practice. Items found defective or not meeting specifications shall be replaced at the supplier's expense within a reasonable period of time. Payment for defective goods or goods failing to meet specifications is not due until thirty (30) days after satisfactory replacement has been made.

REMEDIES: The successful bidder and City of Rosenberg agree that both parties have all rights, duties and remedies available as stated in the Uniform Commercial Code.

SAMPLES: When requested, samples shall be furnished to City of Rosenberg at no charge.

LAW GOVERNING AND VENUE: The law of the State of Texas shall govern this contract and no lawsuit shall be prosecuted on this contract except in a court of competent jurisdiction located in Fort Bend County, Texas.

ASSIGNMENT: The successful bidder shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of City of Rosenberg.

SILENCE OF SPECIFICATION: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

WARRANTY: Successful bidder shall warrant that all items or services shall conform to the proposed specifications and all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title.

BIDDER CERTIFICATION

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 anti-trust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such fine 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 Fill in and Sign:

NAME OF FIRM/COMPANY: Kustom Sweeping, LLC

AGENT'S NAME: Bob Burns

AGENT'S TITLE: President / CEO

MAILING ADDRESS: PO BOX 580591

CITY, STATE, ZIP: Houston, TX 77258

AUTHORIZED SIGNATURE:

DATE OF BID: 12/30/2014

Street Sweeping Services

SCOPE OF WORK

1.0 The Contractor shall clean all curbs, gutters, median curbs, road shoulders, gore points, turning lanes and underpasses located in the City as designated by these specifications. (All of the above areas are herein called "streets").

Streets to be cleaned are listed in the Designated Streets Section of these specifications as follows:

STREET SWEEPING LIST

1.1 The cleaning operation shall include, but is not limited to all sweeping, hand work, panning, dumping and trash pickup operations.

The cleaning operation does not include removal of waste materials in catch basins of storm sewers.

1.2 Streets will be cleaned at the following frequencies:

a. All streets listed in BASE BID SECTION of the Street Sweeping List are to be cleaned, one time every month. If weather is inclement on the scheduled day for sweeping, the missed day will be rescheduled, and the Contractor will notify the Assistant City Manager or his Designee.

b. All streets listed in the ALTERNATE BID SECTION of the Street Sweeping List are to be cleaned, one additional time every month, for a total of two (2) sweeping cycles per month during the months designated by the City. If City Council authorizes the ALTERNATE BID SECTION of the Street Sweeping List, the anticipated months are November through February.

1.3 The City may require unscheduled sweeping service as a result of accidents, citizen's requests, special events, etc. The Contractor shall comply with such requests as follows:

a. During scheduled hours of operation (Monday through Friday, 8:00 a.m. to 5:00 p.m.) a maximum response time of two (2) hours shall be required.

b. During unscheduled hours of operation (all other times not covered in 1.3 a. above) a maximum response time of four (4) hours shall be required.

Payment for such unscheduled service shall be for the time worked at a stipulated hourly rate, plus one hour travel time as payment for travel to and from the point of operation. In no event shall the total payment for each such request be less than two hours.

METHOD OF OPERATIONS

2.0 All operations described in these specifications shall be conducted by the Contractor's personnel and the expense of all such operations shall be the Contractor's.

a. The Contractor shall provide his (its) own equipment, labor, fuel, and any other materials necessary to complete the required work. The Contractor shall be responsible for the maintenance and repair of his (its) own equipment and the availability, presence and supervision of his (its) employees.

b. The Contractor is required to have a competent and experienced supervisor/foreman on duty during each shift (nights and days) when work is being performed under the Contract. The supervisor/foreman referred to herein may be a sweeper operator.

c. The Contractor shall perform all hand work required to effectuate an efficient cleaning operation. The City shall have the right to identify for the Contractor those areas where hand work should be performed.

d. There shall be no subcontractors used by the Contractor to fulfill any items or conditions of the Contract without the prior written consent of the City.

e. All equipment and personnel will move in the same direction as traffic at all times during all cleaning operations.

WEATHER

2.1 For the purpose of this Contract, the National Weather Service at Houston, Texas, shall be the weather forecasting and reporting agency. Any forecast by the National Weather Service shall be deemed to extend only twelve (12) hours into the future.

a. No cleaning operation shall be conducted when there are climatic conditions present or forecast that would make such an operation ineffectual or dangerous. These climatic conditions include, but are not limited to, heavy rains, snow, ice, sleet and high winds.

b. The Contractor may suspend operations if weather conditions are such that cleaning operations cannot be carried out in an effective manner. If such suspension occurs, the Contractor shall immediately notify the Assistant City Manager or his Designee.

c. The Assistant City Manager or his Designee, shall at his (her) discretion have the right to order the suspension of cleaning operations whenever, in his (her) judgment, weather conditions are such that cleaning operations cannot be carried out in an effective manner.

DEBRIS

2.2 Collection and transportation of debris from the streets to the disposal site shall be the responsibility of the Contractor.

a. The Contractor will comply with all applicable State and Local laws and Ordinances related to the hauling and handling of such material.

b. All sweeping debris collected shall be deposited by the Contractor at a place designated by the City.

WATER

2.3 Water for sweeping equipment shall be provided by the City. The reporting of water usage shall be outlined in Paragraph 4.2 herein, and the Contractor shall make whatever arrangements are necessary with the City for the use of hydrants throughout the Contract period.

EQUIPMENT AND FACILITY

3.0 The equipment used for cleaning shall be of sufficient type, capacity and quantity to safely and efficiently perform the cleaning work as specified.

3.1 Minimum equipment for the Contract shall be two (2) sweepers.

3.2 Specification for such equipment are as follows:

a. Street Sweepers – Sweepers used in the cleaning operation will be mechanical broom sweepers or equivalent. No limitation on the age of equipment. Street Sweepers must have a minimum capacity of four (4) cubic yards and be equipped with adequate water systems for dust control. Street sweepers must be equipped with dual steering and dust brooms.

b. Dump Trucks – Depending upon the type of sweepers used, the Contractor may require the use of one or more dump trucks. It is the Contractor's responsibility to provide these vehicles in the event his (its) cleaning equipment requires same.

c. Adequate Support Equipment – Including debris transfer vehicle, pickup trucks, service trucks, tire

trucks, moving arrow board truck and any other item of equipment necessary to provide cleaning services as described in these specifications.

d. All equipment (including support equipment) shall be equipped with two-way radio communications designated for commercial use. Cellular phone service may be utilized for this purpose. CB radios are unacceptable.

3.2 All equipment (including support equipment) to be used by the Contractor shall be listed as part of the "Work Plan" section of the Contractor's Information Report. All such equipment is subject to the inspection and final approval of the City. Such approval may require on-site demonstration of the capability of any proposed equipment.

3.3 All vehicles used by the Contractor must be performance worthy by visual and operational inspection. Sweepers must be washed once per day, inclement weather excepted, and all other equipment a minimum of once per week.

The Assistant City Manager or his Designee shall have the option to perform a complete inspection of all vehicles at any time throughout the term of the Contract. Should any vehicle, when inspected, and in the determination of the City, not meet standards that the City feels are necessary to complete the Contract or to operate safely; the Assistant City Manager or his Designee may require such vehicle to be brought to standard before being placed back in service.

3.4 The Contractor must demonstrate evidence of an adequate service facility to ensure scheduled routine maintenance, and must maintain a sufficient supply of brooms and replacement parts to ensure continuous cleaning operations.

3.5 The Contractor shall maintain a "spill-kit" with each work crew, minimum 5-gallon capacity, in order to contain or mitigate any small fuel or oil spills that may occur while performing the work. The Contractor shall be responsible to promptly pick up and legally dispose of any contaminated absorbent materials. Contractor shall be solely responsible for any notification requirements in accordance with federal, state, and local laws.

PAYMENT

4.0 Payment for street cleaning shall be made by the Contract unit price per curb mile actually cleaned.

4.1 Request for partial payment must be made individually as follows:

a. BASE BID SECTION – Monthly, for all streets cleaned.

b. ALTERNATE BIDE SECTION – If Alternate Bid is approved by City Council – Monthly, for all streets cleaned.

4.2 Request for partial payment must be made in triplicate, forwarded to the Assistant City Manager or his Designee for approval, and must include the following:

a. Standard Claim Form for payment.

b. Cover invoice showing curb miles cleaned, (or cycle completed) and an extension in dollars at the quoted cost, together with the number of gallons of water used to accomplish such services.

c. Copy of the Route Lists for the invoiced period, showing the date each street was cleaned, the total mileage for the period and the initials and signature of the Contractor's representative.

4.3 No payment shall be made for any additional service other than the number of curb miles cleaned at the quoted linear curb mile cost, or upon completion of a complete cycle, except:

a. In the event the City shall employ the Contractor at the hourly rate stipulated in his (its) bid, the

Contractor shall be paid upon completion of the specific work, after approval by the City.

b. Invoicing for such additional hourly work shall be made monthly in the same manner as directed in 4.2 herein.

DESIGNATED STREETS SECTION:

For the purpose of this Contract, curb mileage for streets to be cleaned is listed in this section. The City makes no representation as to the reliability of such figures.

The City expressly reserves the right to add to or delete from the listing of streets set forth in these specifications. The Contractor shall honor such additions or deletions.

In no event shall the number of curb miles for any section of streets be increased or decreased by more than twenty-five percent (25%) of the total curb miles for that section for the duration of the Contract.

The total mileage for each section of streets is as follows:

BASE BID SECTION ONLY – 102.81 total curb miles. See attached Street Sweeping Base Bid List 2015-2016

ALTERNATE BID SECTION – 77.41 total curb miles. See attached Street Sweeping Alternate Bid List 2015-2016

Proposed Base Bid List for 2015-2016
Street Sweeping Contract

STREET	FROM	TO STREET	LENGTH (in ft.)	
			Side 1	Side 2
1st Street	Avenue E	Walnut Avenue	210	210
1st Street	US Hwy 59	Avenue G	10,032	10,032
2nd Street	Avenue E	Avenue D	361	361
2nd Street	Avenue M	Avenue F	871	871
3rd Street	Avenue C	Avenue B	-	368
3rd Street	Avenue M	RR Tracks	2,520	2,520
4th Street	Avenue K	Avenue F	1,364	1,364
4th Street	Avenue K	Avenue M	726	726
4th Street	Mons Avenue	Avenue M	4,740	4,740
5th Street	Avenue K	Avenue F	921	921
6th Street	Avenue M	Avenue F	1,880	2,209
7th Street	Avenue M	Avenue F	1,045	1,045
8th Street	Avenue I	Avenue F	1,157	1,157
Airport Avenue	FM 2218	Graeber Road	2,650	2,650
Alderney Court	Gerona Blvd	Dead End	651	651
Allen Street	Avenue H	Avenue I	300	300
Allen Street	Walger Avenue	Dallas Avenue	303	303
Arbor Court	Village Court Lane	Dead End	300	300
Austin Street	Avenue I	Avenue L	1,081	1,081
Avenue C	3rd Street	4th Street	-	450
Avenue D	3rd Street	FM 723	320	795
Avenue E	Dead End	1st Street	231	231
Avenue F	2nd Street	4th Street	628	628
Avenue F	8th Street	Ward Street	354	354
Avenue G	Alamo Street	Houston Street	3,573	3,573
Avenue G	Frost Street	Dead End	695	695
Avenue H	Walnut Avenue	Jennetta Street	9,977	9,977
Avenue I	Radio Lane	Spur 529	11,976	11,976
Avenue J	3rd Street	7th Street	882	882
Avenue J	Brazos Street	Houston Street	861	861
Avenue J	George Street	James Street	251	251
Avenue J	San Jacinto Street	8th Street	765	765
Avenue K	1st Street	Mulcahy Street	370	-
Avenue K	2nd Street	3rd Street	211	211
Avenue K	4th Street	6th Street	430	430
Avenue K	Brazos Street	West Street	370	370
Avenue K	Ward Street	San Jacinto Street	472	472

Proposed Base Bid List for 2015-2016
Street Sweeping Contract

Avenue L	1st Street	3rd Street	466	466
Avenue L	1st Street	Carlisle Street	440	-
Avenue L	Brazos Street	Mulcahy Street	332	332
Avenue L	George Street	West Street	618	618
Avenue M	1st Street	8th Street	2,120	2,120
Avenue M	1st Street	Carlisle Street	480	-
Avenue M	Frost Street	Brazos Street	626	626
Avenue N	Graeber Road	8th Street	6,950	6,950
Avenue O	Tobola Street	Louise Street	435	435
Avenue P	Jones Street	Louise Street	1,855	1,855
Avenue R	Leonard Street	Louise Street	1,778	1,778
Azalea Drive	Mulcahy Street	Dead End	432	432
Bamore Road	US Hwy 59	Avenue I	8,923	8,219
Blaydon Court	West Parma Drive	Dead End	191	191
Blume Road	Spur 529	Klauke Road	6,200	6,200
Bower Court	West Columbary Drive	Dead End	235	235
Brazos Street	Walger Avenue	Avenue H	3,038	3,038
Briar Ridge Drive	Jones Street	Junker Street	1,129	1,250
Brumbelow Street	Jones Street	Briar Ridge Drive	771	771
Cambay Drive	Town Center Blvd	West Parma Drive	262	262
Cambridge Circle	Ward Circle	Dead End	230	230
Canton Circle	East Columbary Drive	Dead End	260	260
Carlisle Street	Avenue E	Avenue D	416	416
Carlisle Street	Walger Avenue	Avenue H	1,660	1,985
Caslyn Drive	East Columbary Drive	Arbor Court	675	675
Cedar Lane	Mons Avenue	Dead End	712	712
Celaya Court	East Parma Drive	Dead End	416	416
Chelsea Court	Parrott Avenue	Dead End	595	595
Chestnut Drive	Live Oak Drive	Pecan Drive	398	409
City Hall Drive	1st Street	4th Street	925	950
City Hall Parking Lot	Perimeter of City Hall		1,050	917
Commercial Drive	FM 762	Vista Drive	3,887	3,940
Corporate Drive	Mustang Avenue	Dead End	1,225	1,225
Cotter Court	Cotter Lane	Dead End	214	214
Cotter Lane	Manor Drive	East Columbary Drive	2,198	2,198
Cypress Lane	Mons Avenue	Dead End	711	711
Dallas Avenue	Mulcahy Street	Carlisle Street	348	348
Damon Street	Avenue H	Avenue N	1,720	1,720
Davis Avenue	Johnson Street	Grant Street	885	885
Divin Drive	Town Center Blvd	Taylan Lane	565	565

Proposed Base Bid List for 2015-2016
Street Sweeping Contract

Dogwood Drive	Pine Drive	Greenwood Drive	680	680
Dyer Avenue	Mulcahy Street	Houston Street	685	685
Dyer Avenue	West Street	Frost Street	326	326
East Columbary Drive	Cotter Lane	Caslyn Drive	1,327	1,327
East Parma Drive	Hannover Blvd	Gerona Blvd	1,230	1,230
Easy Street	West Street	Dead End	1,356	1,356
Emilee court	Taylan Lane	Dead End	490	490
Frances Drive	Lane Drive	Avenue H	1,584	1,584
Franklin Circle	Monroe Avenue	Dead End	392	392
Freeway Manor	Junker Street	Airport Avenue	1,010	1,010
Frost Street	Avenue I	Avenue G	640	640
Frost Street	Walger Avenue	Avenue I	2,728	2,728
Gardenia Circle	Mulcahy Street	Dead End	467	467
James Street	Avenue G	Avenue H	265	265
George Street	Walger Avenue	Avenue I	2,728	2,766
Georgina	Avenue I	Avenue N	1,838	1,838
Gerona Blvd	East Parma Drive	Town Center Blvd	571	571
Glenmeadow	Tobola Street	Dead End (West)	561	561
Glenmeadow	Tobola Street	Dead End (East)	491	491
Grant Street	Davis Avenue	Monroe Avenue	375	375
Greenfield Drive	Rockwood Drive	Hardwood Drive	330	330
Green Gate Drive	Reading Road	Rockwood Drive	420	420
Greenwood Drive	Avenue N	Sandalwood Avenue	300	310
Greenwood Drive	Redbud Drive	Spruce Drive	1,540	1,540
Grillo Way	Old Richmond Road	Avenue H	630	630
Hamilton Street	Monroe Avenue	Parkway Avenue	593	593
Hannover Blvd	Town Center Blvd	East Parma Drive	523	523
Hardcastle	Old Richmond Road	Avenue H	630	630
Hardwood Drive	Greenfield Drive	Old Creek Drive	192	192
Helmsley Drive	West Columbary Drive	Manor Drive	1,028	1,028
Hemple Drive	Taylan Lane	Town Center Blvd	590	590
Hickory Way	Pecan Drive	Live Oak Drive	285	285
Houston Street	Avenue J	RR Tracks	870	870
James Street	Walger Avenue	Dallas Avenue	1,724	1,724
Jane Long Drive	Lindsey Drive	Timberlane	617	617
Jane Long Drive	Sally Anne Drive	Lindsey Drive	226	226
Jefferson Street	Blume Road	Dead End	1,184	1,184
Jervis Drive	Moray Drive	Hamnover Blvd	317	317
Johnson Street	Madison Avenue	Davis Avenue	285	285
Jones Street	Briar Ridge Drive (just North)	Airport Avenue	2,253	2,081
Junker Street	Jones Street	Briar Ridge Drive	946	946
Klare Avenue	Bamore Road	West Street	1,633	1,633

Proposed Base Bid List for 2015-2016
Street Sweeping Contract

Klauke Court	Briar Ridge Drive	Dead End	347	374
Lane Drive	Avenue H	Avenue I	5,150	5,150
Lawrence Street	Avenue I	Avenue N	1,838	1,838
Lawrence Street	Avenue I	Avenue H	295	-
Leaman Avenue	1st Street	Woodland Village	472	472
Lee Circle	Ward Street	Dead End	283	283
Leonard Street	Avenue N	Dead End	332	315
Lindsey Drive	Jane Long Drive	Timberlane	453	453
Live Oak Drive	Airport Avenue	Chestnut Drive	983	1,125
Longhorn Drive	Airport Avenue	Dead End	726	726
Louise Street	Avenue H	Avenue N	2,087	2,087
Louise Street	Avenue N	US Hwy 59	7,010	7,010
Lynbrook Drive	Ripple Creek Drive	Dead End	372	372
MacArthur Street	Avenue K	Avenue I	643	643
Madison Avenue	McKinley Street	Johnson Street	969	969
Mahlmann Street	Avenue I	Avenue N	1,838	1,838
Mahlmann Street	Avenue N	Avenue P	580	580
Main Avenue	Louise Street	Dead End	500	500
Manor Circle	Village Court Lane	Village Court Lane	273	273
Manor Drive	West Columbary Drive	Dead End	982	982
Maple Circle	Sandalwood Avenue	Dead End	201	201
Marilyn Street	Jones Street	Briar Ridge Drive	610	610
Matamoros Drive	Blume Road	Dead End	1,187	1,187
Matamoros Drive	Blume Road	Monterrey Drive	920	920
McKinley Street	Dead End	Madison Avenue	569	569
Mercantile Drive	US Hwy 59	Commercial Drive	245	245
Miles Street	Avenue I	Avenue N	1,838	1,838
Miles Street	Avenue I	Avenue H	718	718
Millie Street	Avenue I	Avenue H	310	310
Millie Street	Avenue I	Avenue N	1,838	1,838
Mimosa Lane	Mulcahy Street	Dead End	463	463
Mockingbird Lane	Airport Avenue	Dead End	482	482
Monroe Avenue	Grant Street	Hamilton Street	860	860
Mons Avenue	1st Street	Louise Street	4,676	4,676
Monterrey Drive	Matamoros Drive	Vera Cruz Drive	349	349
Moray Drive	West Parma Drive	Jervis Drive	308	308
Mulcahy Street	Avenue I	Avenue H	230	230
Mulcahy Street	Texas Avenue	Dyer Avenue	321	321
Mustang Avenue	In front of school		-	1,588
Nanterre Court	East Parma Drive	Dead End	411	411
Old Creek Drive	Hardwood Drive	Avenue N	801	820
Palm Court	Sandalwood Avenue	Dead End	195	195

