

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, April 21, 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. (Pastor Frankie Rodriguez, Living Stones Church, Sugar Land)

Presentation of Certificates of Appreciation to 2015 FISH-tastic Sponsors and Volunteers. (Lydia Acosta, Recreation Programs Coordinator)

Presentation of Certificates of Appreciation to 2015 Easter Egg Hunt Sponsors and 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 April 07, 2015. (Anne Stark, Assistant City Secretary)
 - B. Consideration of and action on Ordinance No. 2015-11, an Ordinance granting consent to the Fort Bend County Municipal Utility District No. 167 (which includes Brazos Town Center) for the sale and issuance of Unlimited Tax Bonds, Series 2015, in an amount not to exceed \$3,575,000. (Charles A. Kalkomey, City Engineer)

REGULAR AGENDA

2. Consideration of and action on a third and final reading of Ordinance 2015-10, an Ordinance granting to SiEnergy, L.P., a franchise to furnish and supply gas to the general public in the City of Rosenberg, Fort Bend County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said Municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; requiring compliance with all regulatory ordinances of the City; and providing for all other provisions related to the subject matter hereof. (John Maresh, Assistant City Manager of Public Services)

3. Consideration of and action on Resolution No. R-1955, a Resolution finding that CenterPoint Energy Entex's ("CenterPoint" or "Company") Statement of Intent to Increase Rates filing within the City should be denied; finding that the City's reasonable rate case expenses shall be reimbursed by the Company; finding that the meeting at which this Resolution is passed is open to the public as required by law; and requiring notice of this Resolution to the Company and legal counsel. (John Maresh, Assistant City Manager of Public Services)
4. Consideration of and action on Resolution No. R-1959, a Resolution finding that CenterPoint Energy Houston Electric, LLC's ("CenterPoint" or "Company") application for approval of a Distribution Cost Recovery Factor to increase distribution rates within the City should be denied; finding that the City's reasonable rate case expenses shall be reimbursed by the Company; finding that the meeting at which this Resolution is passed is open to the public as required by law; and requiring notice of this Resolution to the Company and legal counsel. (John Maresh, Assistant City Manager of Public Services)
5. Consideration of and action on Resolution No. R-1956, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a Commercial Load Management SOP Agreement, by and between the City and CenterPoint Energy Service Company, LLC, for the Commercial Load Management Standard Offer Program. (John Maresh, Assistant City Manager of Public Services)
6. Consideration of and action on Resolution No. R-1960, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a Pipeline License related to the North Side Water Line Improvements Project – Phase II, by and between the City and BNSF Railway Company, in the amount of \$6,225.00. (John Maresh, Assistant City Manager of Public Services)
7. Consideration of and action on Ordinance No. 2015-12, an Ordinance amending the Code of Ordinances by amending Chapter 14 – Health, Sanitation and Nuisances, Article VI – Junked Vehicles; providing for penalties; providing for a cumulative and conflicts clause; providing a severability clause; and providing an effective date. (Scott Tschirhart, City Attorney)
8. Consideration of and action on Ordinance No. 2015-13, an Ordinance amending the Code of Ordinances, Chapter 6 Buildings and Building Regulations, Article XIV. Reserved, establishing restrictions on fences on public property; establishing location restrictions; establishing approved fencing materials; establishing requirements for fence maintenance; establishing fence restrictions; establishing requirements for dilapidated fence remediation; repealing all conflicting ordinances, providing a severability clause; and providing for an effective date. (Travis Tanner, Executive Director of Community Services)
9. Review and discuss a proposed survey regarding the One-Way Pairs Project, and take action as necessary. (William Benton, Councilor, At-Large Position One / Amanda Barta, Councilor, District 4)
10. Hold Executive Session to deliberate the potential purchase, exchange, lease or value of real property pursuant to Section 551.072 of the Texas Government Code.
11. Adjourn Executive Session, reconvene into Regular Session, and take action as necessary as a result of Executive Session.
12. Announcements.
13. Adjournment.

[EXECUTION PAGE TO FOLLOW]

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

by _____.

Attest:
Anne Stark, Assistant City Secretary

Approved for Posting:
Robert Gracia, City Manager

Approved:
Cynthia McConathy, Mayor Pro Tem

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 Certificates of Appreciation
to 2015 FISH-tastic Sponsors and Volunteers**

City of Rosenberg

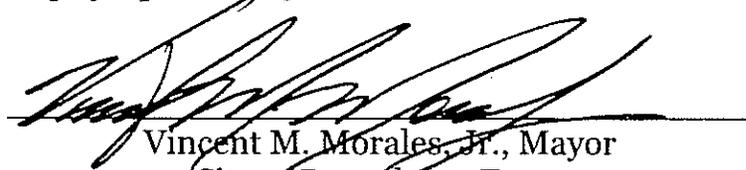
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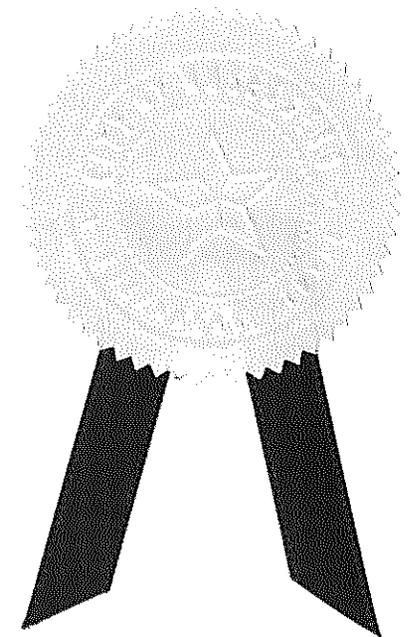
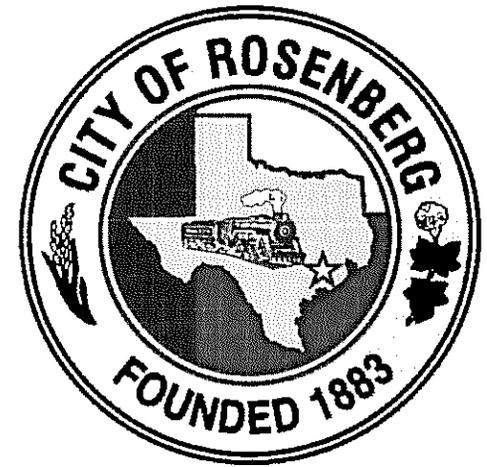
Presented to

Annalee Machemehl

In recognition of the outstanding performance in assisting the City of Rosenberg by volunteering your time and resources at FISH-tastic Children's Fishing Tournament 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 21st day of April, 2015.


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



City of Rosenberg

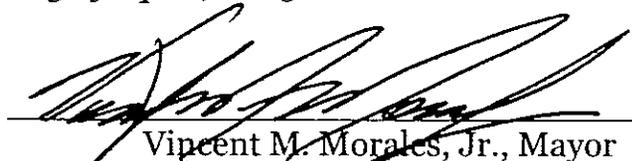
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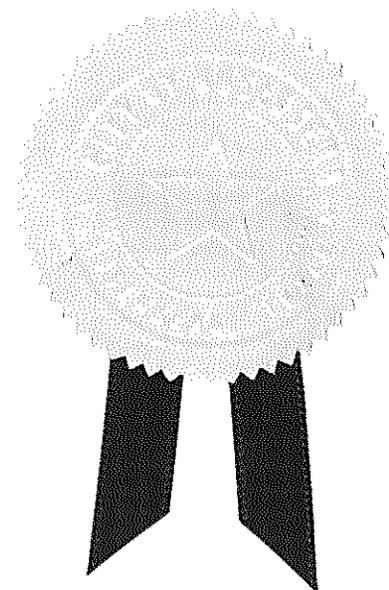
***B. F. Terry High School
National Honor Society***

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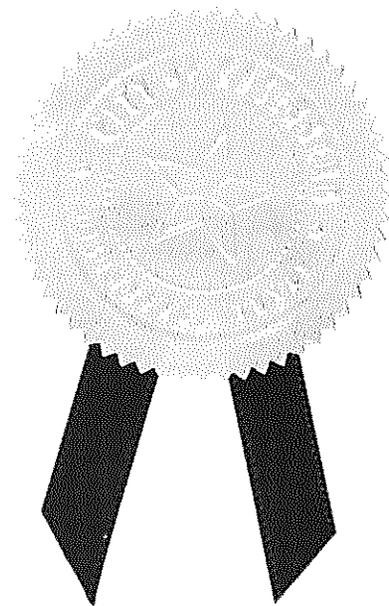
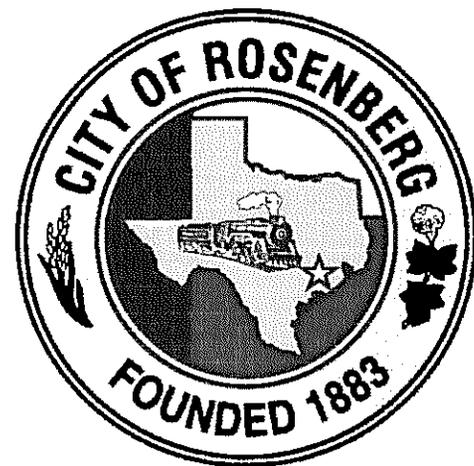
Coastal Prairie Chapter of Texas Master Naturalists

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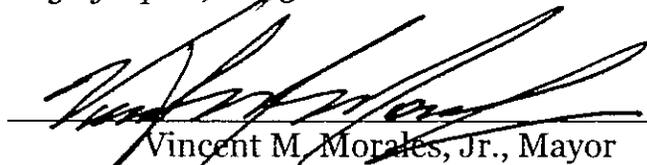
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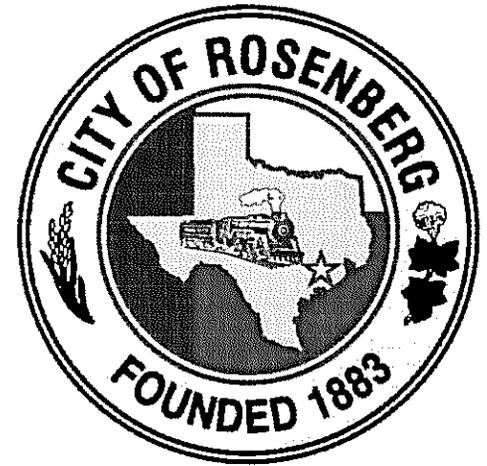
David's Tackle Box