Proposed Base Bid List for 2015-2016
Street Sweeping Contract

Parkway Avenue	Hamilton Street	Dead End	984	984
Parrott Avenue	8th Street	McKinley Street	885	885
Pecan Drive	Chesnut Drive	Hickory Way	458	517
Pecan Court	Pecan Drive	Dead End	374	374
Pecan Park Drive	Dead End	Westwood Drive	855	855
Pine Drive	Redbud Drive	Dogwood Drive	195	180
Plaza Drive	US Hwy 59	Commercial Drive	208	208
Reading Road	FM 2218	Avenue I	4,180	4,190
Reading Road	FM 2218 (Median Only)	Avenue I (Median Only)	719	719
Reading Road	FM 2218	US Hwy 59	4,445	4,445
Reading Road	Herndon Drive	Dead End	634	634
Reading Road	US Hwy 59	Minonite Road (FM 2977)	5,820	5,234
Redbud Drive	Greenwood Drive	Pine Drive	780	780
Ripple Creek Drive	Jones Street	Graeber Road	2,121	2,121
Rockwood Drive	Green Gate Drive	Old Creek Drive	420	420
Ruby Street	Wilburn Street	Trailer Park Entrance	1,222	1,222
San Jacinto Street	Avenue F	Avenue G	150	150
Sandalwood Avenue	Spruce Drive	Greenwood Drive	586	586
Sequoia Lane	Mons Avenue	Dead End	708	708
Spruce Drive	Greenwood Drive	Sandalwood Avenue	586	586
Spruce Drive	Sandalwood Avenue	Woodway Avenue	400	432
Stevens Court	Taylan Lane	Dead End	500	500
Taylan Lane	Hemple Drive	Divin Drive	1,080	1,080
Texas Avenue	Brazos Street	Mulcahy Street	342	342
Texas Avenue	Frost Street	George Street	340	340
Timberlane	Lane Drive	Dead End	684	684
Tobola Street	Avenue I	Avenue N	1,838	1,838
Tobola Street	Avenue O	Avenue R	692	692
Town Center Blvd.	Radio Lane	FM 2218	5,418	5,418
Town Center Blvd.	Radio Lane (Median Only)	FM 2218 (Median Only)	1,398	1,398
Town Center Blvd.	FM 2218	Commercial Drive	5,850	5,850
Town Center Blvd.	FM 2218 (Median Only)	Commercial Drive (Median Only)	1,053	1,053
Township Court	East Columbary Drive	Dead End	434	434
Tremont Court	Parrott Avenue	Dead End	498	498
Truman Circle	Ward Street	Dead End	447	447
Turtle Creek Drive	Airport Avenue	Dead End	879	891
Vera Cruz Drive	Blume Road	Seabourne Meadows Drive	1,299	1,299
Vera Cruz Drive	Blume Road	Monterrey Drive	371	371
Village Court Drive	Town Center Blvd	Manor Drive	1,829	1,829
Village Court Circle	Village Court Drive	Village Court Drive	360	360
Village Court Lane	Arbor Court	Village Court Drive	1,312	1,312
Vista Drive	Reading Road	Town Center Blvd	2,780	2,780
Walger Avenue	Bamore Road	West Street	1,679	1,633

Proposed Base Bid List for 2015-2016
Street Sweeping Contract

Ward Street	Parkway Avenue	Avenue I	3,254	3,654
Washington Street	Blume Road	Dead End	1,253	1,253
West Columbary Drive	Village Court Blvd	Manor Drive	826	826
West Parma Drive	Cambay Drive	Moray Drive	671	671
West Street	Avenue D	Dead End	360	360
West Street	Walger Avenue	Avenue I	2,728	2,728
West Street	Walnut Avenue	Avenue E	200	200
Westwood Drive	Pecan Park Drive	Lane Drive	683	683
White Oak Drive	Woodway Drive	Avenue N	103	103
Wilson Drive	Lane Drive	Dead End	764	764
Woodway Avenue	Spruce Drive	Greenwood Drive	1,173	1,173
		FEET	271,042	271,798
		MILES	51.33	51.48
		TOTAL MILES	102.81	

Alternate Street Bid List for 2015-2016
Street Sweeping Contract

STREET	FROM	TO STREET	LENGTH (in ft.)	
			Side 1	Side 2
1st Street	Avenue E	Walnut Avenue	210	210
1st Street	US Hwy 59	Avenue G	10,032	10,032
2nd Street	Avenue M	Avenue F	871	871
3rd Street	Avenue C	Avenue B	-	368
3rd Street	Avenue M	RR Tracks	2,520	2,520
4th Street	Avenue K	Avenue F	1,364	1,364
4th Street	Avenue K	Avenue M	726	726
4th Street	Mons Avenue	Avenue M	4,740	4,740
5th Street	Avenue K	Avenue F	921	921
6th Street	Avenue M	Avenue F	1,880	2,209
7th Street	Avenue M	Avenue F	1,045	1,045
8th Street	Avenue I	Avenue F	1,157	1,157
Allen Street	Avenue H	Avenue I	300	300
Allen Street	Walger Avenue	Dallas Avenue	303	303
Austin Street	Avenue I	Avenue L	1,081	1,081
Avenue C	3rd Street	4th Street	-	450
Avenue D	3rd Street	FM 723	320	795
Avenue E	Dead End	1st Street	231	231
Avenue F	2nd Street	4th Street	628	628
Avenue F	8th Street	Ward Street	354	354
Avenue G	Alamo Street	Houston Street	3,573	3,573
Avenue G	Frost Street	Dead End	695	695
Avenue H	Walnut Avenue	Jennetta Street	9,977	9,977
Avenue I	Radio Lane	Spur 529	11,976	11,976
Avenue J	3rd Street	7th Street	882	882
Avenue J	Brazos Street	Houston Street	861	861
Avenue J	George Street	James Street	251	251
Avenue J	San Jacinto Street	8th Street	765	765
Avenue K	1st Street	Mulcahy Street	370	-
Avenue K	2nd Street	3rd Street	211	211
Avenue K	4th Street	6th Street	430	430
Avenue K	Brazos Street	West Street	370	370
Avenue K	Ward Street	San Jacinto Street	472	472
Avenue L	1st Street	3rd Street	466	466
Avenue L	1st Street	Carlisle Street	440	-
Avenue L	Brazos Street	Mulcahy Street	332	332
Avenue L	George Street	West Street	618	618
Avenue M	1st Street	8th Street	2,120	2,120

Alternate Street Bid List for 2015-2016
Street Sweeping Contract

Avenue M	Frost Street	Brazos Street	626	626
Avenue N	Graeber Road	8th Street	6,950	6,950
Avenue O	Tobola Street	Louise Street	435	435
Avenue P	Jones Street	Louise Street	1,855	1,855
Avenue R	Leonard Street	Louise Street	1,778	1,778
Azalea Drive	Mulcahy Street	Dead End	432	432
Bamore Road	US Hwy 59	Avenue I	8,923	8,219
Blume Road	Spur 529	Klauke Road	6,200	6,200
Brazos Street	Walger Avenue	Avenue H	3,038	3,038
Briar Ridge Drive	Jones Street	Junker Street	1,129	1,250
Brumbelow Street	Jones Street	Briar Ridge Drive	771	771
Cambridge Circle	Ward Circle	Dead End	230	230
Carlisle Street	Avenue E	Avenue D	416	416
Carlisle Street	Walger Avenue	Avenue H	1,660	1,985
Caslyn Drive	East Columbary Drive	Arbor Court	675	675
Cedar Lane	Mons Avenue	Dead End	712	712
Chelsea Court	Parrott Avenue	Dead End	595	595
Chestnut Drive	Live Oak Drive	Pecan Drive	398	409
City Hall Drive	1st Street	4th Street	925	950
City Hall Parking Lot	Perimeter of City Hall		1,050	917
Cotter Lane	Manor Drive	East Columbary Drive	2,198	2,198
Dallas Avenue	Mulcahy Street	Carlisle Street	348	348
Damon Street	Avenue H	Avenue N	1,720	1,720
Davis Avenue	Johnson Street	Grant Street	885	885
Dogwood Drive	Pine Drive	Greenwood Drive	680	680
Dyer Avenue	Mulcahy Street	Houston Street	685	685
Dyer Avenue	West Street	Frost Street	326	326
East Columbary Drive	Cotter Lane	Caslyn Drive	1,327	1,327
Easy Street	West Street	Dead End	1,356	1,356
Frances Drive	Lane Drive	Avenue H	1,584	1,584
Franklin Circle	Monroe Avenue	Dead End	392	392
Freeway Manor	Junker Street	Airport Avenue	1,010	1,010
Frost Street	Avenue I	Avenue G	640	640
Frost Street	Walger Avenue	Avenue I	2,728	2,728
Gardenia Circle	Mulcahy Street	Dead End	467	467
George Street	Walger Avenue	Avenue I	2,728	2,766
Georgina	Avenue I	Avenue N	1,838	1,838
Glenmeadow	Tobola Street	Dead End (West)	561	561
Glenmeadow	Tobola Street	Dead End (East)	491	491
Grant Street	Davis Avenue	Monroe Avenue	375	375

Alternate Street Bid List for 2015-2016
Street Sweeping Contract

Greenfield Drive	Rockwood Drive	Hardwood Drive	330	330
Green Gate Drive	Reading Road	Rockwood Drive	420	420
Greenwood Drive	Avenue N	Sandalwood Avenue	300	300
Greenwood Drive	Redbud Drive	Spruce Drive	1,540	1,540
Hamilton Street	Monroe Avenue	Parkway Avenue	593	593
Hannover Blvd	Town Center Blvd	East Parma Drive	523	523
Hardcastle	Old Richmond Road	Avenue H	630	630
Hardwood Drive	Greenfield Drive	Old Creek Drive	192	192
Hickory Way	Pecan Drive	Live Oak Drive	285	285
Houston Street	Avenue J	RR Tracks	870	870
James Street	Avenue G	Avenue H	265	265
James Street	Walger Avenue	Dallas Avenue	1,724	1,724
Jane Long Drive	Lindsey Drive	Timberlane	617	617
Jane Long Drive	Sally Anne Drive	Lindsey Drive	226	226
Jefferson Street	Blume Road	Dead End	1,184	1,184
Johnson Street	Madison Avenue	Davis Avenue	285	285
Jones Street	Briar Ridge Drive (just North)	Airport Avenue	2,253	2,081
Junker Street	Jones Street	Briar Ridge Drive	946	946
Klare Avenue	Bamore Road	West Street	1,633	1,633
Klauke Court	Briar Ridge Drive	Dead End	347	374
Lane Drive	Avenue H	Avenue I	5,150	5,150
Lawrence Street	Avenue I	Avenue N	1,838	1,838
Lawrence Street	Avenue I	Avenue H	295	-
Leaman Avenue	1st Street	Woodland Village	472	472
Lee Circle	Ward Street	Dead End	283	283
Leonard Street	Avenue N	Dead End	332	315
Lindsey Drive	Jane Long Drive	Timberlane	453	453
Live Oak Drive	Airport Avenue	Chestnut Drive	983	1,125
Longhorn Drive	Airport Avenue	Dead End	726	726
Louise Street	Avenue H	Avenue N	2,087	2,087
Lynbrook Drive	Ripple Creek Drive	Dead End	372	372
MacArthur Street	Avenue K	Avenue I	643	643
Madison Avenue	McKinley Street	Johnson Street	969	969
Mahlmann Street	Avenue I	Avenue N	1,838	1,838
Mahlmann Street	Avenue N	Avenue P	580	580
Marilyn Street	Jones Street	Briar Ridge Drive	610	610
Matamoros Drive	Blume Road	Dead End	1,187	1,187
Matamoros Drive	Blume Road	Monterrey Drive	920	920
McKinley Street	Dead End	Madison Avenue	569	569
Miles Street	Avenue I	Avenue N	1,838	1,838
Miles Street	Avenue I	Avenue H	718	718

Alternate Street Bid List for 2015-2016
Street Sweeping Contract

Millie Street	Avenue I	Avenue H	310	310
Millie Street	Avenue I	Avenue N	1,838	1,838
Mimosa Lane	Mulcahy Street	Dead End	463	463
Mockingbird Lane	Airport Avenue	Dead End	482	482
Monroe Avenue	Grant Street	Hamilton Street	860	860
Mons Avenue	1st Street	Louise Street	4,676	4,676
Monterrey Drive	Matamoros Drive	Vera Cruz Drive	349	349
Mulcahy Street	Avenue I	Avenue H	230	230
Mulcahy Street	Texas Avenue	Dyer Avenue	321	321
Mustang Avenue	In front of school		-	1,588
Old Creek Drive	Hardwood Drive	Avenue N	801	820
Parkway Avenue	Hamilton Street	Dead End	984	984
Parrott Avenue	8th Street	McKinley Street	885	885
Pecan Court	Pecan Drive	Dead End	374	374
Pecan Drive	Chesnut Drive	Hickory Way	458	517
Pecan Park Drive	Dead End	Westwood Drive	855	855
Pine Drive	Redbud Drive	Dogwood Drive	195	180
Reading Road	Herndon Drive	Dead End	634	634
Redbud Drive	Greenwood Drive	Pine Drive	780	780
Ripple Creek Drive	Jones Street	Graeber Road	2,121	2,121
Rockwood Drive	Green Gate Drive	Old Creek Drive	420	420
San Jacinto Street	Avenue F	Avenue G	150	150
Sandalwood Avenue	Spruce Drive	Greenwood Drive	586	586
Sequoia Lane	Mons Avenue	Dead End	708	708
Spruce Drive	Greenwood Drive	Sandalwood Avenue	586	586
Spruce Drive	Sandalwood Avenue	Woodway Avenue	400	432
Texas Avenue	Brazos Street	Mulcahy Street	342	342
Texas Avenue	Frost Street	George Street	340	340
Timberlane	Lane Drive	Dead End	684	684
Tobola Street	Avenue I	Avenue N	1,838	1,838
Tobola Street	Avenue O	Avenue R	692	692
Tremont Court	Parrott Avenue	Dead End	498	498
Truman Circle	Ward Street	Dead End	447	447
Turtle Creek Drive	Airport Avenue	Dead End	879	891
Vera Cruz Drive	Blume Road	Seabourne Meadows Drive	1,299	1,299
Vera Cruz Drive	Blume Road	Monterrey Drive	371	371
Village Court Drive	Town Center Blvd	Manor Drive	1,829	1,829
Walger Avenue	Bamore Road	West Street	1,679	1,633
Ward Street	Parkway Avenue	Avenue I	3,254	3,654
Washington Street	Blume Road	Dead End	1,253	1,253
West Street	Avenue D	Dead End	360	360

Alternate Street Bid List for 2015-2016
Street Sweeping Contract

West Street	Walger Avenue	Avenue I	2,728	2,728
West Street	Walnut Avenue	Avenue E	200	200
Westwood Drive	Pecan Park Drive	Lane Drive	683	683
Wilson Drive	Lane Drive	Dead End	764	764
		FEET	203,261	205,490
		MILES	38.50	38.92
		TOTAL MILES		77.41

Street Sweeping Services

BID PROPOSAL

Proposals must be submitted *in triplicate*. **Completed bid proposal must be received by the City Secretary's Office of the City of Rosenberg, 2110 4th Street, P. O. Box 32, Rosenberg, Texas 77471-0032 by 10:00 a.m. on Wednesday, January 7, 2015.**

The contractor may submit in person or by mail for consideration. ***The reference sheet must accompany the bid proposal sheet.*** No proposal will be considered without the completed reference document.

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.

Description	Curb Miles	Annual Cycles	Unit Price Per Curb Mile	Total Price Per Monthly Cycle	Total Price for 12 Monthly Cycles
Base Bid-Street List	102.81	12	$ 61.00	$ 6,271.41	75,256.92

Description	Total	
Hourly Rate Per Technical Specifications - 4.3 a & b	$ 100.00	

Description	Curb Miles	Annual Cycles	Unit Price Per Curb Mile	Total Price Per Monthly Cycle	Total Price for 4 Monthly Cycles
Alternate Bid Item 1	77.41	4	$ 15.00	$ 5,805.75	23,223.00

ACCEPTANCE OF BID PROPOSAL:

It is understood by the undersigned that the right is reserved by the City to reject any or all bid proposals for this service.

DATE: 12/30/2014

ATTEST/SEAL (if a Corporation):
WITNESS (if not a Corporation)

BY:
NAME: Bob Burns
TITLE: President

By:
Margaret Burns
Printed or Typed Name

Notary Public, State of Texas
My Commission Expires
October 25, 2015

Kustom Sweeping, LLC
Company's Name (Bidder)
PO BOX 580591
Street Address
Houston, TX 77258
City, State & Zip Code
281-541-6144
Area Code and Phone

BIDDER INFORMATION

FULL LEGAL FIRM/COMPANY NAME: Kustom Sweeping, LLC

BUSINESS STREET ADDRESS: 2629 Westgate Dr., Pearland, TX 77581

BUSINESS MAILING ADDRESS: PO BOX 580591, Houston, TX 77258

BUSINESS TELEPHONE NUMBER: 281-541-6144, 281-412-7643

BUSINESS FAX NUMBER: 281-485-4384

COUNTY: Brazoria MINORITY OWNED: NO #OF EMPLOYEES 75

****

CORPORATION: ____ PARTNERSHIP: ____ PROPRIETORSHIP: ____ L.L.C. ✓ L.L.P. ____

YEAR EST. 1982 NO. OF YEARS IN BUSINESS 32 FEDERAL ID NO. ____

NATURE OF BUSINESS: Sweeping service, general maintenance

PRINCIPALS:

NAME: Bob Burns TITLE: President / CEO

NAME: Scott Corl TITLE: Operations Manager

NAME: Megan Jakob TITLE: Accounts Manager

****

BANK REFERENCE: Frost Bank

NAME OF BANK OFFICER: Angela Pastran

ADDRESS / CITY / STATE / ZIP: 234 West Nasa Parkway
Webster, TX 77598

PHONE NUMBER 713-388-1350

BIDDER CUSTOMER / CLIENT REFERENCES

1. COMPANY NAME: City of Sugarland

ADDRESS: PO BOX 110

CITY / STATE / ZIP: Sugarland, TX 77478

PHONE NUMBER: 713 480 3838

NAME OF CONTACT: Henry Vavrecka

2. COMPANY NAME: City of League City

ADDRESS: 1535 Dickson Ave.

CITY / STATE / ZIP: League City, TX 77573

PHONE NUMBER: 281-338-4883

NAME OF CONTACT: George Chappa

3. COMPANY NAME: HEB

ADDRESS: 23714 Hwy 59 North #26

CITY / STATE / ZIP: Porter, TX 77365

PHONE NUMBER: 713-459-1916

NAME OF CONTACT: Rusty Gotulla

n/a

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.**

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.**

_____

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

_____ _____

Signature of person doing business with the governmental entity Date

Adopted 06/29/2007

OFFICIAL BIDDER'S BOND

THE STATE OF TEXAS }
} **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF FORT BEND }

THAT we, Kustom Sweeping, LLC as Principal and the other subscriber hereto as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Rosenberg, Texas, as municipal corporation, in the sum of $4,923.99 (an equal to 5% of the greatest amount bid by the bidder to do the work).

The condition of this obligation is as follows:

WHEREAS, the Principal has submitted on or about this date a bid proposal offering to perform the following:

Street Sweeping Services for the City of Rosenberg

In accordance with the plans, specifications and terms and conditions related thereto to which reference is hereby made.

NOW, THEREFORE, if the said Principal's offer as stated in the Bid Proposal is accepted by the City, and the said Principal executes and returns to the City the number of original counterparts of the contract required by the City, on the forms prepared by the City, for the work described herein and also executes and returns the same number of the Performance, Payment and Maintenance Bonds, if required, on the forms prepared by the City, in connection with the work described herein, within the time provided in the specifications (such bonds to be executed by a Surety Company authorized to do business in the State of Texas, and having an underwriting limitation in at least the amount of the bond) then this obligation is null and void, otherwise it is to remain in full force and effect.