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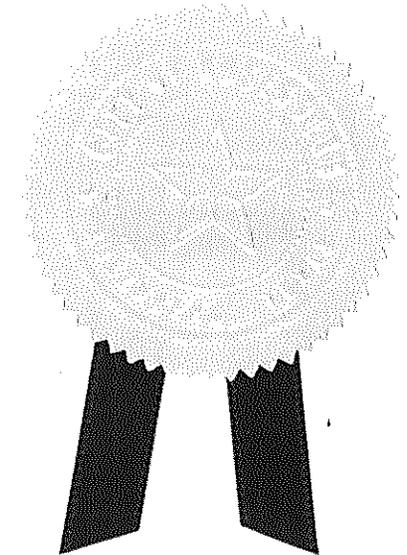
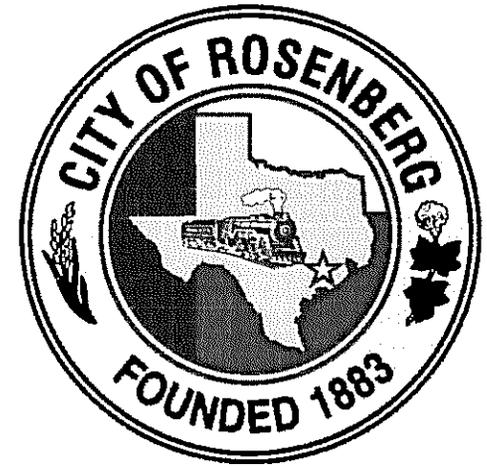
Kempner High School Interact Club

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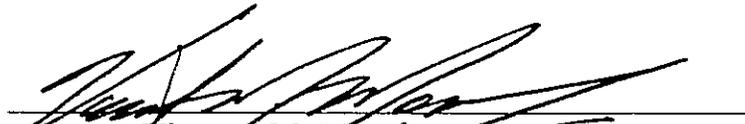
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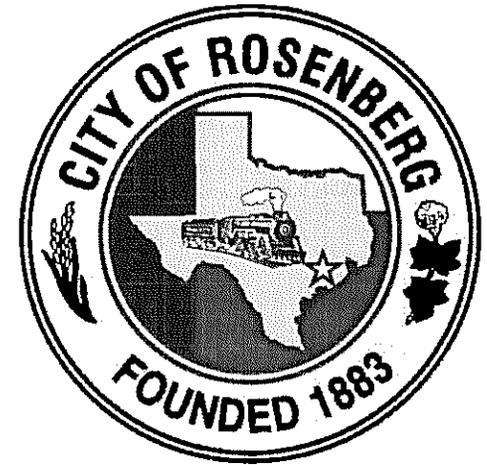
Lamar High School Leo's

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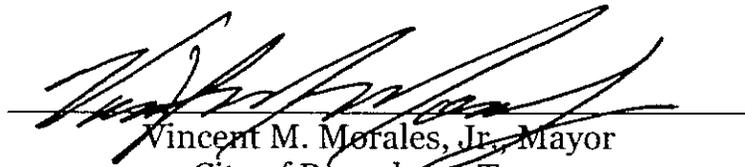
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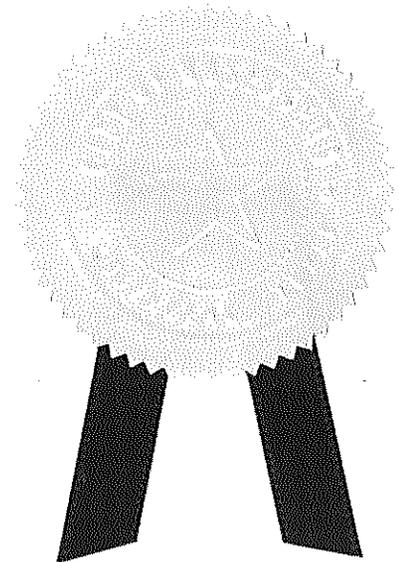
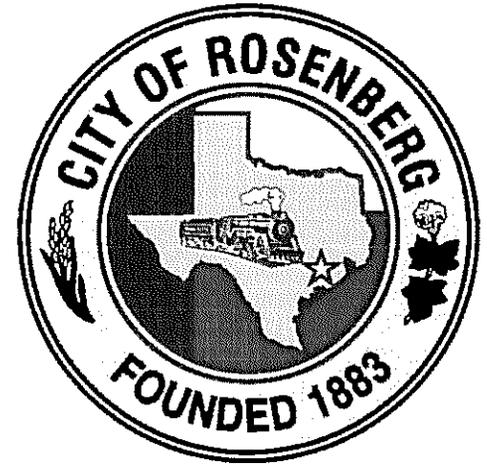
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**Presentation of Certificates of Appreciation
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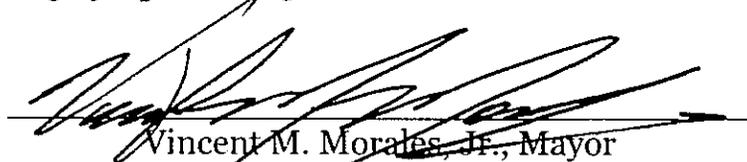
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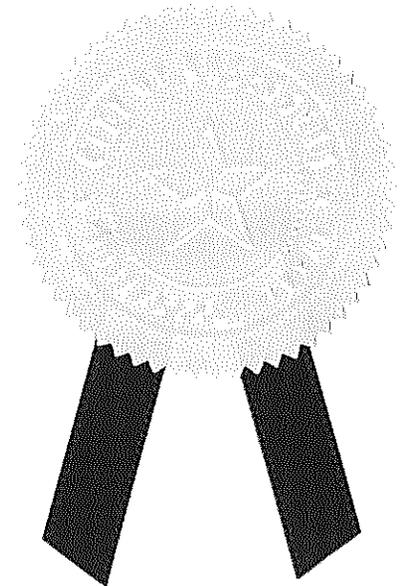
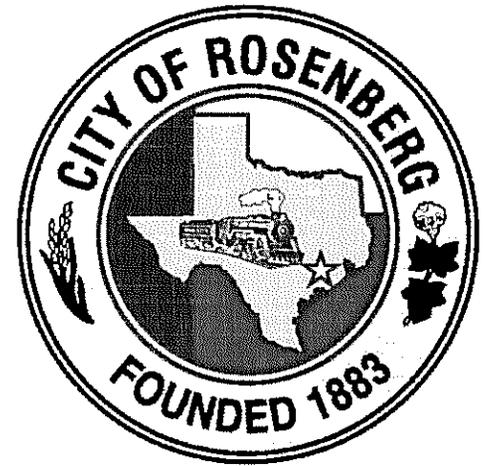
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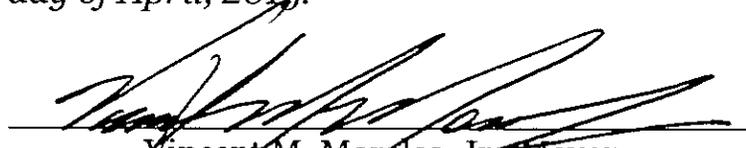
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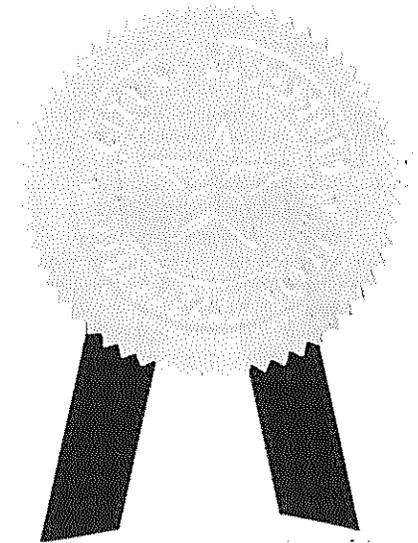
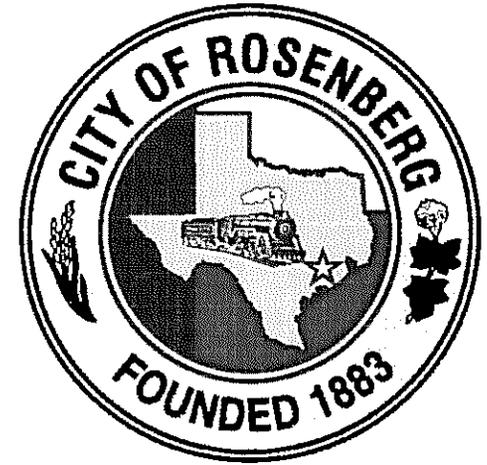
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Another Time Soda Fountain

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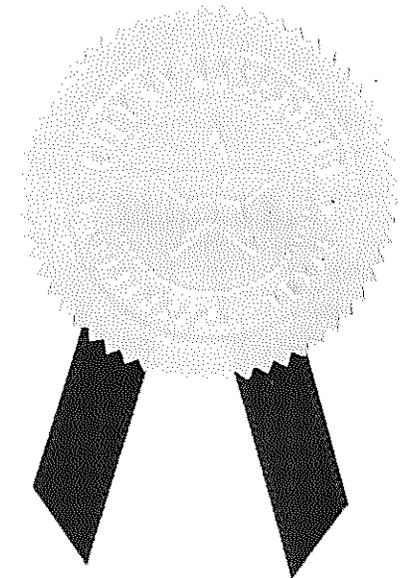
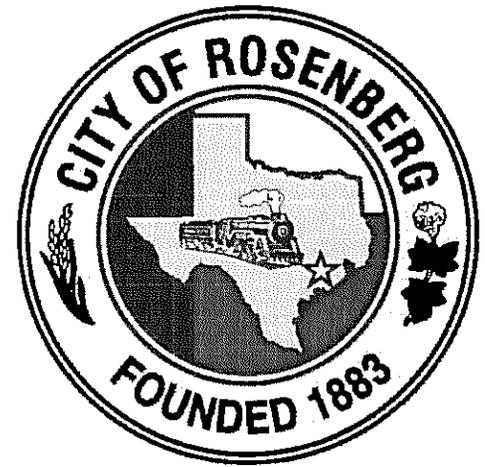
George Ranch High School Student Council

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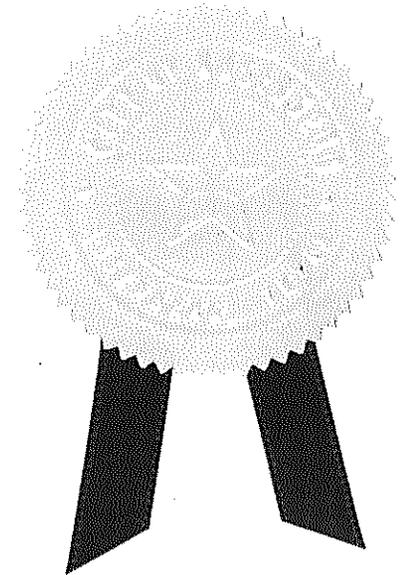
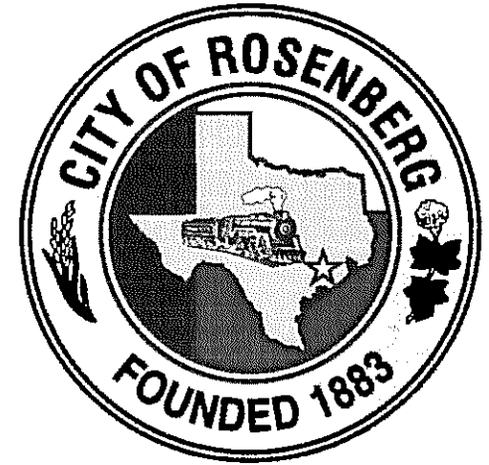
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Girl Scout Troop 3503

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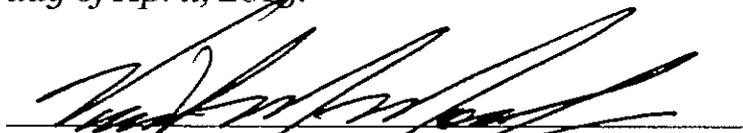
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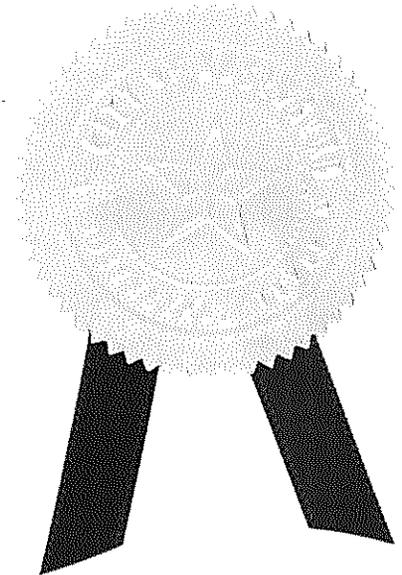
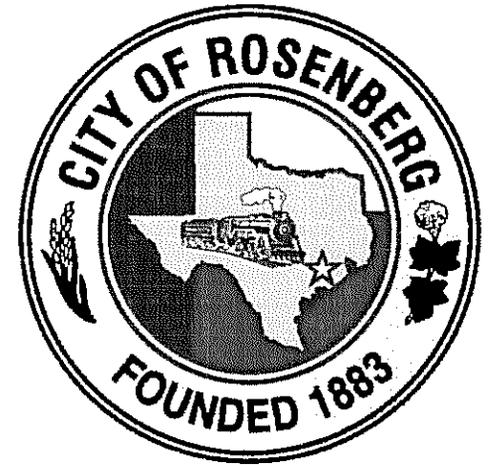
***Lamar High School
Air Force Junior ROTC Unit TX-792nd***

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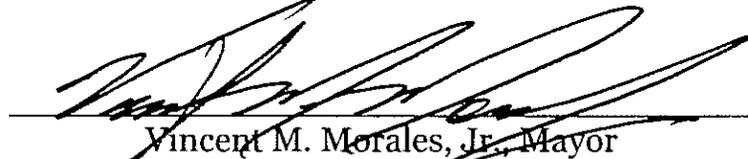
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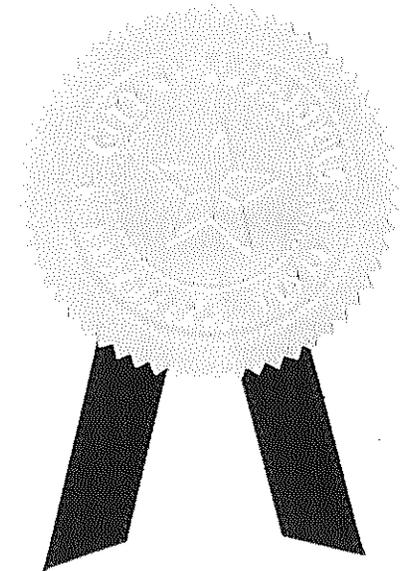
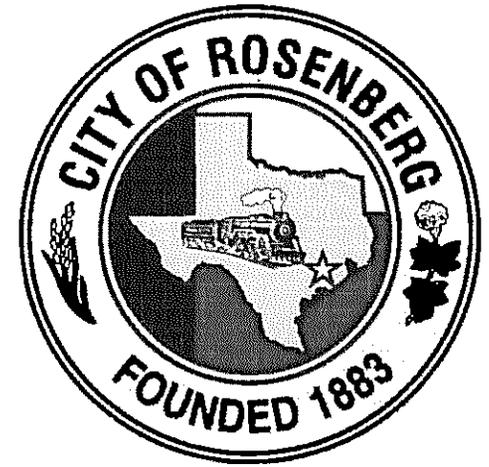
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Lamar High School Leos

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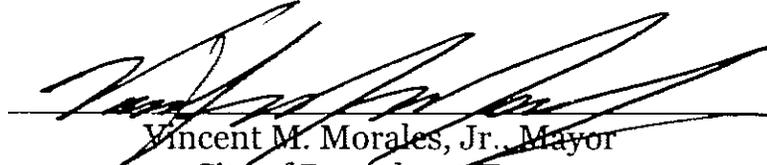
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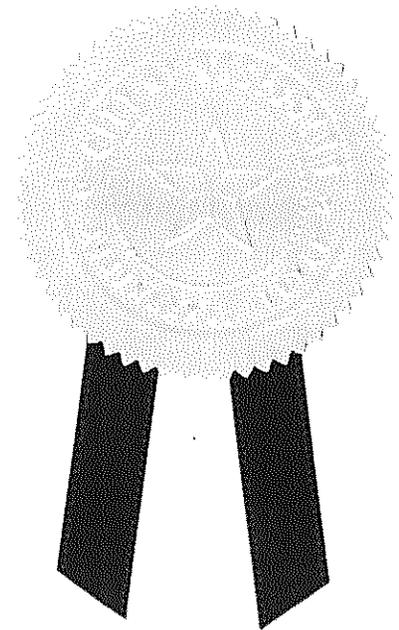
Presented to

Whataburger

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General Comments from the Audience:

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Comments from the Audience for Consent and Regular Agenda Items:

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ITEM 1

Review of Consent Agenda.

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ITEM A

Minutes:

- 1. Regular City Council Meeting Minutes – April 07, 2015**

CITY OF ROSENBERG
REGULAR COUNCIL MEETING MINUTES

*****DRAFT*****

On this the 7th day of April, 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
Susan Euton	Councilor, District 2
Dwayne Grigar	Councilor, District 3
Amanda Barta	Councilor, District 4

STAFF PRESENT

Robert Gracia	City Manager
Scott M. Tschirhart	City Attorney
Anne Stark	Assistant City Secretary
John Maresh	Assistant City Manager of Public Services
Jeff Trinker	Executive Director of Support Services
Joyce Vasut	Executive Director of Administrative Services
Travis Tanner	Executive Director of Community Development
Charles Kalkomey	City Engineer
Lisa Olmeda	Human Resources Director
Jeanne M. McDonald	Attorney
Dallis Warren	Police Chief
Tommy Havelka	Police Officer
Austin Eaton	Police Officer
Wade Goates	Fire Chief
Jeff Schumann	Fire Lieutenant
Cody Bittner	Fire Driver Operator
Cornelius Brooks	Firefighter
Angela Fritz	Executive Director of Information Services
Randall Malik	Economic Development Director
Rigo Calzoncin	Public Works Director
James Lewis	Information Services Manager
Daniel Kelleher	Main Street Manager
Jackie Jurasek	Animal Control Supervisor
Kaye Supak	Executive Assistant

CALL TO ORDER.

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

Invocation and Pledge of Allegiance.

Pastor Rodrick Perkins, The Place Church, Rosenberg, gave the invocation and led the pledge of allegiance to the flag.

PRESENTATION OF THE WILLIE D. MCQUEEN, JR., EMPLOYEE OF THE QUARTER AWARD.

Wade Goates, Fire Chief, presented the Willie D. McQueen, Jr., Employee of the Quarter Award to Lieutenant Jeff Schumann, Driver/Operator Cody Bittner, and Firefighter Cornelius Brooks for their quick action as first responders on a scene in December 2014 involving a LCISD student in cardiac arrest.

PRESENTATION OF CERTIFICATE OF APPRECIATION TO RANDY WEISHEIMER FOR HIS SERVICE AS A POLICE EXPLORER ADVISOR FROM 2008-2015.

Dallis Warren presented a Certificate of Appreciation to Randy Weisheimer for his service as a Police Explorer Advisor from 2008-2015.

PRESENTATION OF CERTIFICATES OF APPRECIATION TO CITY OF ROSENBERG COMMITTEE MEMBERS.