In the event that the Principal is unable to or fails to perform the obligations undertaken herein, the undersigned Principal and Surety shall be liable to the City of Rosenberg for the full amount of this obligation which is hereby acknowledged as the amount of damages which will be suffered by the City on account of the failure of such Principal to perform such obligations, the actual amount of such damages being difficult to ascertain.

[Rest of Page Intentionally Left Blank]

EXECUTED this 30 day of December, 2015

Kustom Sweeping
Bob Burns
Principal

Signature

Bob Burns
Printed Name

President | CEO
Title

ATTEST/WITNESS: (SEAL)

Signature

Printed Name

Account Manager
Title

Kustom Sweeping
Bob Burns
Surety

Signature

Bob Burns
Printed Name

President | CEO
Title

ATTEST/WITNESS: (SEAL)

Signature

Printed Name

Account Manager
Title

REVIEWED:

CITY ATTORNEY

THE FOREGOING BOND IS APPROVED AND ACCEPTED ON BEHALF OF THE CITY OF ROSENBERG:

Robert Gracia, City Manager

GENERAL SERVICES CONTRACT

This Contract (Contract) is made between the City of Rosenberg, Texas (City), and Contractor. The City and Contractor agree to the terms and conditions of this Contract, which consists of the following parts:

I. Summary of Contract Terms
II. Standard Contractual Provisions
III. Special Terms and Conditions
IV. Contract Attachments
V. Signatures

I. Summary of Contract Terms

Contractor: Kustom Sweeping, LLC
Description of Services: Street Sweeping Services
Maximum Contract Amount: $98,479.92
Length of Contract: One-year with one additional one-year extension, if approved by City Council
Effective Date: February 01, 2015
Expiration Date: February 01, 2016

II. Standard Contractual Provisions

A. Definitions

Contract means this Standard Services Contract.

Services means the services for which the City solicited bids or received proposals as described in this Contract.

B. Services and Payment

Contractor will furnish Services to the City in accordance with the terms and conditions specified in this Contract. Contractor will bill the City for the Services provided at intervals of at least 30 days, except for the final billing. The City shall pay Contractor for the Services in accordance with the terms of this Contract, but all payments of interest on overdue amounts, are subject to the applicable provisions of Chapter 2251 of the Texas Government Code. The City reserves the right to modify any amount due to the contractor presented by invoice to the City if necessary to conform the amount to the terms of the Contract and Chapter 2251 of the Texas Government Code.

C. Termination Provisions

(1) *City Termination for Convenience.* Under this paragraph, the City may terminate this Contract during its term at any time for the City's own convenience where the Contractor is not in default by giving written notice to Contractor. If the City terminates this Contract under this paragraph, the City will pay the Contractor for all services rendered in accordance with this Contract to the date of termination.

(2) *Termination for Default.* Either party to this Contract may terminate this Contract as provided in this paragraph if the other party fails to comply with its terms. The party alleging the default shall give the other party written notice of the default citing the terms of the Contract that have been breached and what action the defaulting party must take to cure the default. If the party in default fails to cure the default as specified in the notice, the party giving the notice of default may terminate this Contract by written notice to the other party, specifying the date of termination. Termination of this Contract under this paragraph does not affect the right of either party to seek remedies for breach of the Contract as allowed by law, including any damages or costs suffered by either party. However, this provision is not intended to and does not act as a waiver of the City's sovereign immunity.

(3) *Multi-Year Contracts and Funding.* If this Contract extends beyond the City's fiscal year in which it becomes effective or provides for the City to make any payment during any of the City's fiscal years following the City's fiscal year in which this Contract becomes effective and the City fails to appropriate funds to make any required Contract payment for that successive fiscal year, then this Contract automatically terminates at the beginning of the first day of the City's successive fiscal year of the Contract for which the City has not appropriated funds or otherwise provided for funds to make a required payment under the Contract. (Section 5, Article XI, Texas Constitution) It is expressly understood and agreed that the City shall have the right to terminate the agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to continue the contract. The City may execute such termination by giving the Contractor a written notice of termination at the end of the City's then-current fiscal year.

D. Liability and Indemnity. Contractor shall indemnify, hold harmless and defend the City, it's officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorneys' fees and any and all other costs or fees (whether rounding in constitutional law, tort, contract, or property law, or raised pursuant to local, state or federal statutory provision), arising out of the performance of the Contract and/or arising out of a willful or negligent act or omission of the Contractor, its officers, agents, and employees. It is understood and agreed that the Contractor and any employee or subcontractor of the Contractor shall not be considered an employee of the City. The Contractor shall not be within the protection or coverage of the City's workers' compensation insurance, health insurance, liability insurance or any other insurance that the City from time to time may have in force and effect. The City specifically reserves the right to reject any and all of Contractor's employees, representatives or subcontractors and/or their employees for any cause, should the presence of any such person on City property or their interaction with City employees be found not to be in the best interest of the City, be found to be harassing to any City employee or third person, or is found to interfere with the effective and efficient operation of the City or the City's workplace.

E. Liens. Contractor agrees to and shall indemnify and hold harmless the City against any and all liens and encumbrances for all labor, goods and services which may be provided under or as a result of this Contract. At the City's request, the Contractor and all subcontractors shall provide a proper release of any and all liens, or satisfactory evidence of freedom from all liens shall be delivered to the City.

F. Confidentiality. Any provision of this Contract that attempts to prevent the City's disclosure of information that is subject to disclosure under federal of Texas law or regulation, court or administrative decision or ruling, regardless of the source is invalid. (Chapter 552, Texas Government Code).

G. Tax Exemption. The City is not liable to Contractor for any federal, state or local taxes for which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any item purchased for consumption by the City. Fuel purchased for resale shall include Federal Excise Tax under IRC Section 4081 and Texas Motor Fuel Tax if required under the Texas Tax Code Chapter 162. Texas limited sales tax exemption certificates will be furnished upon request. Contractor shall not charge for said taxes on purchases for consumption by the City. If billed, the City will remit payment less sales tax.

H. Assignment. The Contractor shall not assign this Contract without the prior written consent of the City.

I. Law, Venue and Limitations. This Contract is governed by the laws of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Fort Bend County, Texas. Any provision in this Contract that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice & Remedies Code).

J. Sovereign Immunity. Any provision of this Contract that seeks to waive the City's immunity from suit and/or immunity from liability is void unless agreed to by specific acknowledgement of the provision within the Contract.

K. Entire Contract. This Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.

L. Independent Contractor. Contractor shall perform the work under this Contract as an independent contractor and not as an employee of the City. The City has no right to supervise, direct, or control the Contractor or Contractor's officers or employees in the means, method, or details of the work to be performed by Contractor under this Contract. The City and Contractor agree that the work performed under this Contract is not inherently dangerous, that Contractor will perform the work in a workmanlike manner, and that Contractor will take proper care and precautions to insure the safety of Contractor's officers and employees.

M. Dispute Resolution Procedures. The Contractor and City desire an expeditious means to resolve any disputes that may arise between them regarding this Contract. If either party disputes any matter in relation to this Contract, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

N. Severability. If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.

III. Special Terms or Conditions.

IV. Additional Contract Documents. The following specified documents attached to this Contract are part of this Contract, except as follows: any provision contained in any of the Contractor's Additional Contract Documents specified below that conflicts with a Contract provision.

A. Contractor's Additional Contract Document:
   1. Insurance Certificate

B. City's Additional Contract Documents:
   1. Technical Specifications and Bid Documents
   2. Policy for Bidding Projects

V. Signatures. By signing below, the parties agree to the terms of this Contract:

CITY OF ROSENBERG:

_____
Robert Gracia
City Manager

Attest: City Secretary

_____

CONTRACTOR:

By: Bob Bo

Title: President | CEO

Date: 12/30/2014

Revised: 09-10-14 (DNRBHZ)

POLICY FOR BIDDING PROJECTS

Price Quotations and Purchase Awards

1) Procedures of Negotiated Purchases Not Subject to Competitive Bidding. Purchase requisitions for $5,001 to $50,000. Purchases in excess of $5,000 will require written competitive price quotations from at least three (3) vendors. Failure of the vendor to provide price quotations in writing may be grounds for exclusion of that vendor from the purchasing request.

   a) Purchases between $5,000 and $50,000 will require a certificate of insurance on award of contract for General Liability coverage naming the City of Rosenberg (City) as an additional insured.

   b) No bidders' bond or cashiers' check will be required as bid security.

2) Purchase Subject to Competitive Bidding. Purchases in excess of $50,000 shall be competitively bid and awarded by the City Council, except as otherwise provided in the Purchasing Policy. Such purchases shall be solicited by formal competitive bids or proposals. Purchases exceeding $50,000 during any fiscal year period shall be deemed as meeting the competitive bidding requirements of the Purchasing Policy.

   a) For one time jobs in excess of $50,000, the City will require $500,000 General Liability coverage, as well as Employers' Liability coverage, with the City being named as an additional insured.

   b) For more significant work, (i.e. infrastructure construction, etc.), the City will require $1,000,000 in General Liability coverage minimum combined single-limit General Liability coverage per occurrence and $2,000,000 General Aggregate for bodily injury and property damage coverage, as well as Employers' Liability coverage. If the work will exceed $1,000,000 these limits may be increased upon recommendation of the City Manager. The City will be named as an additional insured.

   c) Workers' Compensation coverage will be required as set forth by State Law.

   d) Vehicle Liability Insurance coverage will be required as the same limits as General Liability coverage for any contractor who uses his own vehicles in the course of the work (not just driving to and from, but actually performing the work).

   e) For work in an amount greater than $50,000 (rather than the $25,000 current requirement in our Purchasing Manual), an Official Bidders' Bond signed by the Surety and Bidder, Cashiers' Check, Certified Check, or a letter of credit from an FDIC insured bank in an amount equal to five (5) percent of the total cost of the project will be required with each submitted proposal. Said bid security shall also serve as guarantee that the successful bidder will deliver all materials/equipment and/or services in accordance with time and specifications of the Request for Proposal.

Procurement of Professional Services

Procurement of Professional Services shall remain the same with the following exception:

a) Although contracts for professional services may not be awarded on the basis of competitive bids, the City Council must authorize any professional service contract which will exceed $50,000, on the basis of the above criteria.

b) Professional services rendered to the City which do not exceed $50,000 in any fiscal year must be approved for payment by the Department Head of the user department, the Finance Director, and the City Manager, as provided herein.

ONESO-2 OP ID: H7

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/29/2014

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
Frost Insurance - Houston
P O Box 1315
Houston, TX 77251
Amanda Lenss
Phone: 713-388-1250
Fax: 713-388-1238

CONTACT NAME: Gwendolyn Rose
PHONE (A/C, No, Ext): 713-388-1245 FAX (A/C, No): 713-388-1238
E-MAIL ADDRESS: grose@frostinsurance.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Allied Insurance	42587
INSURER B: Texas Mutual Ins. Co. 22945	22945
INSURER C: The Hartford	
INSURER D: Rockhill Insurance Co	
INSURER E:	
INSURER F:	

INSURED
One Source Cleaning Solutions
Kustom Sweeping LLC
4502 Cedar Hill Dr.
Pearland, TX 77584-0009

COVERAGES CERTIFICATE NUMBER: 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	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER POLICY X PRO-JECT LOC			ACP7225424206	12/31/2014	12/31/2015	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 1,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS			ACP7225424206	12/31/2014	12/31/2015	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
A	UMBRELLA LIAB OCCUR X EXCESS LIAB CLAIMS-MADE DED RETENTION $			ACP7225424206	12/31/2014	12/31/2015	EACH OCCURRENCE	$ 3,000,000
							AGGREGATE	$ 3,000,000
							Umbr To	$ Follow Form
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [ ] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		TSF0001204568	09/14/2014	09/14/2015	X WC STATU-TORY LIMITS OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
D	Lsd Rented Equipme			ACP7225424206	12/31/2014	12/31/2015	Equipment	75,000
D	Pollution			ENVP011484	10/30/2014	10/30/2015	1M/Occurr	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Additional insured on the GL policy is City of Rosenburg Public Works, Parks and Recreation 832-595-3961

CERTIFICATE HOLDER

CITYRIC

City of Rosenburg
Public Works, Parks and
Recreation
P O Box 32
Rosenburg, TX 77471

CANCELLATION

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

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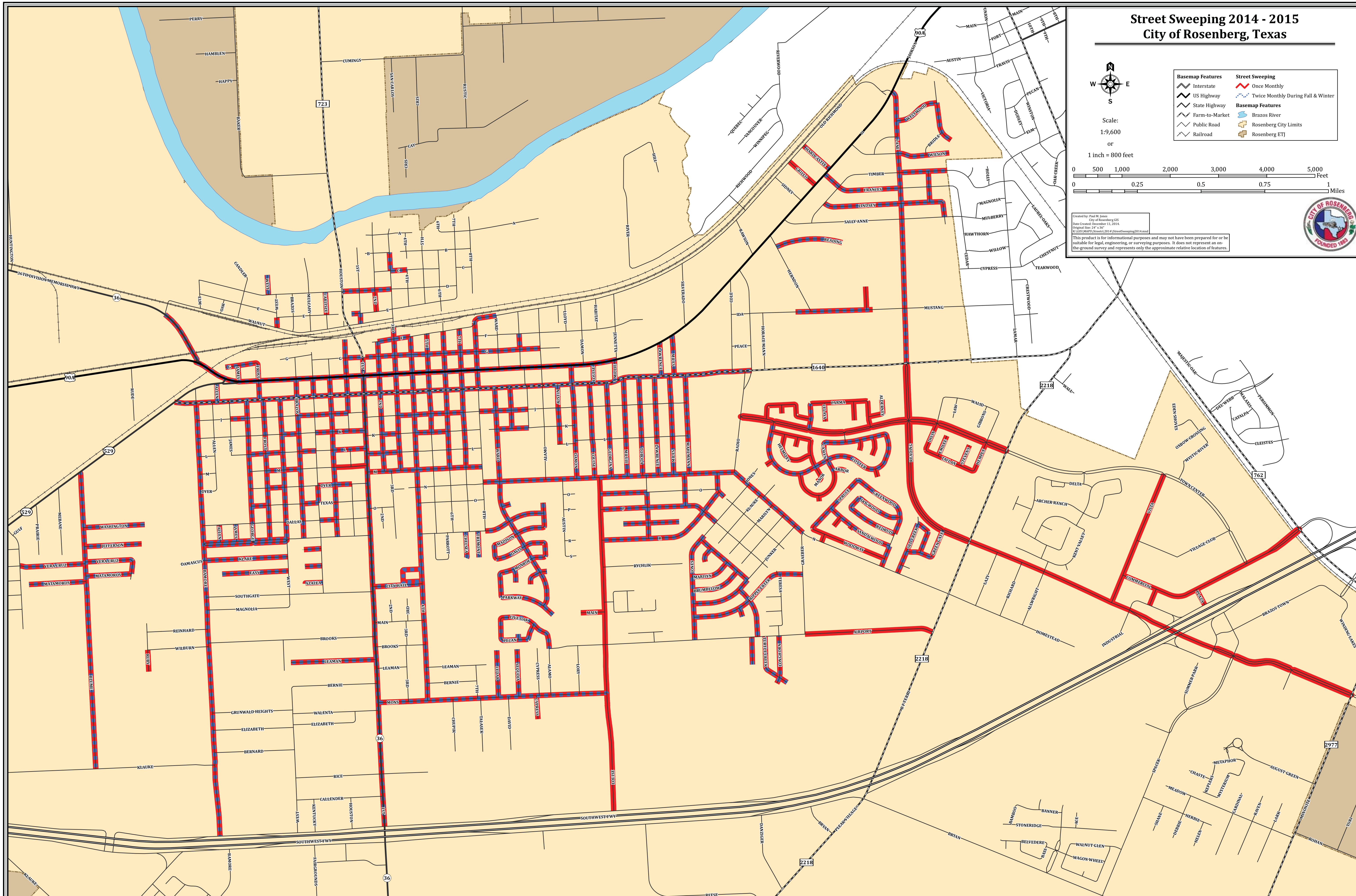
Street Sweeping 2014 - 2015
City of Rosenberg, Texas
N
W
E
S
Scale:
1:9,600
or
1 inch = 800 feet
Basemap Features
Interstate
US Highway
State Highway
Farm-to-Market
Public Road
Railroad
Street Sweeping
Once Monthly
Twice Monthly During Fall & Winter
Basemap Features
Brazos River
Rosenberg City Limits
Rosenberg ETJ
0 500 1,000 2,000 3,000 4,000 5,000 Feet
0 0.25 0.5 0.75 1 Miles
Created by: Paul M. Jones
City of Rosenberg GIS
Date Created: December 11, 2014.
Original Size: 24" x 36"
K:\GIS\MAPS\Streets\2014\StreetSweeping2014.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 features.
CITY OF ROSENBERG
FOUNDED 1883
PERRY
HAMBLEN
HAPPY
BAKER
CUMINGS
723
SAN CARLOS
GRIS
RUSTIC
CAY
HUNTINGTON
36TH DIVISION MEMORIAL HWY
36
90A
529
CANDLER
WEST
ELM
OAK
E
WALNUT
BRAZOS
MULCAHY
CARLISLE
HOUSTON
1ST
2ND
3RD
4TH
5TH
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7TH
8TH
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JAMES
FROST
ALLEN
RUDE
DYER
TEXAS
DALLAS
GEORGE
GULF
PRAIRIE
MEBANE
WASHINGTON
JEFFERSON
VERA CRUZ
MATAMOROS
DAMASCUS
KLARE
EASY
AZALEA
SOUTHGATE
MAGNOLIA
REINHARD
WILBURN
RUBY
BLUME
BAMORE
BROOKS
LEAMAN
BERNIE
GRUNWALD HEIGHTS
WALENTA
ELIZABETH
BERNARD
KLAUKE
RICE
CALLENDER
KENTUCKY
SOUTHWEST FWY
FAIRGROUNDS
CITY HALL
MAIN
MONS
CHUPIK
TALASEK
DAVID
PARROTT
CHELSEA
TREMONT
WARD
MADISON
DAVIS
MONROE
PARKWAY
LIVE OAK
PECAN
CEDAR
SEQUOIA
CYPRESS
ALAMO
LORY
AUSTIN
DAMON
LOUISE
GEORGINA
MILLIE
TOBOLA
LAWRENCE
MILES
MAHLMANN
JENNETTA
HABITAT
LLOYD
SILVERADO
RIVER
HILL
RIVERWOOD
QUEBEC
VANCOUVER
WINNIPEG
RICHWOOD
OLD RICHMOND
RAWSON
HERNDON
JACKSON
HARDCASTLE
GRILLO
SIDNEY
TIMBER
FRANCES
LINDSEY
SALLY ANNE
READING
COLE
IDA
PEACE
HORACE MANN
MUSTANG
1640
LANE
WESTWOOD
BRIDLE
WILSON
RADIO
JONES
KLAUKE
MARILYN
JUNKER
RYCHLIK
BRUMBELOW
RIPPLE CREEK
TERESA
TURTLE CREEK
LONGHORN
GRAEBER
AIRPORT
2218
B F TERRY
PLEAK VILLAGE
BRYAN
DANZIGER
REESE
PARMA
CELAYA
ALDERNEY
HELMSLEY
CASLYN
COTTER
ARBOR
MANOR
SPRUCE
GREENWOOD
DOGWOOD
REDBUD
SANDALWOOD
WOODWAY
OLD CREEK
GREEN GATE
WALID
LAW
GIBBONS
DIVIN
EMILEE
TAYLAN
STEVENS
HEMPLE
DELTA
ARCHER RANCH
KENT VALLEY
LAZY
RICHARD
ALLWRIGHT
HOMESTEAD
INDUSTRIAL
VISTA
COMMERCIAL
PLAZA
VILLAGE CLUB
TOWN CENTER
MYSTIC RIVER
OXBOW CROSSING
EDEN SHOVES
BRAZOS TOWN
WINDING LAKES
762
MAJESTIC OAK
DEL WEBB
MALAXIS
PERSIMMON
CATALPA
CLEISTES
WALL
MAIN
FORT
UNION
10TH
9TH
AUSTIN
TRAVIS
VICTORIA
PECAN
WINSTON
DUDLEY
ELM
HOLLY
OAK CREEK
MAGNOLIA
MULBERRY
LAUREL OAKS
HAWTHORN
WILLOW
CEDAR
CYPRESS
CHESTNUT
TEAKWOOD
CRESTWOOD
LAMAR
SUMMER PARK
SPACEK
METAPHOR
AUGUST GREEN
CHASTE
KEPLERS
MYSTERIUM
MEADOW
SHANE
DEBBIE
HERBIE
HELEN
CARDINAL
RAVEN
LARK
MINONITE
TORI
ROHAN
2977
BAMBOO
BANNER
AGE
STONERIDGE
BELVEDERE
BASS
WALNUT GLEN
WAGON WHEEL

RESOLUTION NO. R-1901

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AWARDING BID NO. 2015-04 FOR STREET SWEEPING SERVICES; AND, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A GENERAL SERVICES CONTRACT RELATED THERETO, 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 Bid No. 2015-04 to _____, in the amount of $_____ for Street Sweeping Services.