Mayor Morales presented Certificates of Appreciation to members of the following boards and committees:

- Water/Wastewater Impact Fee
- Animal Control Shelter Advisory Board
- Building and Standards Board
- Firefighters' Pension Board
- Image Committee
- Main Street Advisory Board
- Parks and Recreation Board
- Planning Commission
- Rental Property Appeals Board
- Rosenberg Development Corporation
- Richmond-Rosenberg Local Government Corporation
- West Fort Bend Management District

PRESENTATION OF ROSENBERG IMAGE COMMITTEE BEAUTIFICATION AND RENOVATION AWARDS.

William Benton, Councilor presented Rosenberg Image Committee Beautification and Renovation Awards to:

Present:

- Capital One Bank 1306 Spacek Road
- Friends of North Rosenberg 503 3rd Street
- The Witt Pitt 2516 1st Street

Not Present:

- LD Sylvester Hayes 2003 Hamilton Street
- Sidney Niemeyer 2713 Monroe Avenue
- Richard and Bobbie Spoons 3720 Avenue R

PRESENTATION OF PROCLAMATION PROCLAIMING APRIL 10, 2015, AMERICAN CANCER SOCIETY RELAY FOR LIFE DAY IN THE CITY OF ROSENBERG.

Mayor Morales presented a Proclamation Proclaiming April 10, 2015, American Cancer Society Relay for Life Day in the City of Rosenberg.

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.

- Alex Martinez, residence unknown, provided Council with feedback from a previous City Council Meeting.
- Hebert Castillo, 1310 Cardinal Drive, Richmond, Texas addressed the Council regarding the Spacek Tract disannexation.

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 MARCH 17, 2015, AND WORKSHOP MEETING MINUTES FOR MARCH 24, 2015.**

- B. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1949, A RESOLUTION IN SUPPORT OF TEXAS SENATE BILL NO. 581 RELATING TO THE CREATION OF A CAMPUS OF THE TEXAS STATE TECHNICAL COLLEGE SYSTEM IN FORT BEND COUNTY.**

Executive Summary: Senator Lois Kolkhorst of Texas Senate District 18 has filed Texas Senate Bill No. 581, relating to the creation of a campus of the Texas State Technical College (TSTC) in Fort Bend County. TSTC is working with the George and Henderson-Wessendorff Foundations on building a new TSTC Fort Bend Campus.

Staff recommends approval of Resolution No. R-1949 as presented.

- C. **CONSIDERATION OF AND ACTION ON THE CITY OF ROSENBERG FY2015 STREET OVERLAY AND RECONSTRUCTION PROJECT LIST.**

Executive Summary: The list of streets for the proposed FY2015 Street Overlay and Reconstruction Project was presented to City Council during the March 24, 2015 Workshop. A copy of the Priority Project List is included in the agenda packet. The cost estimate for the recommended streets included on the Priority Project List is approximately \$800,253.55. The FY2015 Budget includes \$800,000.00, which should fully fund the FY2015 project.

Upon City Council approval, staff will take the necessary actions to purchase the material, including labor and equipment utilizing the Fort Bend County bids. Staff will also prepare bid specifications and complete the bidding process for the subgrade lime stabilization. After bids are received, an action item to award this bid will be placed on a future City Council Agenda.

For reference, the list of remaining streets to be repaved from the approved FY2014 Street Paving Project list is also included in the agenda packet. Fort Bend County Road and Bridge Department is still planning to complete the remainder of the FY2014 work later this Spring/Summer.

Staff recommends approval of the FY2015 Priority Street Overlay and Reconstruction Project List as presented.

- D. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1953, A RESOLUTION ACKNOWLEDGING THE ACQUISITION, BY GENERAL WARRANTY DEED, OF A 20-FOOT WIDE STRIP OF LAND IN THE ROBERT E. HANDY SURVEY, ABSTRACT 187, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS, BEING OUT OF AND A PART OF THAT CERTAIN CALLED 0.998 ACRE TRACT RECORDED IN VOLUME 2725, PAGE 4, OFFICIAL RECORDS, FORT BEND COUNTY, TEXAS, AND GENERALLY LOCATED AT 5187 BRYAN ROAD, ROSENBERG, TEXAS, AND ASSOCIATED WITH THE BRYAN ROAD IMPROVEMENT PROJECT.**

Executive Summary: As a part of the improvements necessary for the widening of Bryan Road, City Council authorized staff to negotiate and purchase certain real property, namely a 20-foot strip of property located at 5187 Bryan Road to serve as a part of the required public right-of-way for the Bryan Road Improvement Project.

Staff has successfully completed the negotiation and successfully acquired said real property. Accordingly, staff recommends approval of Resolution No. R-1953 providing for the acceptance of said property generally located at 5187 Bryan Road, Rosenberg, Texas, and associated with the Bryan Road Improvement Project.

- E. **CONSIDERATION OF AND ACTION ON A FINAL PLAT OF THE RESERVE AT BRAZOS TOWN CENTER SECTION FOUR, BEING 27.6398 ACRE TRACT OF LAND BEING A PARTIAL REPLAT OF RESERVE "H", BLOCK 4, THE VILLAGES AT ROSENBERG (SLIDE NO. 1945 A&B; F.B.C.P.R.) CONVEYED TO FIGURE FOUR PARTNERS, LTD. (F.B.C.C.F. NO. 2013159055) IN THE JANE H. LONG LEAGUE, ABSTRACT NO.**

55, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS; 4 RESERVES, 104 LOTS, 3 BLOCKS.

Executive Summary: The Final Plat of The Reserve at Brazos Town Center Section Four is located off of Town Center Boulevard, north of its intersection with Vista Drive. It is located within the City Limits; in Fort Bend County MUD No. 167; and immediately west of The Reserve at Brazos Town Center Section Three, which has been recorded. The Plat consists of approximately 27.6 acres, with 104 single-family residential lots and four (4) reserves.

The typical lot size for the subdivision is 50 feet in width. This is per the approved Land Plan, which was most recently amended on January 20, 2015. Per the amended Development Agreement, homes in the subdivision will also be a minimum of 51 percent masonry construction, which is noted on the Plat.

The Preliminary Plat of this subdivision was approved by the Planning Commission on November 19, 2014, and the Final Plat was recommended by approval on January 21, 2015. The proposed Final Plat is not in conflict with any applicable regulations, with the approved Land Plan for Brazos Town Center, or with the approved Preliminary Plat. That being said, staff and the Planning Commission recommend approval of the Final Plat of The Reserve at Brazos Town Center Section Four.

F. CONSIDERATION OF AND ACTION ON A FINAL PLAT OF THE RESERVE AT BRAZOS TOWN CENTER SECTION FIVE, A 22.1380 ACRE TRACT OF LAND IN THE ROBERT HANDY SURVEY, ABSTRACT NO. 187, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS; 3 RESERVES, 73 LOTS, 2 BLOCKS

Executive Summary: The Final Plat of The Reserve at Brazos Town Center Section Five is located off of Town Center Boulevard, to the east of its intersection with FM 2218. It is located within the City Limits and in Fort Bend County MUD No. 167. The Plat consists of approximately 22.14 acres, with 73 single-family residential lots and three (3) reserves.

The typical lot size for the subdivision is fifty-five (55') feet in width. This is per the approved Land Plan, as amended on January 20, 2015. Per the amended Development Agreement, residences in the subdivision must also be a minimum of three (3) sides masonry exterior and 2,000 square feet in size.

The Preliminary Plat of this subdivision was approved by the Planning Commission on October 15, 2014, and the Final Plat was recommended for approval on January 21, 2015. The proposed Final Plat is not in conflict with any applicable regulations, with the approved Land Plan or Development Agreement for Brazos Town Center, or with the approved Preliminary Plat. That being said, staff and the Planning Commission recommend approval of the Final Plat of The Reserve at Brazos Town Center Section Five.

G. CONSIDERATION OF AND ACTION ON A FINAL PLAT OF THE TOWNHOMES AT BRAZOS TOWN CENTER, A 20.0427 ACRE TRACT OF LAND BEING A REPLAT OF RESTRICTED RESERVE "A", BRAZOS TOWN CENTER, SECTION TWO (PLAT NO. 20050239; F.B.C.P.R.) IN THE JANE H. LONG LEAGUE, ABSTRACT NO. 55, AND IN THE SIMON JONES SURVEY, ABSTRACT NO. 271, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS; 5 RESERVES, 139 LOTS, 3 BLOCKS.

Executive Summary: The Final Plat of The Townhomes at Brazos Town is located off of Town Center Boulevard, north of its intersection with Commercial Drive. It is located within the City Limits and in Fort Bend County MUD No. 167. The Plat consists of approximately 20.04 acres, with 139 townhome lots and five (5) reserves.

The typical lot size for the subdivision is twenty-four (24) to twenty-eight (28) feet in width. This is per the approved Land Plan, as amended on January 20, 2015. Per the amended Development Agreement, the subdivision must comply with the following, among other things:

- Residences shall be a minimum of 1,700 square feet in size;
- Residences shall have three-sided masonry exterior with a landscape buffer between buildings;
- 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 twenty-foot (20') front building lines on all lots; and,

- A two-car garage shall be required on each lot.

The Planning Commission approved the Preliminary Plat of this subdivision on October 15, 2014, and the Final Plat was recommended for approval on January 21, 2015. The proposed Final Plat is not in conflict with any applicable regulations, with the approved Land Plan or Development Agreement for Brazos Town Center, or with the approved Preliminary Plat. That being said, staff and the Planning Commission recommend approval of the Final Plat of The Townhomes at Brazos Town Center.

- H. *Item H was pulled from the Consent Agenda and moved to Item 2A on the Regular Agenda.*
CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1954, A RESOLUTION ACKNOWLEDGING THE ACCEPTANCE, BY RIGHT-OF-WAY DEED, OF A 0.3030 TRACT OF LAND SITUATED IN THE JAMES LOWERY 1/3 LEAGUE, ABSTRACT NUMBER 275 IN FORT BEND COUNTY, TEXAS, AND BEING OUT OF AND A PART OF THE TRACT OF LAND DESCRIBED IN DEED TO TRINITY LUTHERAN CHURCH OF ROSENBERG, TEXAS, AS RECORDED IN VOLUME 388, PAGE 184 OF THE FORT BEND COUNTY DEED RECORDS, AND GENERALLY LOCATED AT LOUISE STREET AND AVENUE N, AND ASSOCIATED WITH TRINITY LUTHERAN CHURCH EXPANSION PROJECT.

Action: Councilor McConathy made a motion, seconded by Councilor Euton to approve Consent Agenda Items A, B, C, D, E, F, and G. The motion carried by a unanimous vote.

REGULAR AGENDA

- 2A. *This Item was originally Item H on the Consent Agenda.*
CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1954, A RESOLUTION ACKNOWLEDGING THE ACCEPTANCE, BY RIGHT-OF-WAY DEED, OF A 0.3030 TRACT OF LAND SITUATED IN THE JAMES LOWERY 1/3 LEAGUE, ABSTRACT NUMBER 275 IN FORT BEND COUNTY, TEXAS, AND BEING OUT OF AND A PART OF THE TRACT OF LAND DESCRIBED IN DEED TO TRINITY LUTHERAN CHURCH OF ROSENBERG, TEXAS, AS RECORDED IN VOLUME 388, PAGE 184 OF THE FORT BEND COUNTY DEED RECORDS, AND GENERALLY LOCATED AT LOUISE STREET AND AVENUE N, AND ASSOCIATED WITH TRINITY LUTHERAN CHURCH EXPANSION PROJECT.

Executive Summary: Trinity Lutheran Church ("Church") is located at 1512 Louise Street, which is generally the northwest intersection of Louise and Avenue N, consisting of approximately 2.5 acres. Church representatives met with City staff several months ago to discuss potentially further developing their property. One of the issues brought up at that time was the City's requirement to plat the property in order to obtain a building permit per City ordinance. At the time, staff informed the Church of a less costly and time consuming alternative to platting if they aren't subdividing the property, which is to simply dedicate any rights-of-way or easements that may be necessary and file a plat exemption form before a permit is issued. Staff identified, and the Church confirmed, that ten feet (10') of right-of-way was needed along Avenue N, since Avenue N is a collector street per the City's Major Thoroughfare Plan, and thirty feet (30') of right-of-way would be needed for Louise Street, since the Church currently owns in fee up to the centerline of the street. The Church had no objections to these dedications and submitted deed and legal description for the City's review. Staff has reviewed and found no issues with the proposed deed. However, City Council action is required to formally authorize the acceptance, hence the item being placed on the Agenda. Staff recommends approval of Resolution No. R-1954 authorizing the acceptance.

Key Discussion Points: Travis Tanner, Executive Director of Community Development gave an overview of the item. He explained that by dedicating the necessary rights of way to the City, the Church will be exempt from platting.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to approve Resolution No. R-1954, a Resolution acknowledging the acceptance, by Right-of-Way Deed, of a 0.3030 tract of land situated in the James Lowery 1/3 League, Abstract Number 275 in Fort Bend County, Texas, and being out of and a part of the tract of land described in deed to Trinity Lutheran Church of Rosenberg, Texas, as recorded in Volume 388, Page 184 of the Fort Bend

County Deed Records, and generally located at Louise Street and Avenue N, and associated with Trinity Lutheran Church expansion project. The motion carried by a unanimous vote.

2. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1948, A RESOLUTION IN OPPOSITION TO A REVENUE CAP AND LEGISLATIVE INTERFERENCE WITH LOCAL SERVICES.**

Executive Summary: Senate Bill No. 182 has been introduced to the Texas State Senate for the purpose of imposing a cap on revenue generated by City property taxes. This proposed legislation would have a minimal effect on the individual property owner's taxes but would have a dramatic impact on a City's ability to provide essential services.

Resolution No. R-1948 has been included to allow for City Council to provide its support for the opposition of such legislation.

Key Discussion Points:

- Vincent M. Morales, Jr., Mayor gave an overview of the item, encouraging Council to approve the Resolution.
- He explained that a cap of 4 percent as opposed to the current 8 percent would be a hindrance to the City and would add associated cost burdens.
- Councilor Benton expressed concern regarding the efficacy of the proposed letter.
- Mayor Morales explained that the City of Rosenberg would be in the company of several other cities in Texas expressing their opposition to the revenue cap, thereby adding strength in numbers.

Action: Councilor Grigar made a motion, seconded by Councilor McConathy to approve Resolution No. R-1948, a Resolution in opposition to a revenue cap and legislative interference with local services.

The motion carried by a vote of 5 to 2 as follows: Yeses: Mayor Morales, Councilors Pena, Euton, Grigar and McConathy. Noes: Councilors Benton and Barta.

3. **REVIEW AND DISCUSS OVERVIEW REGARDING MUNICIPAL UTILITY DISTRICT OPERATIONS AND DISSOLUTIONS, AND TAKE ACTION AS NECESSARY.**

Executive Summary: A Municipal Utility District (MUD) is a political subdivision of the State of Texas authorized by the Texas Commission of Environmental Quality (TCEQ) to provide improvements such as water, sewage, drainage and other services within the MUD boundaries. MUDs are primarily a funding mechanism for the capital outlay necessary to provide said improvements. This item has been included on the Agenda to offer City Council an opportunity to receive and discuss information regarding MUD creation and dissolution.

Key Discussion Points: Jeanne H. McDonald, Attorney gave a general overview of the creation and history of MUDs. No action was taken on this item.

4. **REVIEW AND DISCUSS PROPOSED SUPPORT FOR LEGISLATION CREATING FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 218, AND TAKE ACTION AS NECESSARY.**

Executive Summary: One part of the Municipal Utility District (MUDs) approval process is consideration of the MUDs legislative language by the Texas Legislature. MUD No. 218 has submitted legislation for the creation of their MUD. House Bill No. 4126 is included in the agenda packet. The developer, D.R. Horton, is seeking support from the City for the legislation.

This Agenda item should not be considered approval of the MUD District itself, but simply demonstrates approval of their legislation as they seek approval from our legislators in order to create the MUD District. The City may withdraw its support at any time.

Should City Council look favorably upon this request, staff will finalize and send the draft correspondence provided.

Key Discussion Points: Jeanne H. McDonald gave an overview of the item.

Action: Councilor Barta made a motion, seconded by Councilor Grigar to approve the draft correspondence in support of House Bill No. 4126, creating MUD No. 218. The motion carried by a unanimous vote.

5. **CONSIDERATION OF AND ACTION ON A SECOND READING OF ORDINANCE NO. 2015-10, AN ORDINANCE GRANTING TO SIENERGY, L.P., A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; REQUIRING COMPLIANCE WITH ALL REGULATORY ORDINANCES OF THE CITY; AND PROVIDING FOR ALL OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.**

Executive Summary: It was recently determined that SiEnergy, L.P., is providing natural gas service to areas that are now located within a portion of the Rosenberg City Limits. Therefore, SiEnergy, L.P., is required to obtain a franchise agreement from the City. In accordance with Article XII of the City Charter, the City Attorney has prepared Ordinance No. 2015-10 which will grant said franchise to furnish and supply gas to the general public.

Article XII, Section 12.03 of the City Charter identifies specific procedures for approval of franchise ordinances which are summarized below:

- Ordinances shall not be passed finally until its third and final reading
- Ordinances shall be read at three separate regular meetings of the City Council, the last of which shall take place not less than thirty days from the first
- No ordinance granting a franchise shall pass any reading except by a vote of the majority of the City Council
- Ordinances shall not take effect until sixty days after its adoption on its third and final reading
- Any time before the ordinance shall finally take effect, a petition can be presented to the City Council signed by not less than twenty percent of the voters voting at the last regular municipal election, but in no event less than one hundred fifty bona fide qualified voters, requiring the City Council submit the question of granting said franchise to a vote of the qualified voters of the City

SiEnergy, L.P., has reviewed the Ordinance and has no objections to any of the terms. City Council considered and approved the first reading of Ordinance No. 2015-10 at the March 17, 2015 Regular Meeting. Staff recommends approval of this second reading of Ordinance No. 2015-10 as presented.

Key Discussion Points: John Maresh, Assistant City Manager of Public Services read the Executive Summary.

Action: Councilor Benton made a motion, seconded by Councilor Grigar to approve the second reading of Ordinance No. 2015-10, an Ordinance granting to SiEnergy, L.P., a franchise to furnish and supply gas to the general public in the City of Rosenberg, Fort Bend County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said Municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; requiring compliance with all regulatory ordinances of the City; and providing for all other provisions related to the subject matter hereof. The motion carried by a unanimous vote.

6. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1945, A RESOLUTION AWARDED BID NO. 2015-08 FOR TREE TRIMMING 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.**

Executive Summary: On Wednesday, March 18, 2015, bids were received and opened for Bid No. 2015-08 for the Tree Trimming Services Contract in Council District No. 4. The City received three (3) bids, the lowest from Bio Landscape and Maintenance, Inc., in the amount of \$19,250.00. The prices that Bio Landscape and Maintenance, Inc., submitted were compared to previous tree trimming done by various vendors for the City and found to be favorable. References were

checked and found to be acceptable.

Staff recommends approval of Resolution No. R-1945 which will award Bid No. 2015-08 and provide authorization for the City Manager to negotiate and execute all required documents necessary to facilitate the Agreement. Should City Council award Bid No. 2015-08 as recommended, the proposal will be attached to Resolution No. R-1945 to serve as Exhibit "A".

Key Discussion Points: John Maresh read the Executive Summary and gave an overview of the item. He explained that when the previous contract expired two years ago, District 4 was the next on the list, which is why the new contract begins there. Resulting from the reasonable bid by this company, there will be enough money to trim trees in more than one District this year. The general consensus of Council was to approve this Resolution, and to begin gathering information for the next District which could be completed during this calendar year.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to approve Resolution No. R-1945, a Resolution awarding Bid No. 2015-08 for Tree Trimming 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. The motion carried by a unanimous vote.

7. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1946, A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY, AN AMENDED AND RESTATED AGREEMENT RELATING TO THE TEMPORARY ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER WATER SUPPLY CONTRACT, BY AND BETWEEN THE CITY AND THE GULF COAST WATER AUTHORITY.**

Executive Summary: Beginning in 2011, City Council has annually approved a Resolution authorizing the City Manager to execute an Agreement to assign a portion of the City's contracted Brazos River Authority (BRA) raw surface water supply to the Gulf Coast Water Authority (GCWA) at the same rate paid to the BRA. The assignment is subject to BRA consent on an annual basis.