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 _____ 2015.

ATTEST:

_____

Linda Cernosek, TRMC, **City Secretary**

APPROVED:

_____

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

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
8	**Resolution No. R-1908 – Union Pacific Railroad Company Pipeline Crossing Agreement**

ITEM/MOTION

Consideration of and action on Resolution No. R-1908, a Resolution authorizing the City Manager to execute a Pipeline Crossing Agreement related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and Union Pacific Railroad Company, in the amount of $7,200.00.

FINANCIAL SUMMARY		ELECTION DISTRICT
Annualized Dollars: [X] One-time [ ] Recurring [ ] N/A	**Budgeted:** [X] Yes [ ] No [ ] N/A Source of Funds: 423-0000-550-7032 (CP 1410)	[X] District 1 [ ] District 2 [ ] District 3 [ ] District 4 [ ] City-wide [ ] N/A **MUD #:** N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1908
2. Peters Correspondence – 12-29-14
3. Site Map

APPROVALS

Submitted by:	Reviewed by:	Approved for Submittal to City Council:
John Maresh Assistant City Manager of Public Services	[X] Exec. Dir. of Administrative Services [ ] Asst. City Manager of Public Services [X] City Attorney ***DNRBHZ/rl*** [ ] City Engineer [ ] (Other)	Robert Gracia City Manager

EXECUTIVE SUMMARY

The 2014 Sanitary Sewer Pipebursting Project includes the replacement of three (3) separate aging collection system lines crossing both the BNSF and Union Pacific railroad rights-of-way (ROW) between Avenue F and Avenue E. As a requirement of crossing railroad ROW, the City must execute a separate Pipeline Crossing Agreement (Agreement) from each railroad for each individual line. This particular Agreement is with the Union Pacific Railroad Company for access upon their premises. The Agreement will allow for the installation of a 24-inch HDPE sanitary sewer line inside an existing metal casing.

Staff and the City Attorney have reviewed the Pipeline Crossing Agreement and recommend approval of Resolution No. R-1908 as presented.

RESOLUTION NO. R-1908

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A PIPELINE CROSSING AGREEMENT RELATED TO THE 2014 SANITARY SEWER PIPEBURSTING PROJECT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND UNION PACIFIC RAILROAD COMPANY, IN THE AMOUNT OF $7,200.00.

* * * * *

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 Pipeline Crossing Agreement related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and Union Pacific Railroad Company in the amount of $7,200.00.

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

PASSED, APPROVED, AND RESOLVED this _____ day of _____ 2015.

ATTEST: **APPROVED:**

_____ _____

Linda Cernosek, **CITY SECRETARY** Vincent M. Morales, Jr., **MAYOR**

Pipeline Crossing 080808
Last Modified: 03/29/10
Form Approved, AVP-Law

Folder No. 2898-91

PIPELINE CROSSING AGREEMENT

Mile Post: 35.78, Glidden Subdivision
Location: Rosenberg, Fort Bend County, Texas

THIS AGREEMENT ("Agreement") is made and entered into as of December 29, 2014, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **CITY OF ROSENBERG**, a Texas municipal corporation to be addressed at Po Box 32, Rosenberg, Texas 77471 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 24 inch cased pipeline for transporting and conveying waste water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated November 18, 2014 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying waste water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery depicting the Pipeline crossing, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Seven Thousand Two Hundred Dollars ($7,200.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. **DEFINITION OF LICENSEE.**

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. **INSURANCE.**

A. During the life of the License, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this license, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. **TERM.**

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY	**CITY OF ROSENBERG**
By: _____	By: _____
Manager - Contracts	Name Printed: _____
	Title: _____

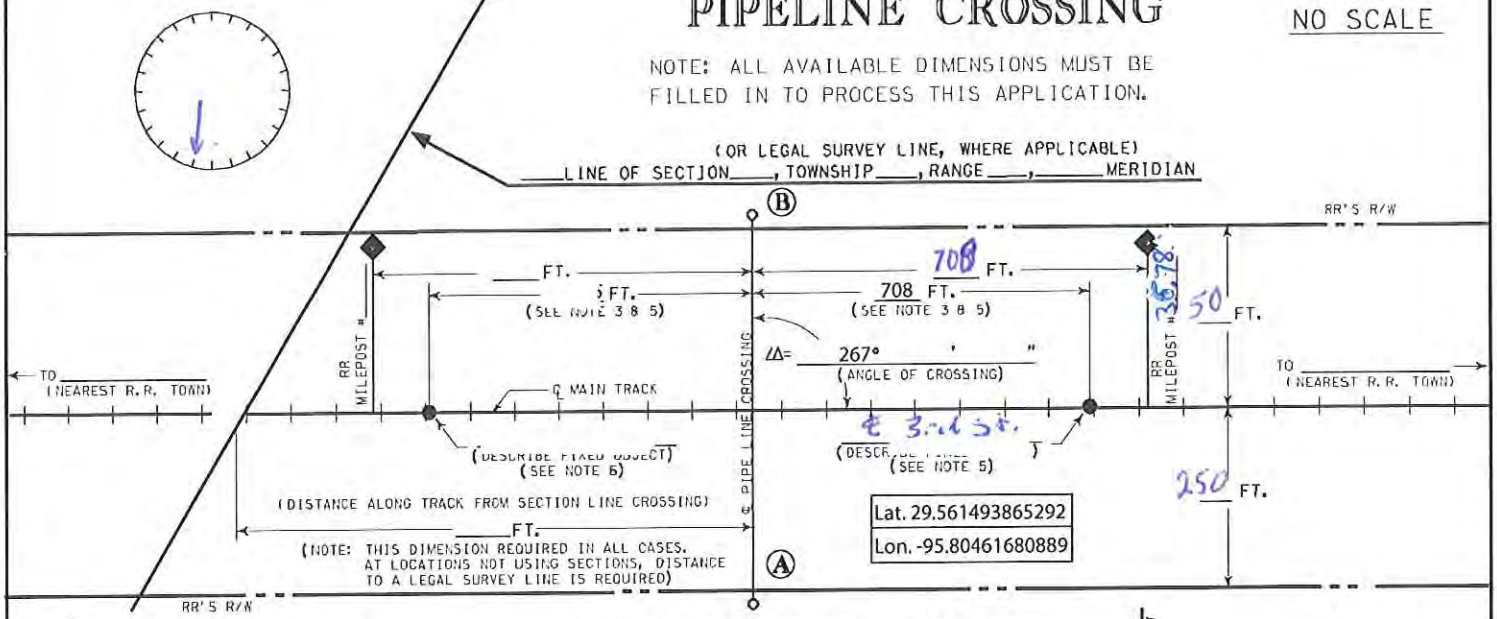
10-7-14

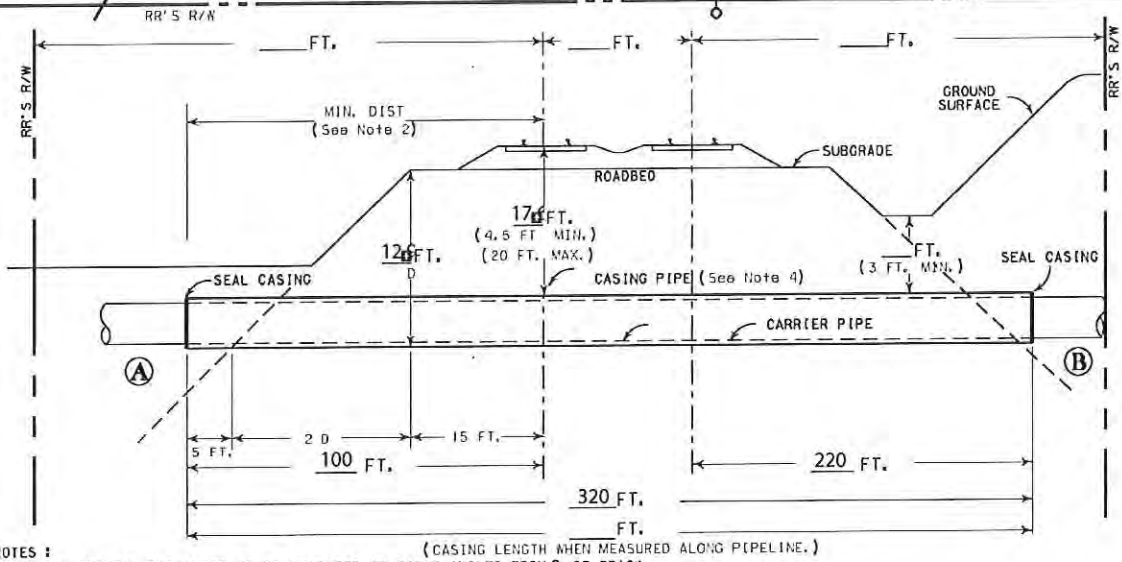
ENCASED NON-FLAMMABLE PIPELINE CROSSING

FORM DR-0404-B
REV 10-22-2007
www.uprr.com
NO SCALE

PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.



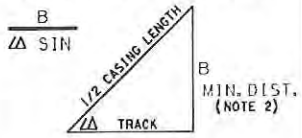


STEEL CASING WALL THICKNESS CHART		
MINIMUM THICKNESS		DIAMETER OF CASING PIPE
.2500"	1/4"	12" OR LESS
.3125"	5/16"	OVER 12"-18"
.3750"	3/8"	OVER 18"-22"
.4375"	7/16"	OVER 22"-28"
.5000"	1/2"	OVER 28"-34"
.5625"	9/16"	OVER 34"-42"
.6250"	5/8"	OVER 42"-48"

OVER 48" MUST BE APPROVED BY R.R. CO.

NOTE: THIS CHART IS ONLY FOR SMOOTH STEEL CASING PIPES WITH MINIMUM YIELD STRENGTH OF 35,000 PSI.

FORMULA TO FIGURE CASING LENGTH WITH ANGLE OF CROSSING OTHER THAN 90°



NOTES:
1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM ℄ OF TRACK.
2) CASING TO EXTEND BEYOND THE ℄ OF TRACK AT RIGHT ANGLES THE GREATER OF 2D + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, ℄ OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
5) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; ℄ OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

A) IS PIPELINE CROSSING WITHIN DEDICATED STREET ? ( ) YES; (•) NO;
B) IF YES, NAME OF STREET 3RD STREET
D) DISTRIBUTION LINE (•)_____ OR TRANSMISSION LINE ( )_____
C) CARRIER PIPE :
COMMODITY TO BE CONVEYED WASTE WATER
OPERATING PRESSURE 0 PSI
WALL THICKNESS 1.263 ; DIAMETER 24 ; MATERIAL HIGH DENSITY;
E) CASING PIPE :
WALL THICKNESS 0.5 ; DIAMETER 30 ; MATERIAL STEEL ;
NOTE : CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
( ) DRY BORE AND JACK (WET BORE NOT PERMITTED) ;
( ) TUNNEL ; OTHER CASING IS EXISTING AND WILL NOT BE REPLACED.
G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? ( ) YES; ( ) NO;
H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 100 (30' MIN.)
I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE (•) DOES ; ( ) DOES NOT ; EXIST IN VICINITY OF WORK TO BE PERFORMED . TICKET NO. 20141007035

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

Glidden Sub
(SUBDIVISION)

M. P 35.78 E. S. 1892+97

ENCASED WASTE WATER CROSSING AT

Rosenberg (NEAREST CITY) Fort Bend (COUNTY) TX (STATE)

CITY OF ROSENBERG
(APPLICANT)

RR FILE NO. 0289891 DATE 11/18/14

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE : 1-800-336-9193

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.

B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.

C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. <u>NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.</u>

A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

KEVIN N. STEWART
MGR TRACK MNTCE
2802 Moy St
HOUSTON, TX 77007
W: 713 577-0488
C: 713 458-8364

B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.

C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.

D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensee whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.

G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. **<u>LICENSEE TO BEAR ENTIRE EXPENSE.</u>**

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.

B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.

D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.

E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. <u>RESTORATION OF LICENSOR'S PROPERTY.</u>

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. <u>INDEMNITY.</u>

A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT,

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. <u>REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.</u>

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. <u>WAIVER OF BREACH.</u>

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.

B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

Approved: Insurance Group
Created: 9/23/05
Last Modified: 03/29/10
Form Approved, AVP-Law

EXHIBIT C
Union Pacific Railroad Company
Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than $2,000,000 each occurrence and an aggregate limit of not less than $4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less $2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. **Workers Compensation and Employers** Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 disease policy limit $500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. **Railroad Protective Liability** insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000.

The definition of “JOB LOCATION” and “WORK” on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

E. **Umbrella or Excess** insurance. If Licensee utilizes umbrella or excess policies, and these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker’s compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad’s negligence whether sole or partial, active or passive, and shall not be limited by Licensee’s liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

(i) Waist-length shirts with sleeves.
(ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
(iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

(i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
(ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
(iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers
- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)

(iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee and its contractor are responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

(i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

(ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.

(iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

(i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
(ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).
(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
(v) Before stepping over or crossing tracks, look in both directions first.
(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

December 29, 2014
Folder: 2898-91

LANE GRIFFITH
CITY OF ROSENBERG
PO BOX 32
ROSENBERG TX 77471

Re: Proposed 24 Inch Cased waste water Pipeline Crossing of Railroad Property at Mile Post 35.78 on the Glidden Subdivision at or near Rosenberg, Fort Bend County, Texas

Lane Griffith:

Attached is an agreement covering your use of the Railroad Company's right of way. Please execute the attached documents IN DUPLICATE and return.

An original copy of the fully-executed document will be returned to you, when approved and processed by the Railroad Company. Also, please provide a resolution or other authorization for the party executing the documents, *if signature authorization is required by your Entity.*

Railroad Protective Liability Insurance (RPLI) may be obtained from any insurance company which offers such coverage. Union Pacific has also worked with a national broker, Marsh USA, to make available RPLI to you or your contractor. You can find additional information, premium quotes, and application forms at (uprr.marsh.com).

- Payment in the amount of **Seven Thousand Two Hundred Dollars ($7,200.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. Please include your payment, **with Folder No. 2898-91 noted on that document.** If you require formal billing, you may consider this letter as a formal bill and that 94-6001323 is this Corporation's correct Federal Taxpayer Identification Number.

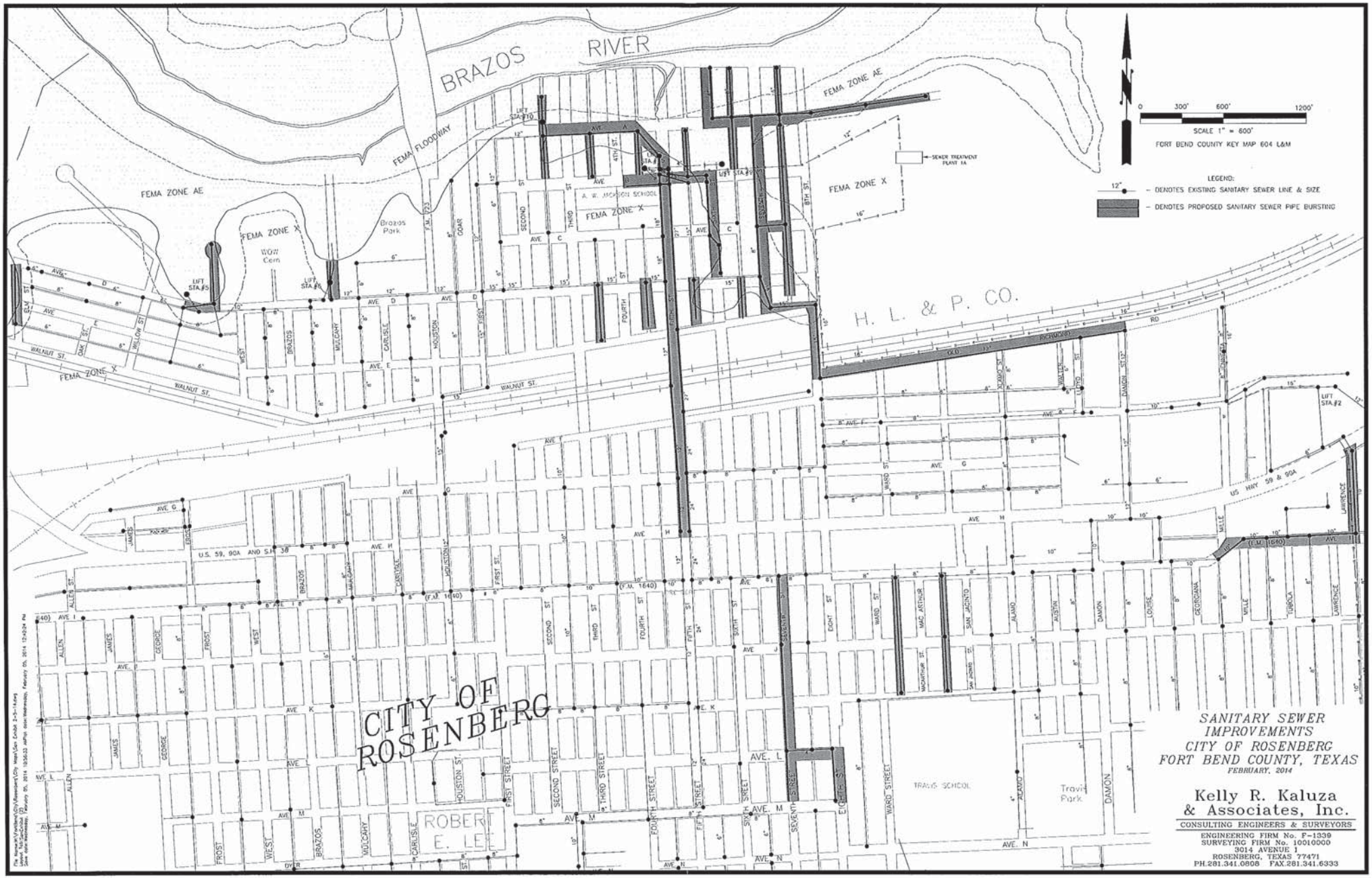
- Railroad Protective Liability Insurance (RPLI) may be obtained from any insurance company which offers such coverage. Union Pacific has also worked with a national broker, Marsh USA, to make available RPLI to you or your contractor. You can find additional information, premium quotes, and application forms at (uprr.marsh.com).

If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

If you have any questions, please contact me at (402) 544-8549.

Sincerely,

Daniel Peters
Asst. Manager - Contracts



SANITARY SEWER IMPROVEMENTS
CITY OF ROSENBERG
FORT BEND COUNTY, TEXAS
FEBRUARY, 2014

Kelly R. Kaluza & Associates, Inc.
CONSULTING ENGINEERS & SURVEYORS
ENGINEERING FIRM No. F-1339
SURVEYING FIRM No. 10010000
3014 AVENUE I
ROSENBERG, TEXAS 77471
PH.281.341.0808 FAX.281.341.6333

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
9	**Resolution No. R-1909 – Union Pacific Railroad Company Pipeline Crossing Agreement**

ITEM/MOTION

Consideration of and action on Resolution No. R-1909, a Resolution authorizing the City Manager to execute a Pipeline Crossing Agreement related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and Union Pacific Railroad Company, in the amount of $7,200.00.