The City's contracted allocation of BRA raw surface water is four thousand five hundred (4,500) acre feet annually. The Agreement under consideration provides for consent to assign the full four thousand five hundred (4,500) acre feet on an annual basis, for the remainder of the BRA contract term which expires August 31, 2050. Section 6 of the Agreement allows either party to terminate the Agreement on December 31 of any year, provided a one-hundred twenty (120) day prior written notice is given to the other party. This provision is important as the City will retain the option to change its course regarding use of the BRA contracted water when the Brazosport Water Authority (BWA) surface water supply project begins to deliver water.

Per the Agreement, GCWA is required to pay or reimburse the City for the assigned water at the same rate charged by the BRA. For FY2015 the BRA rate is \$69.50/acre foot for a total of \$312,750.00. By assigning the raw surface water allocation to GCWA, the City will be able to recoup this full amount. These dollars will be placed back into the Subsidence (GRP) Fund to help cover expenses for the City's alternative water supply internal capital projects currently under design/construction and the BWA Water Supply Agreement which are all necessary to comply with the Fort Bend Subsidence District unfunded mandate to reduce groundwater withdrawals by thirty percent (30%) in 2016.

The Agreement has been reviewed by Attorney Patrick Lindner, serving as Special Counsel regarding water related projects. Staff recommends approval of Resolution No. R-1946, with the Agreement attached as Exhibit "A", as presented. If approved by City Council, the formal Consent Agreement for year 2015 will be placed on a future Agenda for consideration, subject to BRA consent.

Key Discussion Points: John Maresh read the Executive Summary and gave an overview of the item.

Action: Councilor Euton made a motion, seconded by Councilor McConathy to approve Resolution No. R-1946, a Resolution authorizing the City Manager to negotiate and execute, for and on behalf of the City, an Amended and Restated Agreement Relating to the Temporary Assignment of Rights and Obligations under Water Supply Contract, by and between the City and the Gulf Coast Water Authority. The motion carried by a unanimous vote.

8. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1947, A RESOLUTION RELATING TO THE WATER SUPPLY AGREEMENT, BY AND BETWEEN THE CITY AND BRAZOSPORT WATER AUTHORITY.**

Executive Summary: On December 02, 2014, City Council authorized the Mayor to execute a Water Supply Agreement (Agreement) with the Brazosport Water Authority (BWA) as required by the amended Groundwater Reduction Plan (GRP). The Agreement provides a mechanism allowing for compliance with the Fort Bend Subsidence District unfunded mandate to reduce groundwater withdrawals by 30% beginning October 01, 2016, by constructing a pipeline supplying treated surface water to the City. Subsequently on February 03, 2015, City Council authorized the Mayor to execute Amendment No. 1 to the Agreement, allowing the City to exercise the option to acquire an additional 2.7 million gallons of treated surface water per day.

Section 1.1 of the Agreement includes a provision that allows the City to terminate said Agreement if BWA was unable to secure the issuance of bonds necessary to finance the delivery system by March 31, 2015. Included in the packet is a timeline prepared by BWA's Financial Advisor identifying the various steps and target dates necessary to secure the bond funds. According to the timeline, the funds are scheduled to be delivered on May 27, 2015. Since this date will be past March 31, 2015, BWA has requested written assurance the City does not intend to terminate the Agreement. BWA staff has confirmed they are on schedule and still anticipate delivery of the funds on, or about, May 27, 2015.

Resolution No. R-1947 was prepared by Attorney Patrick Lindner, serving as Special Counsel regarding water related issues. Staff does recommend approval of Resolution No. R-1947 as presented.

Key Discussion Points: John Maresh read the Executive Summary and informed the Council that the project is proceeding at this time, now that they have the proper approval in place.

Action: Councilor McConathy made a motion, seconded by Councilor Euton to approve Resolution No. R-1947, a Resolution relating to the Water Supply Agreement, by and between the City and Brazosport Water Authority. The motion carried by a unanimous vote.

9. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1951, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, AN ENGINEERING SERVICES PROPOSAL FOR ENGINEERING RELATED TO WATER PLANT NO. 8, BY AND BETWEEN THE CITY AND JONES AND CARTER, INC., IN AN AMOUNT NOT TO EXCEED \$586,000.00.**

Executive Summary: The construction of Water Plant No. 8 is necessary in order to take delivery of the treated surface water that will be provided by the Brazosport Water Authority to meet the Fort Bend Subsidence District (District) unfunded mandate to reduce groundwater withdrawal by 30% beginning October 01, 2016. The water will be stored and pumped into the City's water distribution system from this facility. Water Plant No. 8 will be located within the boundaries of Fort Bend County Municipal Utility District No. 184 (MUD No. 184) located along A. Meyer Road, between Burdett Road and Benton Road. MUD No. 184 previously agreed to convey a 3-acre water plant site to the City. This project is a component of the Amended Groundwater Reduction Plan (GRP) which has been approved by the District. The Alternate Water Project is also included in the FY2015 Capital Improvements Program approved by City Council on June 17, 2014 (Resolution No. R-1801).

An Engineering Services Proposal for Water Plant No. 8 from Jones and Carter, Inc., is included in the agenda packet as Exhibit "A" to Resolution No. R-1951 for City Council's consideration. The base amount for design and construction phase services is \$440,000.00. Additional services for

topographic and boundary surveys, construction staking, construction management, field inspections, geotechnical investigation and other reimbursable expenses total \$146,000.00, for an estimated total of \$586,000.00.

Staff recommends approval of Resolution No. R-1951 as presented.

Key Discussion Points: John Maresh read the Executive Summary.

Action: Councilor McConathy made a motion, seconded by Councilor Euton to approve Resolution No. R-1951, a Resolution authorizing the City Manager to execute, for and on behalf of the City, an Engineering Services Proposal for engineering related to Water Plant No. 8, by and between the City and Jones and Carter, Inc., in an amount not to exceed \$586,000.00. The motion carried by a unanimous vote.

10. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1952, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, AN ENGINEERING SERVICES PROPOSAL FOR CHLORAMINE CONVERSIONS AT WATER PLANT NOS. 2, 3, 4, 5, 6, AND 7, BY AND BETWEEN THE CITY AND JONES AND CARTER, INC., IN AN AMOUNT NOT TO EXCEED \$300,000.00.**

Executive Summary: The City of Rosenberg currently uses a free chlorine disinfection system at its existing ground water plant sites. In order to effectively blend the chloramine-treated surface water from the Brazosport Water Authority (BWA), it is necessary to convert the existing free chlorine disinfection system to a chloramine disinfection system. This project is also a component of the Amended Groundwater Reduction Plan (GRP) which has been approved by the Fort Bend Subsidence District in order to reduce groundwater withdrawal by 30% beginning October 01, 2016. The Alternate Water Project is included in the FY2015 Capital Improvements Program approved by City Council on June 17, 2014 (Resolution No. R-1801).

The Engineering Services Proposal from Jones and Carter, Inc., included in the agenda packet as Exhibit "A" to Resolution No. R-1952, provides for the design and construction phase engineering of this conversion process. The base amount for this Project is \$225,000.00. Additional services for surveys, field inspections and other reimbursable expenses are estimated at \$75,000.00, for a total amount not to exceed \$300,000.00. It should also be noted as a part of the preliminary design phase, options for converting the gas chlorine to chlorine bleach will be provided to staff for consideration before the final design phase begins. Secondly, the installation of tank mixers is not included as a part of this project. The cost to install a mixer at every tank is estimated at \$500,000. Instead, staff proposes to complete the chloramine conversion and review the need for mixers at individual tanks, if water quality issues are encountered.

Staff recommends approval of Resolution No. R-1952 as presented.

Key Discussion Points: John Maresh read the Executive Summary. He clarified that this is for ground water plant sites, not Wastewater Treatment Plant 1-A that has been discussed in previous meetings.

Action: Councilor McConathy made a motion, seconded by Councilor Grigar to approve Resolution No. R-1952, a Resolution authorizing the City Manager to execute, for and on behalf of the City, an Engineering Services Proposal for chloramine conversions at Water Plant Nos. 2, 3, 4, 5, 6, and 7, by and between the City and Jones and Carter, Inc., in an amount not to exceed \$300,000.00. The motion carried by a unanimous vote.

11. **HOLD EXECUTIVE SESSION TO CONSULT WITH CITY ATTORNEY REGARDING PENDING LITIGATION, NAMELY IMPERIAL ARTS V. ROSENBERG, PURSUANT TO SECTION 551.071 OF THE TEXAS GOVERNMENT CODE.**

Action: Councilor Barta made a motion, seconded by Councilor McConathy 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 regarding pending litigation, namely

Imperial Arts v. Rosenberg, pursuant to Section 551.071 of the Texas Government Code.

12. **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 9:22 p.m.

13. **ANNOUNCEMENTS.**

Rosenberg Railroad Museum RailFest will be held April 11, 2015, from 11:00 a.m. - 5:00 p.m.

14. **ADJOURNMENT.**

There being no further business Mayor Morales adjourned the meeting at 9:23 p.m.

Attest:

Anne Stark, Assistant City Secretary



CITY COUNCIL COMMUNICATION

April 21, 2015

ITEM #	ITEM TITLE
B	Ordinance No. 2015-11 - MUD No. 167 Unlimited Tax Bonds, Series 2015 Bond Sale - \$3,575,000

ITEM/MOTION

Consideration of and action on Ordinance No. 2015-11, an Ordinance granting consent to the Fort Bend County Municipal Utility District No. 167 (which includes Brazos Town Center) for the sale and issuance of Unlimited Tax Bonds, Series 2015, in an amount not to exceed \$3,575,000.

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

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

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

SUPPORTING DOCUMENTS:

1. Ordinance No. 2015-11
2. Location Map
3. Oliver Correspondence w/o Attachments – 04-09-15
4. TCEQ Technical Memorandum/Order – 04-16-15

MUD #: 167 (Brazos Town Center)

APPROVALS

Submitted by:


 Charles A. Kalkomey, P.E.
 City Engineer

Reviewed by:

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

Approved for Submittal to City Council:


 Robert Gracia
 City Manager

EXECUTIVE SUMMARY

Attached for your consideration is Ordinance No. 2015-11 granting the City's consent to Fort Bend County Municipal Utility District No. 167 (MUD No. 167), to sell Unlimited Tax Bonds, Series 2015, in an amount not to exceed \$3,575,000. MUD No. 167 is located within the City's Corporate Limits. The development is generally identified as Brazos Town Center.

City Council consented to the creation of MUD No. 167 on June 28, 2005, through Ordinance No. 2005-14 which was originally proposed as a 121.81 acre development. A Development Agreement between the City and A-S 70 HWY 59-FM762, LP, was executed on December 07, 2004; a Water Supply and Wastewater Services Agreement was executed on December 06, 2005; and an Economic Development Agreement was executed on August 08, 2006. City Council approved Ordinance No. 2006-06 consenting to the addition of 173.8037 acres into MUD No. 167 on April 04, 2006, and Ordinance No. 2007-03 consented to the addition of 118.7858 acres into MUD No. 167 on February 06, 2007, for a total of approximately 414 acres.

This will be the fifth Unlimited Tax Bond sale for MUD No. 167.

- The first sale of Unlimited Tax Bonds was approved by City Council on July 01, 2008, through Ordinance No. 2008-20 in the amount of \$3,165,000.
- MUD No. 167's Tax Road Bond Anticipation Note was approved by City Council on November 18, 2008, through Ordinance No. 2008-48 in the amount of \$3,560,000.
- A Road Bond sale was approved by City Council on June 16, 2009, through Ordinance No. 2009-19 in the amount of \$7,000,000.
- The Texas Commission on Environmental Quality (TCEQ) issued an order approving the issuance of \$4,120,000 in bonds on September 29, 2010. However, after the tax assessment values were

released at that time, MUD No. 167 revised the bond issuance to \$3,000,000. The second Unlimited Tax Bonds sale, in the amount of \$3,000,000, was approved by City Council on November 16, 2010, through Ordinance No. 2010-28, deferring the remaining \$1,120,000 to a future sale.

- The second part of the previous sale of Unlimited Tax Bonds was approved by City Council on April 17, 2012, through Ordinance No. 2012-17 in the amount of \$1,120,000 for a total of the TCEQ approved \$4,120,000.
- The third sale was approved by City Council on November 20, 2012, through Ordinance No. 2012-43 in the amount of \$3,000,000.
- The fourth sale of Unlimited Tax Bonds was approved by City Council on May 04, 2014, through Ordinance No. 2014-20 in the amount of \$3,725,000.

Much of the submission documentation provided by MUD No. 167 for this proposed sale such as the Bond Order Authorizing the Issuance of Bonds by MUD No. 167, the Preliminary Official Statement/Notice of Sale, Resolution Authorizing the Issuance of Bonds by MUD No. 167, Cash Flow Analysis, Debt Fund Schedule, Summary of Costs, along with minute excerpts and related Ordinances are available for review in the City Secretary's Office.

Staff has reviewed the documentation and found it to be in compliance with applicable City Ordinances. Staff is recommending approval of Ordinance No. 2015-11 thus authorizing the sale of Unlimited Tax Bonds, Series 2015, in an amount not to exceed \$3,575,000.

ORDINANCE NO. 2015-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, GRANTING CONSENT TO THE FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 167 FOR THE SALE AND ISSUANCE OF UNLIMITED TAX BONDS, SERIES 2015, IN AN AMOUNT NOT TO EXCEED \$3,575,000.

WHEREAS, the City of Rosenberg, Texas (the "City") consented to the creation of the Fort Bend County Municipal District No. 167 (the "District") by Ordinance No. 2005-14, passed and approved on June 28, 2005, (the "Consent Ordinance"); and,

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

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

WHEREAS, the District has requested the City's consent to the District's sale and issuance of Unlimited Tax Bonds, Series 2015, in an amount not to exceed \$3,575,000; and,

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

WHEREAS, the City Council has determined that the sale and issuance of such Bonds by the District is in accordance with the Consent Ordinance, the Water Supply and Wastewater Services Contract entered into by and between the City and the District on December 06, 2005, including all amendments and addendums thereto, and the terms and conditions set forth in Chapter 29 of the City Code of Ordinances; now, therefore,

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

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

Section 2. The City Council hereby approves and consents to the sale and issuance of Unlimited Tax Bonds, Series 2015, in an amount not to exceed \$3,575,000, by the Fort Bend County Municipal Utility District No. 167. Such approval is based on to the certifications, representations, and conditions set forth in the District's request for

approval of the sale and issuance of such Bonds, and the terms and provisions of the Consent Ordinance, the Water Supply and Wastewater Services Contracts entered into by and between the City and District, including all amendments and addendums thereto, and the applicable provisions set forth in Chapter 29 of the City Code of Ordinances.

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:

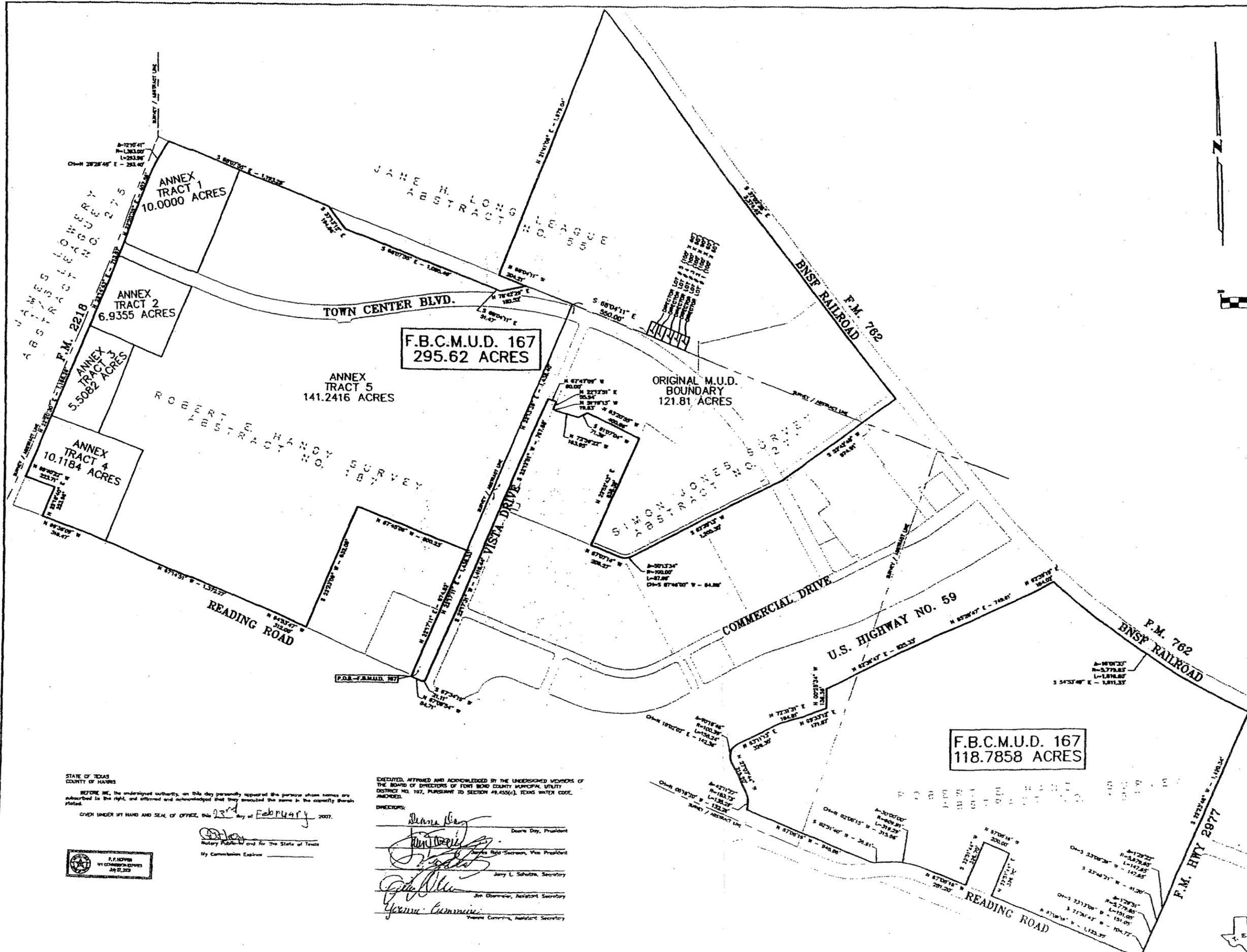
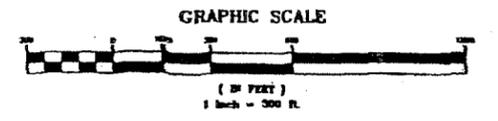
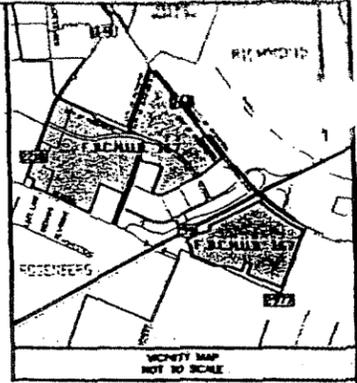
APPROVED:

Anne Stark, **Assistant City Secretary**

Cynthia McConathy, **Mayor Pro Tem**

APPROVED AS TO FORM:

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

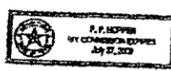


F.B.C.M.U.D. 167
295.62 ACRES

ORIGINAL M.U.D.
BOUNDARY
121.81 ACRES

F.B.C.M.U.D. 167
118.7858 ACRES

STATE OF TEXAS
COUNTY OF HARRIS
BEFORE ME, the undersigned authority, on this day personally appeared the persons whose names are subscribed to the right and affirmed and acknowledged that they executed the same in the capacity therein stated.
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 23rd day of February 2007.