FINANCIAL SUMMARY		ELECTION DISTRICT
Annualized Dollars: [X] One-time [ ] Recurring [ ] N/A	**Budgeted:** [X] Yes [ ] No [ ] N/A Source of Funds: 423-0000-550-7032 (CP 1410)	[X] District 1 [ ] District 2 [ ] District 3 [ ] District 4 [ ] City-wide [ ] N/A **MUD #:** N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1909
2. Peters Correspondence – 01-02-15
3. Site Map

APPROVALS

Submitted by:	Reviewed by:	Approved for Submittal to City Council:
John Maresh Assistant City Manager of Public Services	[X] Exec. Dir. of Administrative Services [ ] Asst. City Manager of Public Services [X] City Attorney ***DNRBHZ/rl*** [ ] City Engineer [ ] (Other)	Robert Gracia City Manager

EXECUTIVE SUMMARY

The 2014 Sanitary Sewer Pipebursting Project includes the replacement of three (3) separate aging collection system lines crossing both the BNSF and Union Pacific railroad rights-of-way (ROW) between Avenue F and Avenue E. As a requirement of crossing railroad ROW, the City must execute a separate Pipeline Crossing Agreement (Agreement) from each railroad for each individual line. This particular Agreement is with the Union Pacific Railroad Company for access upon their premises. The Agreement will allow for the installation of a 12-inch HDPE sanitary sewer line inside an existing metal casing.

Staff and the City Attorney have reviewed the Pipeline Crossing Agreement and recommend approval of Resolution No. R-1909 as presented.

RESOLUTION NO. R-1909

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A PIPELINE CROSSING AGREEMENT RELATED TO THE 2014 SANITARY SEWER PIPEBURSTING PROJECT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND UNION PACIFIC RAILROAD COMPANY, IN THE AMOUNT OF $7,200.00.

* * * * *

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 Pipeline Crossing Agreement related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and Union Pacific Railroad Company in the amount of $7,200.00.

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

PASSED, APPROVED, AND RESOLVED this _____ day of _____ 2015.

ATTEST: **APPROVED:**

_____ _____

Linda Cernosek, **CITY SECRETARY** Vincent M. Morales, Jr., **MAYOR**

Pipeline Crossing 080808
Last Modified: 03/29/10
Form Approved, AVP-Law

Folder No. 2898-96

PIPELINE CROSSING AGREEMENT

Mile Post: 35.8, Glidden Subdivision
Location: Rosenberg, Fort Bend County, Texas

THIS AGREEMENT ("Agreement") is made and entered into as of January 02, 2015, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **CITY OF ROSENBERG**, a Texas municipal corporation to be addressed at Po Box 32, Rosenberg, Texas 77471 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 12 inch cased pipeline for transporting and conveying waste water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated November 24, 2014 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying waste water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery depicting the Pipeline crossing, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Seven Thousand Two Hundred Dollars ($7,200.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. **DEFINITION OF LICENSEE.**

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. **INSURANCE.**

A. During the life of the License, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this license, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. **TERM.**

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY	**CITY OF ROSENBERG**
By: _____	By: _____
Kylan Crawford Senior Manager – Real Estate	Name Printed: _____
	Title: _____

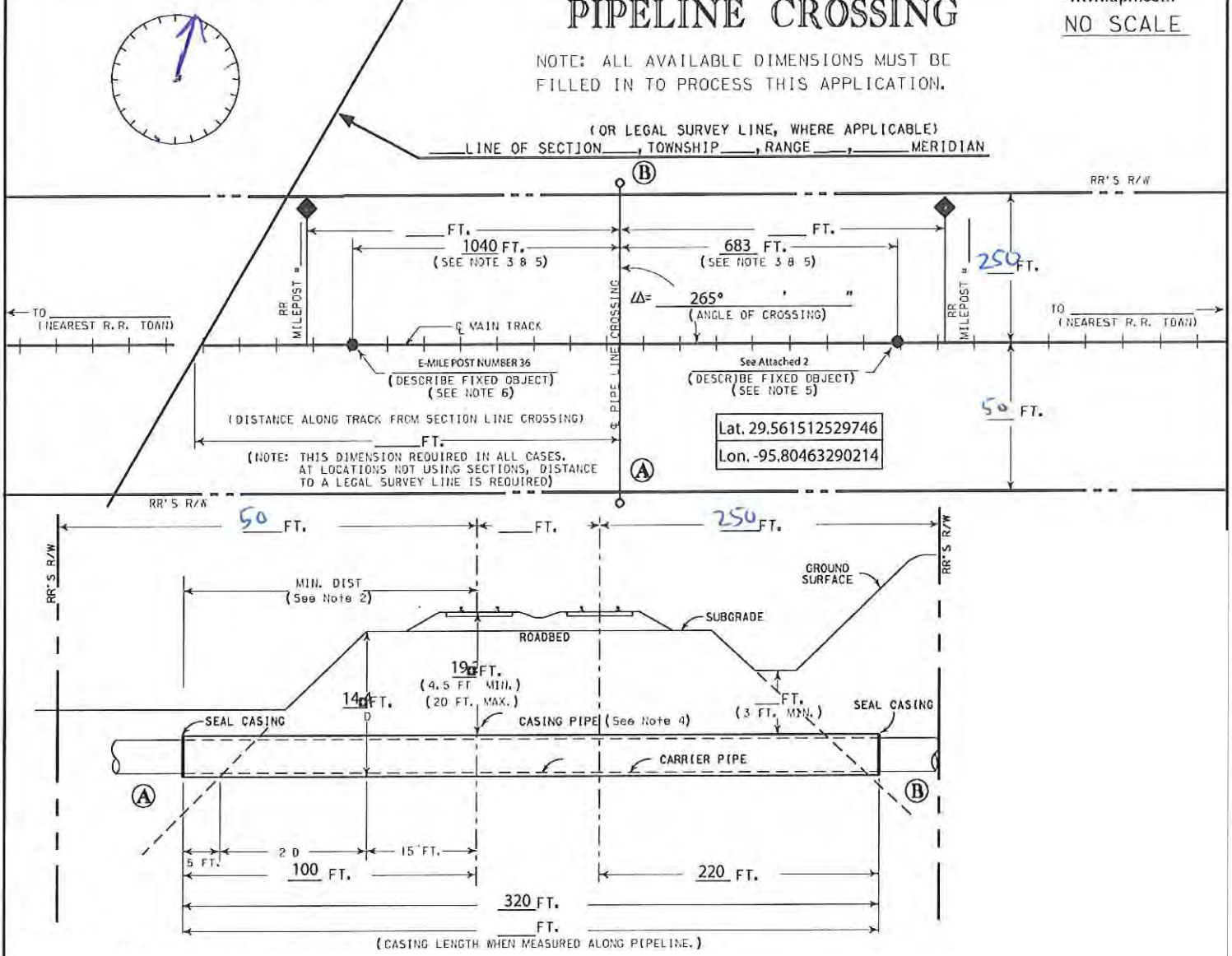
10-8-14

PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING

ENCASED NON-FLAMMABLE PIPELINE CROSSING

FORM DR-0404-B
REV 10-22-2007
www.uprr.com
NO SCALE

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.



Note: REFER TO AREMA VOLUME 1 PART 5 FOR REQUIRMENT RELATING TO PIPELINE CROSSINGS

A) IS PIPELINE CROSSING WITHIN DEDICATED STREET ? ○ YES; ● NO;
B) IF YES, NAME OF STREET 3RD STREET
D) DISTRIBUTION LINE ● ____ OR TRANSMISSION LINE ○ ____
C) CARRIER PIPE :
COMMODITY TO BE CONVEYED WASTE WATER
OPERATING PRESSURE 0 PSI
WALL THICKNESS 0.671 ; DIAMETER 12 ; MATERIAL HIGH DENSITY;
E) CASING PIPE :
WALL THICKNESS 0.5 ; DIAMETER 30 ; MATERIAL STEEL ;
NOTE : CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
○ DRY BORE AND JACK (WET BORE NOT PERMITTED) ;
○ TUNNEL ; OTHER CASING IS EXISTING AND WILL NOT BE REPLACED.
G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? ○ YES; ○ NO;
H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 100 (30' MIN.)
I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE ● DOES ; ○ DOES NOT ; EXIST IN VICINITY OF WORK TO BE PERFORMED . TICKET NO. 20141007035

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

Glidden
(SUBDIVISION)

M. P 35.8 E. S. 1892 + 53

ENCASED WASTE WATER CROSSING AT

ROSENBERG (NEAREST CITY) Fort Bend (COUNTY) TX (STATE)

CITY OF ROSENBERG
(APPLICANT)

RR FILE NO. 0289896 DATE 11-24-14

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE : 1-800-336-9193

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.

B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.

C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. <u>NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.</u>

A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

CASEY R. BUUS
MGR SIGNAL MNTCE
124 COMMERCE ST
EAGLE LAKE, TX 77434
C: 832 545-2980

KEVIN N. STEWART
MGR TRACK MNTCE
2802 Moy St
HOUSTON, TX 77007
W: 713 577-0488
C: 713 458-8364

B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.

C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.

D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensee whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.

G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. **<u>LICENSEE TO BEAR ENTIRE EXPENSE.</u>**

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.

B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.

D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.

E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. <u>RESTORATION OF LICENSOR'S PROPERTY.</u>

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. <u>INDEMNITY.</u>

A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT,

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. <u>REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.</u>

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. <u>WAIVER OF BREACH.</u>

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. <u>TERMINATION.</u>

A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.

B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. <u>AGREEMENT NOT TO BE ASSIGNED.</u>

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. <u>SUCCESSORS AND ASSIGNS.</u>

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. <u>SEVERABILITY.</u>

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

Approved: Insurance Group
Created: 9/23/05
Last Modified: 03/29/10
Form Approved, AVP-Law

EXHIBIT C
Union Pacific Railroad Company
Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than $2,000,000 each occurrence and an aggregate limit of not less than $4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less $2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. **Workers Compensation and Employers** Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 disease policy limit $500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. **Railroad Protective Liability** insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000.

The definition of “JOB LOCATION” and “WORK” on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

E. **Umbrella or Excess** insurance. If Licensee utilizes umbrella or excess policies, and these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker’s compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad’s negligence whether sole or partial, active or passive, and shall not be limited by Licensee’s liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

(i) Waist-length shirts with sleeves.
(ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
(iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

(i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
(ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
(iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)

(iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee and its contractor are responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

(i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

(ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.

(iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

(i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
(ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).
(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
(v) Before stepping over or crossing tracks, look in both directions first.
(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

January 2, 2015
Folder: 2898-96

JOHN MARESH
CITY OF ROSENBERG
PO BOX 32
ROSENBERG TX 77471

Re: Proposed 12 Inch Cased waste water Pipeline Crossing of Railroad Property at Mile Post 35.8 on the Glidden Subdivision at or near Rosenberg, Fort Bend County, Texas

John Maresh:

Attached is an agreement covering your use of the Railroad Company's right of way. Please execute the attached documents IN DUPLICATE and return.

An original copy of the fully-executed document will be returned to you, when approved and processed by the Railroad Company. Also, please provide a resolution or other authorization for the party executing the documents, *if signature authorization is required by your Entity.*

Railroad Protective Liability Insurance (RPLI) may be obtained from any insurance company which offers such coverage. Union Pacific has also worked with a national broker, Marsh USA, to make available RPLI to you or your contractor. You can find additional information, premium quotes, and application forms at (uprr.marsh.com).

- Payment in the amount of **Seven Thousand Two Hundred Dollars ($7,200.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. Please include your payment, **with Folder No. 2898-96 noted on that document.** If you require formal billing, you may consider this letter as a formal bill and that 94-6001323 is this Corporation's correct Federal Taxpayer Identification Number.

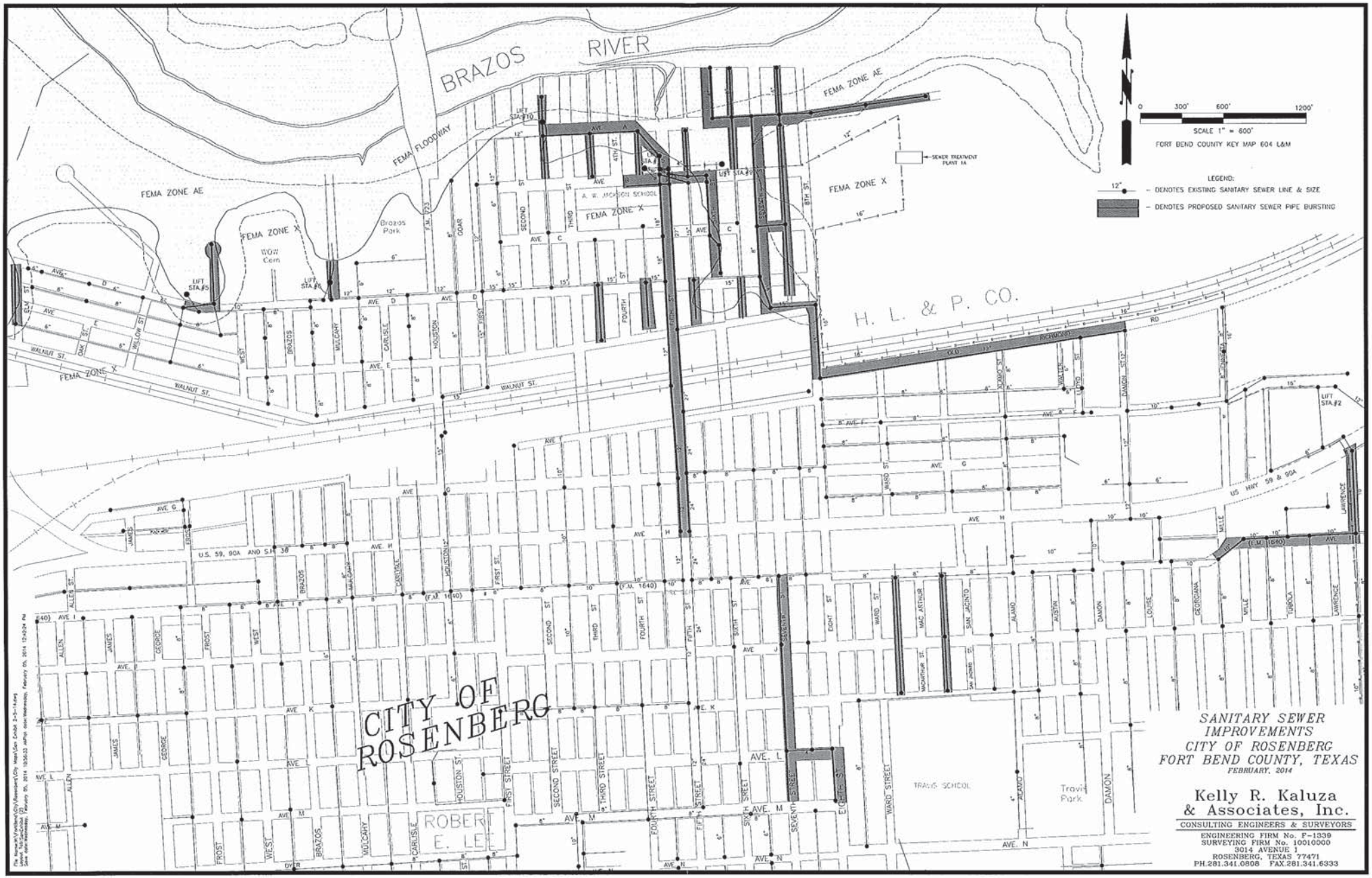
- Railroad Protective Liability Insurance (RPLI) may be obtained from any insurance company which offers such coverage. Union Pacific has also worked with a national broker, Marsh USA, to make available RPLI to you or your contractor. You can find additional information, premium quotes, and application forms at (uprr.marsh.com).

If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

If you have any questions, please contact me at (402) 544-8620.

Sincerely,

Daniel Peters
Asst. Manager - Contracts



SANITARY SEWER IMPROVEMENTS
CITY OF ROSENBERG
FORT BEND COUNTY, TEXAS
FEBRUARY, 2014

Kelly R. Kaluza & Associates, Inc.
CONSULTING ENGINEERS & SURVEYORS
ENGINEERING FIRM No. F-1339
SURVEYING FIRM No. 10010000
3014 AVENUE I
ROSENBERG, TEXAS 77471
PH.281.341.0808 FAX.281.341.6333

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
10	**Resolution No. R-1910 – Union Pacific Railroad Company Pipeline Crossing Agreement**

ITEM/MOTION

Consideration of and action on Resolution No. R-1910, a Resolution authorizing the City Manager to execute a Pipeline Crossing Agreement related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and Union Pacific Railroad Company, in the amount of $7,200.00.

FINANCIAL SUMMARY

Annualized Dollars:

[X] One-time
[ ] Recurring
[ ] N/A

Budgeted:

[X] Yes [ ] No [ ] N/A

Source of Funds:

423-0000-550-7032
(CP 1410)

ELECTION DISTRICT

[X] District 1
[ ] District 2
[ ] District 3
[ ] District 4
[ ] City-wide
[ ] N/A

MUD #: N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1910
2. Peters Correspondence – 01-02-15
3. Site Map

APPROVALS

Submitted by:

John Maresh
Assistant City Manager of Public Services

Reviewed by:

[X] Exec. Dir. of Administrative Services
[ ] Asst. City Manager of Public Services
[X] City Attorney ***DNRBHZ/rl***
[ ] City Engineer
[ ] (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

The 2014 Sanitary Sewer Pipebursting Project includes the replacement of three (3) separate aging collection system lines crossing both the BNSF and Union Pacific railroad rights-of-way (ROW) between Avenue F and Avenue E. As a requirement of crossing railroad ROW, the City must execute a separate Pipeline Crossing Agreement (Agreement) from each railroad for each individual line. This particular Agreement is with the Union Pacific Railroad Company for access upon their premises. The Agreement will allow for the installation of a 16-inch HDPE sanitary sewer line inside an existing metal casing.

Staff and the City Attorney have reviewed the Pipeline Crossing Agreement and recommend approval of Resolution No. R-1910 as presented.

RESOLUTION NO. R-1910

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A PIPELINE CROSSING AGREEMENT RELATED TO THE 2014 SANITARY SEWER PIPEBURSTING PROJECT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND UNION PACIFIC RAILROAD COMPANY, IN THE AMOUNT OF $7,200.00.

* * * * *

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 Pipeline Crossing Agreement related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and Union Pacific Railroad Company in the amount of $7,200.00.

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

PASSED, APPROVED, AND RESOLVED this _____ day of _____ 2015.

ATTEST: **APPROVED:**

_____ _____

Linda Cernosek, **CITY SECRETARY** Vincent M. Morales, Jr., **MAYOR**

Pipeline Crossing 080808
Last Modified: 03/29/10
Form Approved, AVP-Law

Folder No. 2898-97

PIPELINE CROSSING AGREEMENT

Mile Post: 35.6, Glidden Subdivision
Location: Rosenberg, Fort Bend County, Texas

THIS AGREEMENT ("Agreement") is made and entered into as of January 2, 2015, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **CITY OF ROSENBERG**, a Texas municipal corporation to be addressed at Po Box 32, Rosenberg, Texas 77471 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 16 inch encased pipeline for transporting and conveying waste water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated November 24, 2014 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying waste water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery depicting the Pipeline crossing, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Seven Thousand Two Hundred Dollars ($7,200.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. **DEFINITION OF LICENSEE.**

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. **INSURANCE.**

A. During the life of the License, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this license, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. **TERM.**

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY	**CITY OF ROSENBERG**
By: _____	By: _____
Kylan Crawford Senior Manager – Real Estate	Name Printed: _____
	Title: _____

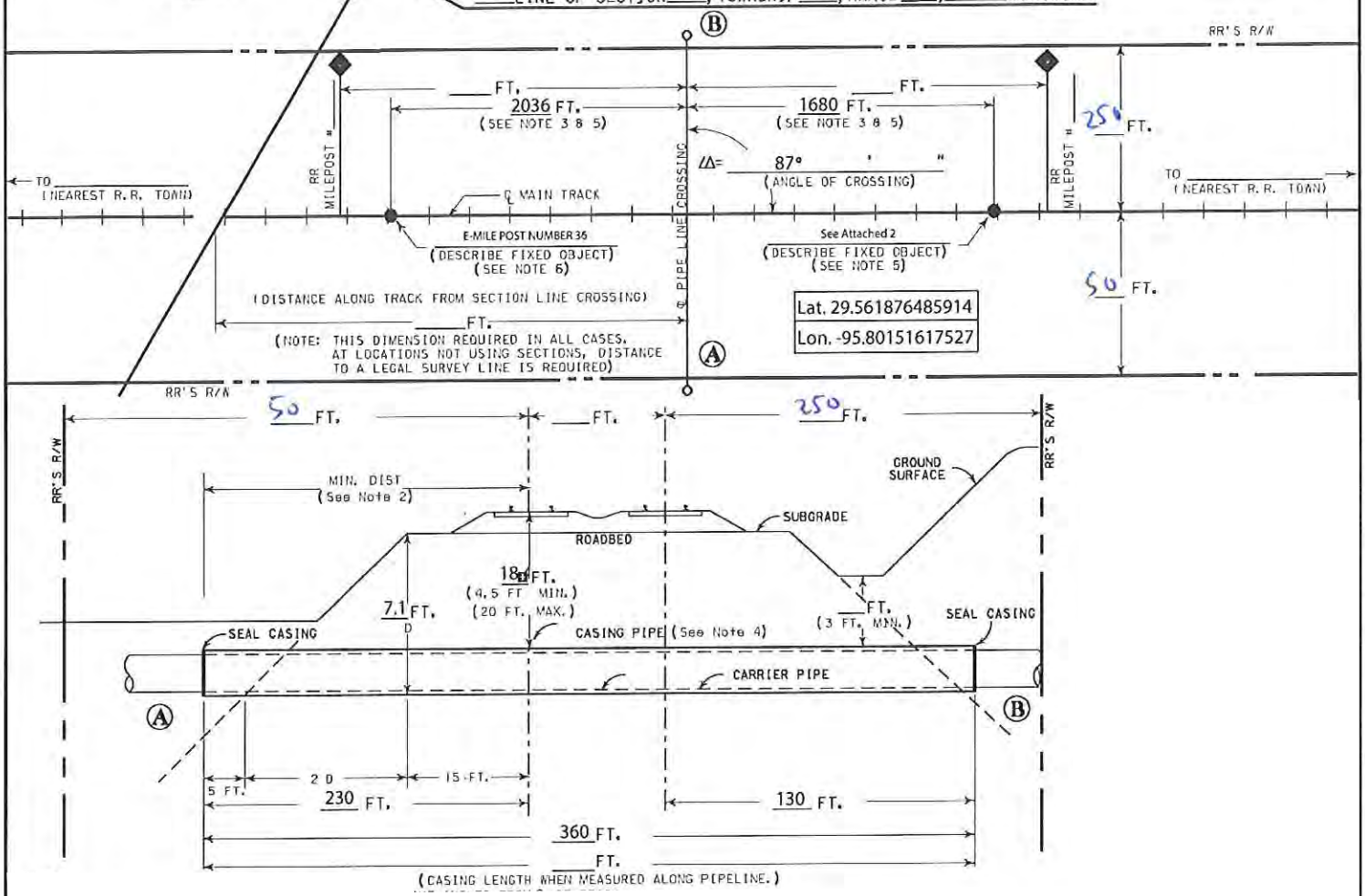
10-8-14

ENCASED NON-FLAMMABLE PIPELINE CROSSING

FORM DR-0404-B
REV 10-22-2007
www.uprr.com
NO SCALE

PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.



NOTE: REFER TO AREMA VOLUME 1 PART 5 FOR REQUIREMENT RELATING TO PIPELINE CROSSINGS

A) IS PIPELINE CROSSING WITHIN DEDICATED STREET ? ___ YES; ● NO;

B) IF YES, NAME OF STREET 3RD STREET

D) DISTRIBUTION LINE ● _____ OR TRANSMISSION LINE ___

C) CARRIER PIPE :
COMMODITY TO BE CONVEYED WASTE WATER
OPERATING PRESSURE 0 PSI
WALL THICKNESS 0.842 ; DIAMETER 16 ; MATERIAL HIGH DENSITY;

E) CASING PIPE :
WALL THICKNESS 0.5 ; DIAMETER 30 ; MATERIAL STEEL ;
NOTE : CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.

F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
___ DRY BORE AND JACK (WET BORE NOT PERMITTED) ;
___ TUNNEL ; OTHER CASING IS EXISTING AND WILL NOT BE REPLACED.

G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? ___ YES; ___ NO;

H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 130 (30' MIN.)

I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE ● DOES ; ___ DOES NOT ; EXIST IN VICINITY OF WORK TO BE PERFORMED . TICKET NO. 20141007035

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

Glidden
(SUBDIVISION)

M. P 35.6 E. S. 1883+00±

ENCASED WASTE WATER CROSSING AT

ROSENBERG (NEAREST CITY) Fort Bend (COUNTY) TX (STATE)

CITY OF ROSENBERG
(APPLICANT)

RR FILE NO. 0289897 DATE 11-24-14

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE : 1-800-336-9193

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.

B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.

C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. <u>NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.</u>

A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

CASEY R. BUUS
MGR SIGNAL MNTCE
124 COMMERCE ST
EAGLE LAKE, TX 77434
C: 832 545-2980

KEVIN N. STEWART
MGR TRACK MNTCE
2802 Moy St
HOUSTON, TX 77007
W: 713 577-0488
C: 713 458-8364

B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.

C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.

D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensee whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.

G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. **<u>LICENSEE TO BEAR ENTIRE EXPENSE.</u>**

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.

B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.

D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.

E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. <u>RESTORATION OF LICENSOR'S PROPERTY.</u>

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. <u>INDEMNITY.</u>

A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT,

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. <u>REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.</u>

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. <u>WAIVER OF BREACH.</u>

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. <u>TERMINATION.</u>

A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.

B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. <u>AGREEMENT NOT TO BE ASSIGNED.</u>

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. <u>SUCCESSORS AND ASSIGNS.</u>

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. <u>SEVERABILITY.</u>

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

Approved: Insurance Group
Created: 9/23/05
Last Modified: 03/29/10
Form Approved, AVP-Law

EXHIBIT C
Union Pacific Railroad Company
Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than $2,000,000 each occurrence and an aggregate limit of not less than $4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less $2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

C. **Workers Compensation and Employers** Liability insurance. Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 disease policy limit $500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. **Railroad Protective Liability** insurance. Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000.

The definition of “JOB LOCATION” and “WORK” on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

E. **Umbrella or Excess** insurance. If Licensee utilizes umbrella or excess policies, and these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker’s compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad’s negligence whether sole or partial, active or passive, and shall not be limited by Licensee’s liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

(i) Waist-length shirts with sleeves.
(ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
(iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

(i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
(ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
(iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

- 100 feet of a locomotive or roadway/work equipment
- 15 feet of power operated tools
- 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)

(iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee and its contractor are responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

(i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

(ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.

(iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.

B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.

C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.

B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

D. All employees comply with the following safety procedures when working around any railroad track:

(i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
(ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
(iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).
(iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
(v) Before stepping over or crossing tracks, look in both directions first.
(vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

January 2, 2015
Folder: 2898-97

JOHN MARESH
CITY OF ROSENBERG
PO BOX 32
ROSENBERG TX 77471

Re: Proposed 16 Inch Encased waste water Pipeline Crossing of Railroad Property at Mile Post 35.6 on the Glidden Subdivision at or near Rosenberg, Fort Bend County, Texas

John Maresh:

Attached is an agreement covering your use of the Railroad Company's right of way. Please execute the attached documents IN DUPLICATE and return.

An original copy of the fully-executed document will be returned to you, when approved and processed by the Railroad Company. Also, please provide a resolution or other authorization for the party executing the documents, *if signature authorization is required by your Entity.*

Railroad Protective Liability Insurance (RPLI) may be obtained from any insurance company which offers such coverage. Union Pacific has also worked with a national broker, Marsh USA, to make available RPLI to you or your contractor. You can find additional information, premium quotes, and application forms at (uprr.marsh.com).

- Payment in the amount of **Seven Thousand Two Hundred Dollars ($7,200.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. Please include your payment, **with Folder No. 2898-97 noted on that document.** If you require formal billing, you may consider this letter as a formal bill and that 94-6001323 is this Corporation's correct Federal Taxpayer Identification Number.

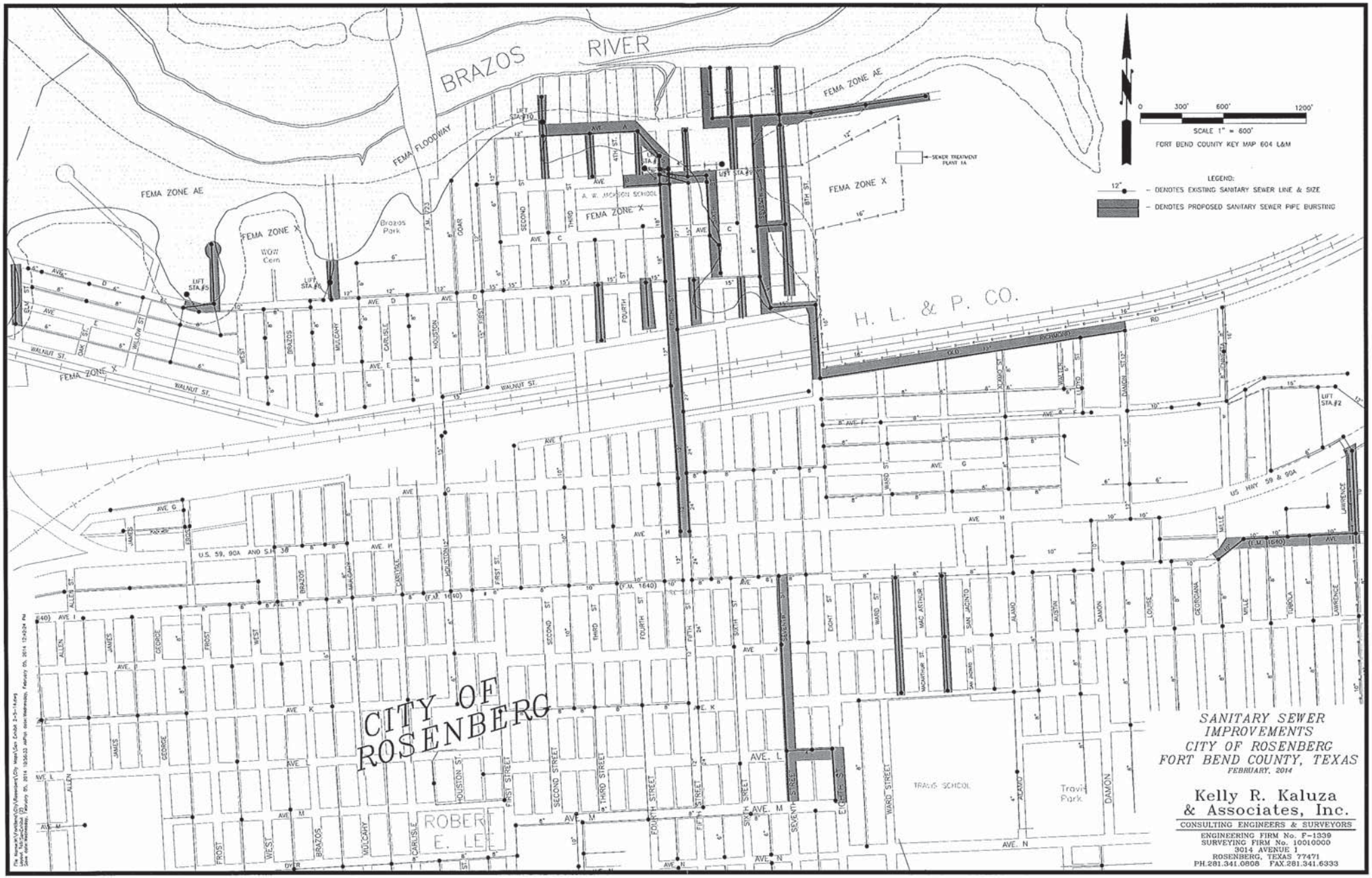
- Railroad Protective Liability Insurance (RPLI) may be obtained from any insurance company which offers such coverage. Union Pacific has also worked with a national broker, Marsh USA, to make available RPLI to you or your contractor. You can find additional information, premium quotes, and application forms at (uprr.marsh.com).

If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

If you have any questions, please contact me at (402) 544-8620.

Sincerely,

Daniel Peters
Asst. Manager - Contracts



SANITARY SEWER IMPROVEMENTS
CITY OF ROSENBERG
FORT BEND COUNTY, TEXAS
FEBRUARY, 2014

Kelly R. Kaluza & Associates, Inc.
CONSULTING ENGINEERS & SURVEYORS
ENGINEERING FIRM No. F-1339
SURVEYING FIRM No. 10010000
3014 AVENUE I
ROSENBERG, TEXAS 77471
PH.281.341.0808 FAX.281.341.6333

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
11	**Resolution No. R-1911 – BNSF Railway Company Pipeline License**

ITEM/MOTION

Consideration of and action on Resolution No. R-1911, a Resolution authorizing the City Manager to execute a Pipeline License related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and BNSF Railway Company, in the amount of $4,150.00.

FINANCIAL SUMMARY

Annualized Dollars:

[X] One-time
[ ] Recurring
[ ] N/A

Budgeted:

[X] Yes [ ] No [ ] N/A

Source of Funds:

423-0000-550-7032
(CP 1410)

ELECTION DISTRICT

[X] District 1
[ ] District 2
[ ] District 3
[ ] District 4
[ ] City-wide
[ ] N/A

MUD #: N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1911
2. Jenkins Correspondence – 12-29-14
3. Site Map

APPROVALS

Submitted by:

John Maresh
Assistant City Manager of Public Services

Reviewed by:

[X] Exec. Dir. of Administrative Services
[ ] Asst. City Manager of Public Services
[X] City Attorney ***DNRBHZ/rl***
[ ] City Engineer
[ ] (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

The 2014 Sanitary Sewer Pipebursting Project includes the replacement of three (3) separate aging collection system lines crossing both the BNSF and Union Pacific railroad rights-of-way (ROW) between Avenue F and Avenue E. As a requirement of crossing railroad ROW, the City must execute a separate Pipeline License (License) from each railroad for each individual line. This particular License is with the BNSF Railway Company for access upon their premises. The License will allow for the installation of a 12-inch HDPE sanitary sewer line.

Staff and the City Attorney have reviewed the Pipeline License and recommend approval of Resolution No. R-1911 as presented.

RESOLUTION NO. R-1911

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A PIPELINE LICENSE RELATED TO THE 2014 SANITARY SEWER PIPEBURSTING PROJECT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND BNSF RAILWAY COMPANY, IN THE AMOUNT OF $4,150.00.

* * * * *

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 Pipeline License related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and BNSF Railway Company in the amount of $4,150.00.

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

PASSED, APPROVED, AND RESOLVED this _____ day of _____ 2015.

ATTEST: **APPROVED:**

_____ _____

Linda Cernosek, **CITY SECRETARY** Vincent M. Morales, Jr., **MAYOR**

PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective _____, 2015 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF ROSENBERG**, a Texas corporation ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) HDPE pipeline, twelve (12) inches (the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Rosenberg, County of Fort Bend, State of Texas, Line Segment 7500, Mile Post 65.69 as shown on the attached Drawing No. 62316, dated November 12, 2014, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").

2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.

4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry waste water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.

5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, the sum of Three Thousand and No/100 Dollars ($3000) as compensation for the use of the Premises.

7. Costs and Expenses.

   7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

   7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid

holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7.**

8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or

9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. Construction and Maintenance of the Pipeline.

11.1 Licensee shall notify Licensor's Roadmaster, at 1301 Noth Gordon, Alvin,TX 77511, telephone (713) 847-3176 or patrick.mcaleese@bnsf.com, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.

11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.

11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (*e.g.*, consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

12.3 Any open hole, boring, or well, constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

12.3.1 filled in to surrounding ground level with compacted bentonite grout; or

12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**

13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**

13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**

13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**

13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**

13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.

- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is $1150.00.

❑ I **elect** to participate in Licensor's Blanket Policy;

❑ I **elect not** to participate in Licensor's Blanket Policy.

15.5 Pollution Legal Liability (PLL) Insurance. Intentionally deleted, not required for this permit

15.6 Other Requirements:

15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of

Licensee's owned or leased property, or property under Licensee's care, custody, or control.

15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

15.6.10 Failure to provide evidence as required by this **Section 15** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.

15.6.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

15.5.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.

15.6.13 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.

16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.

16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.

16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the

Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2**.

17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

    23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.

    23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.

    23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

    23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from

any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;

24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. Assignment.

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the

prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.

26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: City of Rosenberg
P.O. Box 32
Rosenberg, Texas 77471

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

35. Interpretation.

35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other

subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF RAILWAY COMPANY a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.,
4300 Amon Carter Blvd, Suite 100
Fort Worth, Texas 76155

By: _____
Ed Darter
Title: Sr. Vice President - National Accounts

Date: _____

LICENSEE:

CITY OF ROSENBERG a Texas corporation

By: P.O. Box 32
Rosenberg, Texas 77471

By: _____

Title: _____

Date: _____

COORDINATE SYSTEM: TX SC

TRACKING NO. 14-51360

MAP REF. 508623

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN

BNSF RAILWAY COMPANY

AND

CITY OF ROSENBERG

N

SCALE: 1 IN.= 100 FT.

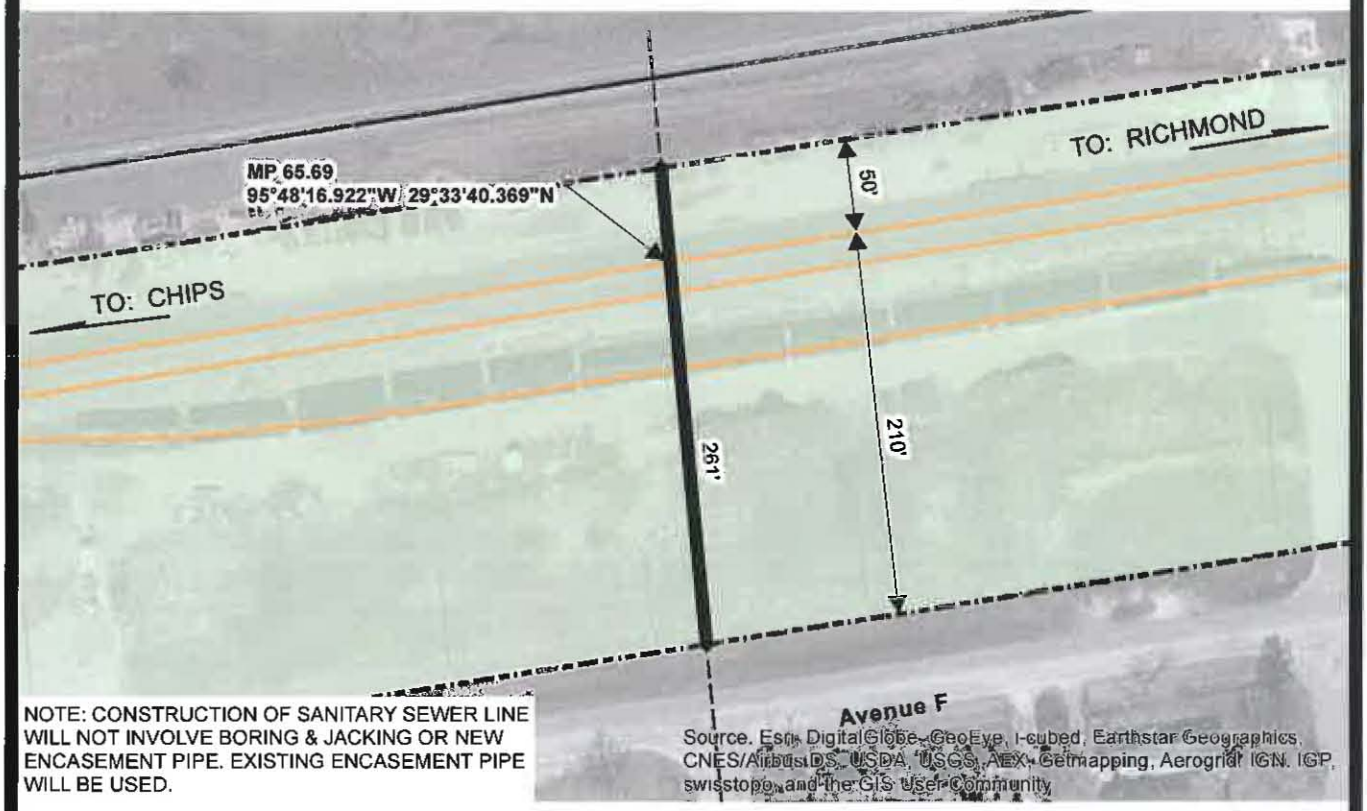
GULF DIV.

GALVESTON SUBDIV.

L.S. 7500 MP 65.69

DATE 11/12/2014

SURVEY: SCOTT, H



NOTE: CONSTRUCTION OF SANITARY SEWER LINE WILL NOT INVOLVE BORING & JACKING OR NEW ENCASEMENT PIPE. EXISTING ENCASEMENT PIPE WILL BE USED.

NOTE:
EXISTING CONTRACT
GC-16849

DESCRIPTION OF PIPELINE
PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	12"	N/A	LENGTH ON R/W:	261'	-
CONTENTS:	WASTE WATER		WORKING PRESSURE:	GRAVITY	
PIPE MATERIAL:	HDPE	N/A	BURY: BASE/RAIL TO TOP OF CASING		18.0'
SPECIFICATIONS / GRADE:	ASTM F714	N/A	BURY: NATURAL GROUND		14.6'
WALL THICKNESS:	0.671"	N/A	BURY: ROADWAY DITCHES		14.6'
COATING:	N/A	N/A	CATHODIC PROTECTION		N/A

VENTS: NUMBER ___ SIZE ___ HEIGHT OF VENT ABOVE GROUND ___

AT ROSENBERG
COUNTY OF FORT BEND

STATE OF TX

TR

REVISION 1

DRAWING NO. 62316

JONES LANG LASALLE

Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, Texas 76155
tel +1 817-230-2600, fax +1 817 306-8265

December 29, 2014

PENDING ENGINEERING APPROVAL

City of Rosenberg
Attention: Mr. John Maresh
P.O. Box 32
Rosenberg, Texas 77471

Tracking no, 14-51360

Dear Mr. Maresh:

Attached please find the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please print two (2) copies execute and ***return both copies with original signature*** for completion on part of BNSF Railway Company ("BNSF") to this office, along with the following requirements:

A check in the amount of $3000.00 payable to BNSF Railway Company which covers the contract fee(s).

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway.

1. A Certificate of Insurance as required in the agreement.

2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

In lieu of providing a separate policy for Railroad Protective Liability Insurance, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional $1150.00 with your check.

PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

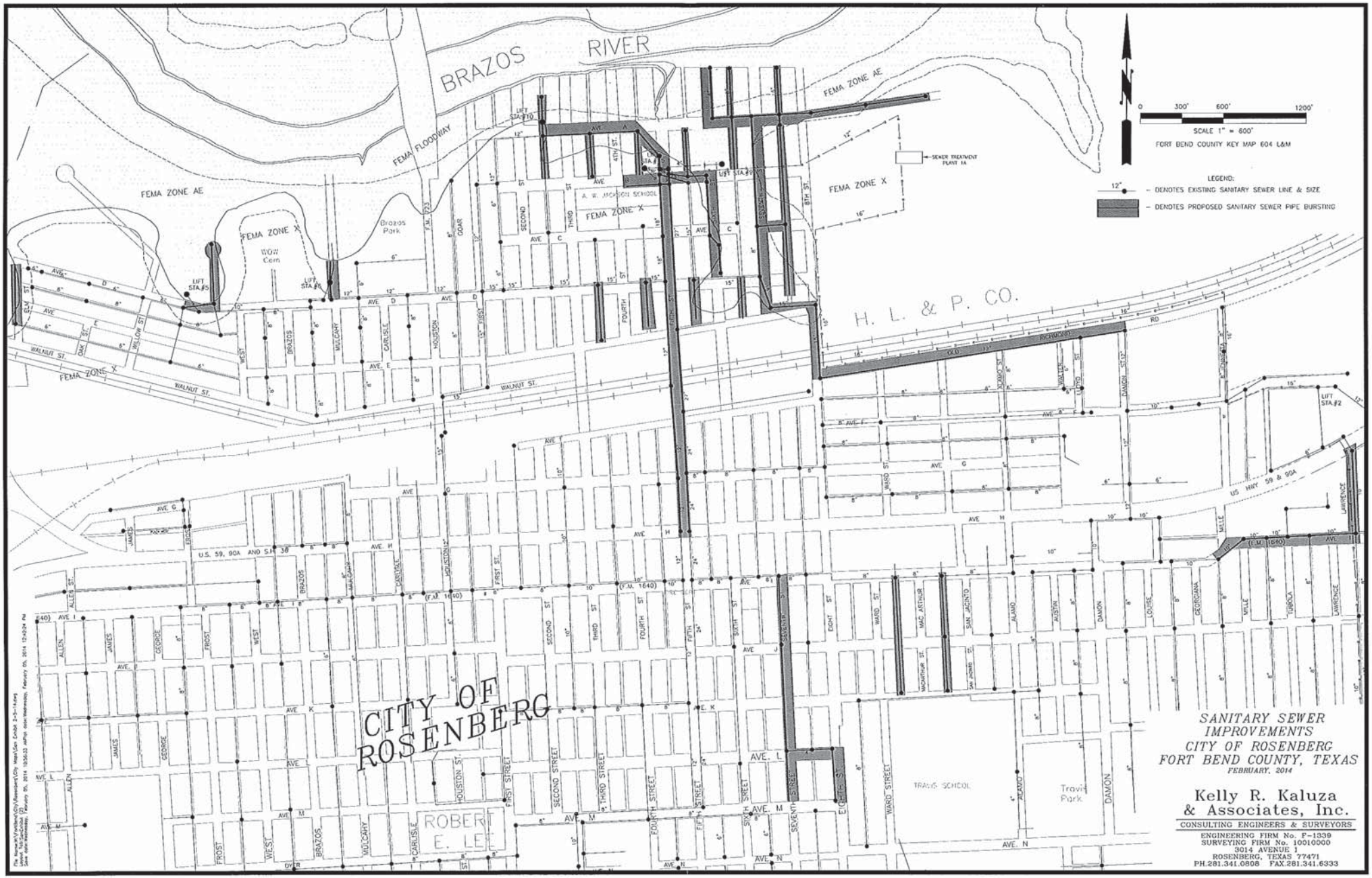
The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.

We are in receipt of check no. 163024 in the amount of $600 for payment of the processing fee. Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, the processing fee will increase an additional $600.00.

Sincerely,

Annette Jenkins
Senior Manager Permits
Attachment



SANITARY SEWER IMPROVEMENTS
CITY OF ROSENBERG
FORT BEND COUNTY, TEXAS
FEBRUARY, 2014

Kelly R. Kaluza & Associates, Inc.
CONSULTING ENGINEERS & SURVEYORS
ENGINEERING FIRM No. F-1339
SURVEYING FIRM No. 10010000
3014 AVENUE I
ROSENBERG, TEXAS 77471
PH.281.341.0808 FAX.281.341.6333

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
12	**Resolution No. R-1912 – BNSF Railway Company Pipeline License**

ITEM/MOTION

Consideration of and action on Resolution No. R-1912, a Resolution authorizing the City Manager to execute a Pipeline License related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and BNSF Railway Company, in the amount of $4,150.00.

FINANCIAL SUMMARY		ELECTION DISTRICT
Annualized Dollars: [X] One-time [ ] Recurring [ ] N/A	**Budgeted:** [X] Yes [ ] No [ ] N/A Source of Funds: 423-0000-550-7032 (CP 1410)	[X] District 1 [ ] District 2 [ ] District 3 [ ] District 4 [ ] City-wide [ ] N/A
SUPPORTING DOCUMENTS:		**MUD #:** N/A

1. Resolution No. R-1912
2. Jenkins Correspondence – 12-29-14
3. Site Map

APPROVALS

Submitted by:	Reviewed by:	Approved for Submittal to City Council:
John Maresh Assistant City Manager of Public Services	[X] Exec. Dir. of Administrative Services [ ] Asst. City Manager of Public Services [X] City Attorney ***DNRBHZ/rl*** [ ] City Engineer [ ] (Other)	Robert Gracia City Manager

EXECUTIVE SUMMARY

The 2014 Sanitary Sewer Pipebursting Project includes the replacement of three (3) separate aging collection system lines crossing both the BNSF and Union Pacific railroad rights-of-way (ROW) between Avenue F and Avenue E. As a requirement of crossing railroad ROW, the City must execute a separate Pipeline License (License) from each railroad for each individual line. This particular License is with the BNSF Railway Company for access upon their premises. The License will allow for the installation of a 24-inch HDPE sanitary sewer line inside an existing 42-inch metal casing.

Staff and the City Attorney have reviewed the Pipeline License and recommend approval of Resolution No. R-1912 as presented.

RESOLUTION NO. R-1912

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A PIPELINE LICENSE RELATED TO THE 2014 SANITARY SEWER PIPEBURSTING PROJECT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND BNSF RAILWAY COMPANY, IN THE AMOUNT OF $4,150.00.

* * * * *

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 Pipeline License related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and BNSF Railway Company in the amount of $4,150.00.

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

PASSED, APPROVED, AND RESOLVED this _____ day of _____ 2015.

ATTEST: **APPROVED:**

_____ _____

Linda Cernosek, **CITY SECRETARY** Vincent M. Morales, Jr., **MAYOR**

PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective _____, 2015 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF ROSENBERG**, a Texas corporation ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, twenty-four (24) inches in diameter inside an existing forty-two (42) inch corrugated metal casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Rosenberg, County of Fort Bend, State of Texas, Line Segment 7500, Mile Post 65.68 as shown on the attached Drawing No. 62315, dated November 12, 2014, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").

2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.

4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry waste water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.

5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, the sum of Three Thousand and No/100 Dollars ($3000) as compensation for the use of the Premises.

7. Costs and Expenses.

   7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

   7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or

double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7.**

8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or

9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. Construction and Maintenance of the Pipeline.

11.1 Licensee shall notify Licensor's Roadmaster, at 1301 Noth Gordon, Alvin,TX 77511, telephone (713) 847-3176 or patrick.mcaleese@bnsf.com, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.

11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.

11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (*e.g.*, consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

12.3 Any open hole, boring, or well, constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

12.3.1 filled in to surrounding ground level with compacted bentonite grout; or

12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**

13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**

13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**

13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**

13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**

13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.

- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is $1150.00.

❑ I **elect** to participate in Licensor's Blanket Policy;

❑ I **elect not** to participate in Licensor's Blanket Policy.

15.5 Pollution Legal Liability (PLL) Insurance. Intentionally deleted, not required for this permit

15.6 Other Requirements:

15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of

Licensee's owned or leased property, or property under Licensee's care, custody, or control.

15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

15.6.10 Failure to provide evidence as required by this **Section 15** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.

15.6.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

15.5.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.

15.6.13 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.

16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.

16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.

16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the

Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2**.

17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

    23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.

    23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.

    23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

    23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from

any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;

24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. Assignment.

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the

prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.

26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: City of Rosenberg
P.O. Box 32
Rosenberg, Texas 77471

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

35. Interpretation.

35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other

subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF RAILWAY COMPANY a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.,
4300 Amon Carter Blvd, Suite 100
Fort Worth, Texas 76155

By: _____
Ed Darter
Title: Sr. Vice President - National Accounts

Date: _____

LICENSEE:

CITY OF ROSENBERG a Texas corporation

By: P.O. Box 32
Rosenberg, Texas 77471

By: _____

Title: _____

Date: _____

COORDINATE SYSTEM: TX_SC

TRACKING NO. 14-51359

MAP REF. 508623

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN

BNSF RAILWAY COMPANY

AND

CITY OF ROSENBERG

N

SCALE: 1 IN.= 100 FT.

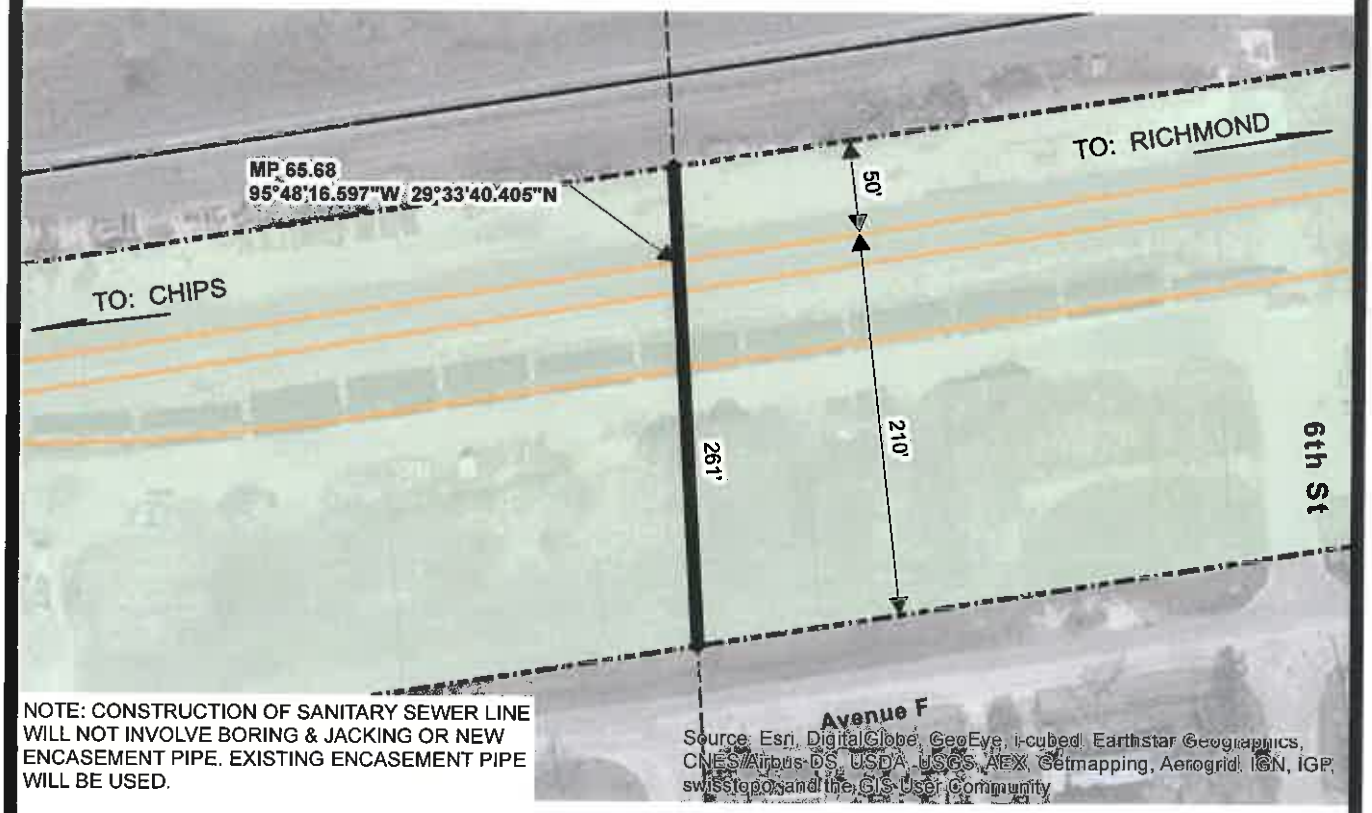
GULF DIV.

GALVESTON SUBDIV.

L.S. 7500 MP 65.68

DATE 11/12/2014

SURVEY: SCOTT, H



NOTE: CONSTRUCTION OF SANITARY SEWER LINE WILL NOT INVOLVE BORING & JACKING OR NEW ENCASEMENT PIPE. EXISTING ENCASEMENT PIPE WILL BE USED.

NOTE:
EXISTING CONTRACT
GC-36022

DESCRIPTION OF PIPELINE
PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	24"	42"	LENGTH ON R/W:	261'	261'
CONTENTS:	WASTE WATER		WORKING PRESSURE:	GRAVITY	
PIPE MATERIAL:	HDPE	CORR.METAL	BURY: BASE/RAIL TO TOP OF CASING		17.5'
SPECIFICATIONS / GRADE:	ASTM F714	10 GA. GALV	BURY: NATURAL GROUND		12.6'
WALL THICKNESS:	1.263"	0.138"	BURY: ROADWAY DITCHES		12.6'
COATING:	N/A	N/A	CATHODIC PROTECTION		N/A

VENTS: NUMBER ___ SIZE ___ HEIGHT OF VENT ABOVE GROUND ___

AT ROSENBERG
COUNTY OF FORT BEND

STATE OF TX

TR

REVISION 1

DRAWING NO. 62315

JONES LANG LASALLE.

Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, Texas 76155
tel +1 817-230-2600, fax +1 817 306-8265

December 29, 2014

PENDING ENGINEERING APPROVAL

City of Rosenberg
Attention: Mr. John Maresh
P.O. Box 32
Rosenberg, Texas 77471

Tracking no. 14-51359

Dear Mr. Maresh:

Attached please find the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please print two (2) copies execute and ***return both copies with original signature*** for completion on part of BNSF Railway Company ("BNSF") to this office, along with the following requirements:

A check in the amount of $3000.00 payable to BNSF Railway Company which covers the contract fee(s).

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway.

1. A Certificate of Insurance as required in the agreement.

2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

In lieu of providing a separate policy for Railroad Protective Liability Insurance, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional $1150.00 with your check.

PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

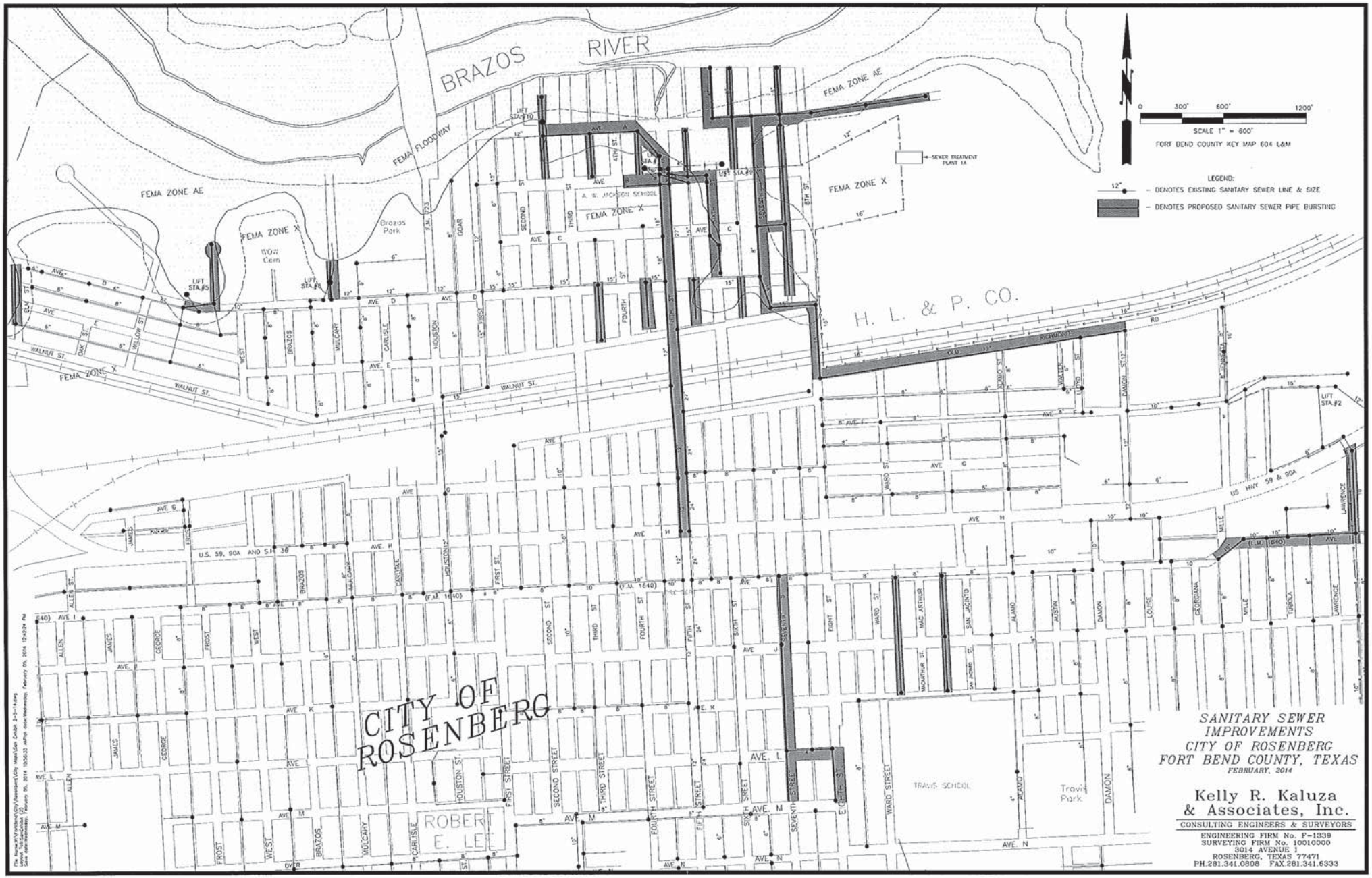
The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.

We are in receipt of check no. 163023 in the amount of $600 for payment of the processing fee. Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, the processing fee will increase an additional $600.00.

Sincerely,

Annette Jenkins
Senior Manager Permits
Attachment



SANITARY SEWER IMPROVEMENTS
CITY OF ROSENBERG
FORT BEND COUNTY, TEXAS
FEBRUARY, 2014

Kelly R. Kaluza & Associates, Inc.
CONSULTING ENGINEERS & SURVEYORS
ENGINEERING FIRM No. F-1339
SURVEYING FIRM No. 10010000
3014 AVENUE I
ROSENBERG, TEXAS 77471
PH.281.341.0808 FAX.281.341.6333

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
13	**Resolution No. R-1913 – BNSF Railway Company Pipeline License**

ITEM/MOTION

Consideration of and action on Resolution No. R-1913, a Resolution authorizing the City Manager to execute a Pipeline License related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and BNSF Railway Company, in the amount of $4,150.00.

FINANCIAL SUMMARY

Annualized Dollars:

[X] One-time
[ ] Recurring
[ ] N/A

Budgeted:

[X] Yes [ ] No [ ] N/A

Source of Funds:

423-0000-550-7032
(CP 1410)

ELECTION DISTRICT

[X] District 1
[ ] District 2
[ ] District 3
[ ] District 4
[ ] City-wide
[ ] N/A

MUD #: N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1913
2. Jenkins Correspondence – 12-29-14
3. Site Map

APPROVALS

Submitted by:

John Maresh
Assistant City Manager of
Public Services

Reviewed by:

[X] Exec. Dir. of Administrative Services
[ ] Asst. City Manager of Public Services
[X] City Attorney ***DNRBHZ/rl***
[ ] City Engineer
[ ] (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

The 2014 Sanitary Sewer Pipebursting Project includes the replacement of three (3) separate aging collection system lines crossing both the BNSF and Union Pacific railroad rights-of-way (ROW) between Avenue F and Avenue E. As a requirement of crossing railroad ROW, the City must execute a separate Pipeline License (License) from each railroad for each individual line. This particular License is with the BNSF Railway Company for access upon their premises. The License will allow for the installation of a 16-inch HDPE sanitary sewer line inside an existing 26-inch metal casing.

Staff and the City Attorney have reviewed the Pipeline License and recommend approval of Resolution No. R-1913 as presented.

RESOLUTION NO. R-1913

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A PIPELINE LICENSE RELATED TO THE 2014 SANITARY SEWER PIPEBURSTING PROJECT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND BNSF RAILWAY COMPANY, IN THE AMOUNT OF $4,150.00.

* * * * *

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 Pipeline License related to the 2014 Sanitary Sewer Pipebursting Project, by and between the City and BNSF Railway Company in the amount of $4,150.00.

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

PASSED, APPROVED, AND RESOLVED this _____ day of _____ 2015.

ATTEST: **APPROVED:**

_____ _____

Linda Cernosek, **CITY SECRETARY** Vincent M. Morales, Jr., **MAYOR**

PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective _____, 2015 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF ROSENBERG**, a Texas corporation ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, sixteen (16) inches in diameter inside an existing twenty-six (26) inch steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Rosenberg, County of Fort Bend, State of Texas, Line Segment 7500, Mile Post 65.5 as shown on the attached Drawing No. 62314, dated November 14, 2014, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").

2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.

4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry waste water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.

5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, the sum of Three Thousand and No/100 Dollars ($3000) as compensation for the use of the Premises.

7. Costs and Expenses.

   7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

   7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or

double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7.**

8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or

9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. Construction and Maintenance of the Pipeline.

11.1 Licensee shall notify Licensor's Roadmaster, at 1301 Noth Gordon, Alvin,TX 77511, telephone (713) 847-3176 or patrick.mcaleese@bnsf.com, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.

11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.

11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (*e.g.*, consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

12.3 Any open hole, boring, or well, constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

12.3.1 filled in to surrounding ground level with compacted bentonite grout; or

12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

13.2 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

13.2.1 THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

13.2.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,

13.2.3 LICENSEE'S OCCUPATION AND USE OF THE PREMISES,

13.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR

13.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.

13.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.

- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is $1150.00.

❑ I **elect** to participate in Licensor's Blanket Policy;

❑ I **elect not** to participate in Licensor's Blanket Policy.

15.5 Pollution Legal Liability (PLL) Insurance. Intentionally deleted, not required for this permit

15.6 Other Requirements:

15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of

Licensee's owned or leased property, or property under Licensee's care, custody, or control.

15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

15.6.10 Failure to provide evidence as required by this **Section 15** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.

15.6.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

15.5.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.

15.6.13 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.

16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.

16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.

16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the

Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2**.

17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

    23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.

    23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.

    23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

    23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from

any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;

24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. Assignment.

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the

prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.

26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: City of Rosenberg
P.O. Box 32
Rosenberg, Texas 77471

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

35. Interpretation.

35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other

subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF RAILWAY COMPANY a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.,
4300 Amon Carter Blvd, Suite 100
Fort Worth, Texas 76155

By: _____
Ed Darter
Title: Sr. Vice President - National Accounts

Date: _____

LICENSEE:

CITY OF ROSENBERG a Texas corporation

By: P.O. Box 32
Rosenberg, Texas 77471

By: _____

Title: _____

Date: _____

COORDINATE SYSTEM: TX SC

TRACKING NO. 14-51358

MAP REF. 508623

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN

BNSF RAILWAY COMPANY

AND

CITY OF ROSENBERG

N

SCALE: 1 IN.= 100 FT.

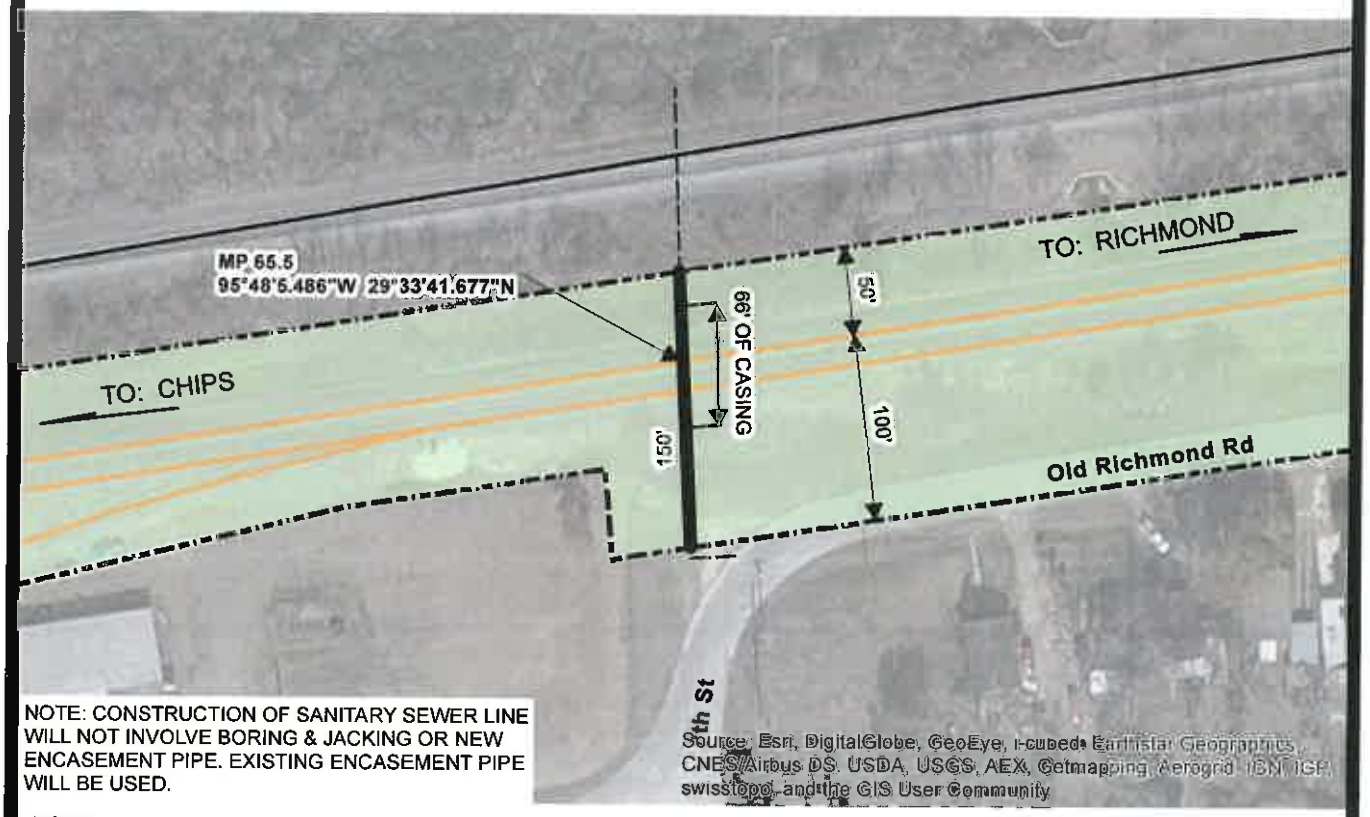
GULF DIV.

GALVESTON SUBDIV.

L.S. 7500 MP 65.5

DATE 11/14/2014

SURVEY: MOORE, J W



NOTE: CONSTRUCTION OF SANITARY SEWER LINE WILL NOT INVOLVE BORING & JACKING OR NEW ENCASEMENT PIPE. EXISTING ENCASEMENT PIPE WILL BE USED.

NOTE:
EXISTING CONTRACTS
GC-27780
AT-174900

DESCRIPTION OF PIPELINE
PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	16"	26" O.D.	LENGTH ON R/W:	150'	66'
CONTENTS:	WASTE WATER		WORKING PRESSURE:	GRAVITY	
PIPE MATERIAL:	HDPE	STEEL	BURY: BASE/RAIL TO TOP OF CASING		17.1'
SPECIFICATIONS / GRADE:	ASTM F714	GD. B	BURY: NATURAL GROUND		8.4'
WALL THICKNESS:	0.842"	0.438"	BURY: ROADWAY DITCHES		8.4'
COATING:	N/A	N/A	CATHODIC PROTECTION		N/A

VENTS: NUMBER ___ SIZE ___ HEIGHT OF VENT ABOVE GROUND ___

AT ROSENBERG
COUNTY OF FORT BEND

STATE OF TX

TR

REVISION 1

DRAWING NO. 62314

JONES LANG LASALLE.

Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, Texas 76155
tel +1 817-230-2600, fax +1 817 306-8265

December 29, 2014

PENDING ENGINEERING APPROVAL

City of Rosenberg
Attention: Mr. John Maresh
P.O. Box 32
Rosenberg, Texas 77471

Tracking no. 14-51358

Dear Mr. Maresh:

Attached please find the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please print two (2) copies execute and ***return both copies with original signature*** for completion on part of BNSF Railway Company ("BNSF") to this office, along with the following requirements:

A check in the amount of $3000.00 payable to BNSF Railway Company which covers the contract fee(s).

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway.

1. A Certificate of Insurance as required in the agreement.

2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

In lieu of providing a separate policy for Railroad Protective Liability Insurance, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional $1150.00 with your check.

PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

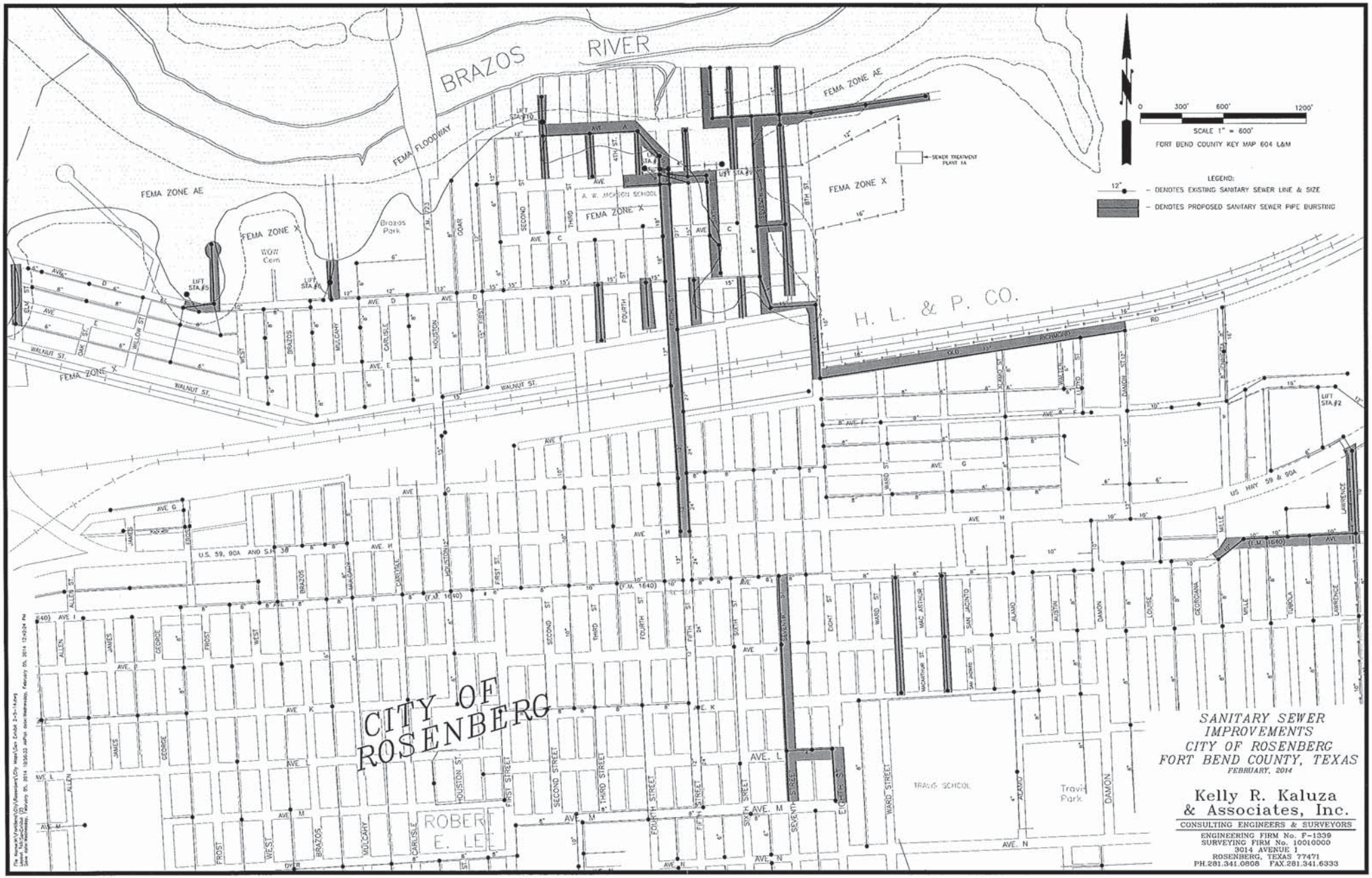
The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.

We are in receipt of check no. 163022 in the amount of $600 for payment of the processing fee. Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, the processing fee will increase an additional $600.00.

Sincerely,

Annette Jenkins
Senior Manager Permits
Attachment



SANITARY SEWER IMPROVEMENTS
CITY OF ROSENBERG
FORT BEND COUNTY, TEXAS
FEBRUARY, 2014

Kelly R. Kaluza & Associates, Inc.
CONSULTING ENGINEERS & SURVEYORS
ENGINEERING FIRM No. F-1339
SURVEYING FIRM No. 10010000
3014 AVENUE I
ROSENBERG, TEXAS 77471
PH.281.341.0808 FAX.281.341.6333

ITEM 14

Hold Executive Session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of City Manager pursuant to Section 551.074 of the Texas Government Code.

ITEM 15

Adjourn Executive Session, reconvene into Regular Session, and take action as necessary as a result of Executive Session.

CITY COUNCIL COMMUNICATION

January 20, 2015

ITEM #	ITEM TITLE
16	**Resolution No. R-1914 – City Manager's Employment Agreement**

ITEM/MOTION

Consideration of and action on Resolution No. R-1914, a Resolution authorizing the Mayor to execute, for and on behalf of the City, an Employment Agreement by and between the City and Robert Gracia to serve as City Manager.

FINANCIAL SUMMARY

Annualized Dollars:

[ ] One-time
[ ] Recurring
[X] N/A

Budgeted:

[ ] Yes [ ] No [X] N/A

Source of Funds: N/A

ELECTION DISTRICT

[ ] District 1
[ ] District 2
[ ] District 3
[ ] District 4
[ ] City-wide
[X] N/A

MUD #: N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1914 - w/o attachment

APPROVALS

Submitted by:

Vincent M. Morales, Jr./ks

Vincent M. Morales, Jr.
Mayor

Reviewed by:

[ ] Exec. Dir. of Administrative Services
[ ] Asst. City Manager of Public Services
[ ] City Attorney
[ ] City Engineer
[X] Human Resources Director

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

For your review and consideration, attached please find Resolution No. R-1914 which provides authorization for the Mayor to execute an Employment Agreement with Robert Gracia for his service in the position of City Manager. The Employment Agreement will serve as Exhibit "A" to Resolution No. R-1914.

Staff recommends approval of Resolution No. R-1914, as presented.

RESOLUTION NO. R-1914

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, AN EMPLOYMENT AGREEMENT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND ROBERT GRACIA TO SERVE AS CITY MANAGER.

* * * * *

WHEREAS, City Council duly affirms the reappointment of Robert Gracia as City Manager for the City of Rosenberg effective October 01, 2014; and,

WHEREAS, the City Manager has been charged by City Council with all of the duties, powers, and responsibilities commensurate with the City Manager's position and service; and,

WHEREAS, the City Manager has previously and successfully acted in the capacity of City Manager since appointment by City Council on November 19, 2013; and,

WHEREAS, City Council has determined that such service will be subject to an Employment Agreement (Agreement) for said City Manager which sets out compensation, duties, conditions, obligations, and other terms; now, therefore,

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

Section 1. City Council hereby reappoints Robert Gracia as City Manager for the City of Rosenberg as of October 01, 2014.

Section 2. City Council hereby authorizes the Mayor to execute an Employment Agreement which establishes compensation and other terms of employment of Robert Gracia in the position of City Manager attached hereto as Exhibit "A" and made a part hereof for all purposes.

Section 3. No provision of this Resolution shall be in conflict with any other agreements that may have been executed by Robert Gracia and the City.

Section 4. This Resolution shall become effective immediately upon adoption by the City Council.

PASSED, APPROVED, AND RESOLVED this _____ day of _____ 2015.

ATTEST: **APPROVED:**

_____ _____

Linda Cernosek, **City Secretary** Vincent M. Morales, Jr., **Mayor**

ITEM 17

Announcements.

ITEM 18

Adjournment.