[Signature]
Notary Public in and for the State of Texas
My Commission Expires _____

EXECUTED, AFFIRMED AND ACKNOWLEDGED BY THE UNDERSIGNED MEMBERS OF THE BOARD OF DIRECTORS OF FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 167, PURSUANT TO SECTION 49.455(c), TEXAS WATER CODE, AMENDED.
DIRECTORS:
[Signature] Deanna Day, President
[Signature] James Earl Sorenson, Vice President
[Signature] Jerry L. Schertz, Secretary
[Signature] Jim O'Brien, Assistant Secretary
[Signature] Yvonne Curran, Assistant Secretary

[Signature]
2/23/07

EXHIBIT

OF
FORT BEND COUNTY MUNICIPAL UTILITY
DISTRICT 167 BOUNDARY MAP
IN BRAZOS TOWN CENTER,
CITY OF ROSENBERG,
FORT BEND COUNTY, TEXAS

TEXAS ENGINEERING AND MAPPING
12810 CENTURY DRIVE
STAFFORD, TEXAS 77477



ALLEN BOONE HUMPHRIES ROBINSON LLP

ATTORNEYS AT LAW

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HOUSTON, TEXAS 77027
TEL (713) 860-6400
FAX (713) 860-6401
abhr.com

Direct Line: (713) 860-6465
Direct Fax: (713) 860-6665

doliver@abhr.com

David M. Oliver
Partner

April 9, 2015

Via Electronic Mail and Messenger

Ms. Kaye Supak
City of Rosenberg
2110 Fourth Street
Rosenberg, TX 77471

Re: Fort Bend County Municipal Utility District No. 167 (the "District")
Request for City of Rosenberg Approval of \$3,575,000 Unlimited Tax
Bonds, Series 2015

Dear Ms. Supak:

Please accept this letter, along with the enclosed documents, as the District's formal request to the City of Rosenberg for approval of the District's sale of \$3,575,000 Unlimited Tax Bonds, Series 2015 (the "Bonds").

Enclosed please find the following documents supporting the feasibility of the Bonds:

1. Texas Commission on Environmental Quality's Order approving the issuance of the Bonds;
2. Draft Resolution Authorizing the Issuance of the Bonds;
3. Preliminary Official Statement and Official Notice of Sale for the Bonds;
4. Projected Cash Flow Analysis;
5. Projected Debt Service Schedule; and
6. Summary of Costs.

We respectfully request that these items be placed on your Council's agenda by April 21, 2014, which will allow the District to advertise the sale of the Bonds for the proposed sale date of May 7, 2015.

Thank you in advance for your consideration, and if you have any questions during the review process, or if you require additional documentation, please do not hesitate to contact me at 713-860-6465.

Very truly yours,

A handwritten signature in black ink that reads "David M. Oliver". The signature is written in a cursive style with a large, stylized "D" and "O".

David M. Oliver

Enclosures

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS
COUNTY OF TRAVIS
I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY
OF A TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
DOCUMENT, WHICH IS FILED IN THE PERMANENT RECORDS

MAR 16 2015

OF THE COMMISSION, GIVEN UNDER MY HAND AND THE
SEAL OF OFFICE ON

Bridget C. Bohan
BRIDGET C. BOHAN, CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER APPROVING AN ENGINEERING PROJECT AND THE ISSUANCE OF \$3,575,000 IN UNLIMITED TAX BONDS FOR FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT No. 167

An application by Fort Bend County Municipal Utility District No. 167 (the "District") was presented to the Executive Director of the Texas Commission on Environmental Quality (TCEQ) for consideration of approval pursuant to TEX. WATER CODE §§ 5.122 and 49.181. The District requests approval of an engineering project and the issuance of \$3,575,000 in bonds to finance: City of Rosenberg water/wastewater impact fees; water, wastewater and drainage improvements for The Reserve at Brazos Town Center Section One and Town Center Boulevard Phase 1; wastewater/drainage improvements for Hampton Inn, and engineering cost. The TCEQ has jurisdiction to consider this matter, and the following Findings of Fact and Conclusions of Law are appropriate after examining the application and supporting documentation.

FINDINGS OF FACT

1. The District filed an application with the TCEQ on December 15, 2014, for approval of a proposed engineering project and the issuance of \$3,575,000 in bonds.
2. The Executive Director has investigated the District.
3. The application and accompanying documents have been examined. The project site was visited by a member of the Districts Section on January 29, 2015, and a memorandum was prepared on the project dated February 5, 2015, a copy of which is attached and made a part hereof.
4. The District's project and the issuance of \$3,575,000 in bonds at a maximum net effective interest rate of 5.44% to finance the project should be approved.
5. The request for a waiver of the 30% developer contribution requirement should be granted pursuant to 30 TEX. ADMIN. CODE §293.47 (a) (1).
6. The District should be directed not to purchase facilities or assume facility contracts from the developer until the (a) the TCEQ's region office has inspected the project, and the District has received a region office report with no deficiencies noted, for which approval is valid for 120 days from the date of this Order; or , if a region office report indicates deficiencies, (b) the TCEQ's Districts Section has received a request from the district and a region office report, reviewed the contract administration, and given written authorization to finalize the purchase or assumption; either one in accordance with 30 TEX. ADMIN. CODE §293.69.

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

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

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

CONCLUSIONS OF LAW

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

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

3. The Districts Section's memorandum dated February 5, 2015, on this engineering project and bond issue should be adopted as the written TCEQ project report in compliance with TEX. WATER CODE § 49.181(d).

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that the Districts Section's memorandum dated February 5, 2015, on this bond issue is adopted as the written TCEQ project report. Pursuant to TEX. WATER CODE § 49.181, the engineering project for Fort Bend County Municipal Utility District No.167 is hereby approved together with the issuance of \$3,575,000 in bonds at a maximum net effective interest rate of 5.44%. The request for a waiver of the 30% developer contribution is granted pursuant to 30 TEX. ADMIN. CODE §293.47 (a)(1). The District should be directed not to purchase facilities or assume facility contracts from the developer until either (a) the TCEQ's region office has inspected the project, and the District has received a region office report with no deficiencies noted, for which approval is valid for 120 days from the date of the Order; or, if a region office report indicates deficiencies, (b) the TCEQ's Districts Section has received a request from the District and a region office report, reviewed the contract administration, and given written authorization to finalize the purchase or assumption; either one in accordance with 30 TEX. ADMIN. CODE §293.69. The District's Board of Directors is directed to review to its satisfaction the detailed calculations of the developer's interest to ensure that the costs are authorized District expenditures and in accordance with 30 TEX. ADMIN. CODE §293.50 before reimbursement to the developer is made. The District is advised that the legal, fiscal agent and engineering fees have not been evaluated to determine whether these fees are reasonable or competitive. These fees are included as presented in the engineering report. The District is directed that any surplus bond proceeds resulting from the sale of bonds at a lower interest rate than that proposed shall be shown as a contingency line item in the Official Statement and the use of such funds shall be subject to approval pursuant to TCEQ rules on surplus funds. The approval of the sale of these bonds herein shall be valid for one year from the date of this Order unless extended by written authorization from the TCEQ.

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

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

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

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

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

Issue Date: **March 12, 2015**



For the Commission

Texas Commission on Environmental Quality

TECHNICAL MEMORANDUM

De for
To: Justin P. Taack, Manager
Districts Section

Date: February 5, 2015

2/25/15
Thru: Tom Glab, P.E., Leader
Districts Bond Team

OK
2-25-15
From: Clyde Sifford, P.E.
Districts Bond Team

Subject: Fort Bend County Municipal Utility District No.167 (the "District"); Application for Approval of \$3,575,000 Unlimited Tax Bonds, Fifth Issue, 5.44% Net Effective Interest Rate, Series 2015; Pursuant to Texas Water Code Section 49.181. TCEQ Internal Control No. D-12152014-024 (TC) CN: 603252511 RN:105374862

A. GENERAL INFORMATION

The Texas Commission on Environmental Quality (TCEQ) received an application from the District requesting approval of the issuance of \$3,575,000 in unlimited tax bonds to finance the District's share of the following projects:

1. Town Center Boulevard Phase 1
2. Water and wastewater impact fees
3. Engineering and developer interest cost
4. Water, wastewater, and drainage facilities serving the following development within the District:

<u>Development</u>	<u>Type of Development</u>	<u>Acreage</u>	<u>Active ESFCs⁽¹⁾</u>	<u>Ultimate ESFCs</u>
The Reserve at Brazos Town Center Sect.1	Single-Family	47.4	158	158
Utilities for Hampton Inn	Commercial	<u>3.0</u>	<u>50</u>	<u>50</u>
	Totals	50.4	208	208

Note: (1) Equivalent single-family connections as of September 1, 2043 as stated in the engineering report.

The District's previous bond issues funded utilities to serve 940 ESFCs on 113.6 acres (based on the engineering report). Including this bond issue, the District will have funded 1148 ESFC's on 164.0 acres. According to the engineering report and based on a current total District area of 428.24 acres, the District's ultimate development is projected to serve 2,490 ESFCs on 362.68 developable acres.

B. ECONOMIC ANALYSIS

Tax Rate Analysis

The financial feasibility of this bond issue is based on the existing 1,099 ESFCs as of September 1, 2014, and no-growth to an estimated taxable valuation of \$238,139,718 as of August 1, 2014. A market study has not been provided, and is not required since the feasibility is based on no-growth.

According to the Fort Bend Central Appraisal District, the District's January 1, 2014, estimated taxable valuation is \$222,979,280. The annual debt service requirements for the proposed bond amount of \$3,575,000 and existing debt averages \$1,537,265 for the 25-year life of the District's bond debt. The District levied a maintenance tax of \$0.12 in 2013 and is projecting to levy a maintenance tax of \$0.10 in the future.

The District's financial advisor submitted cash flow schedules considering the requested \$3,575,000 bond issue, no-growth to an estimated taxable valuation of \$238,139,718 by August 1, 2014, 12 months of capitalized interest, a bond interest rate of 5.25%, a 3% bond discount, 97% collection rate, and a projected tax rate of \$0.79 per \$100 assessed valuation. A Districts Section's financial analyst has reviewed the financial information submitted and concludes that the following level of debt service tax rates for no-growth would be sufficient;

<u>District</u>	<u>Projected Tax Rate</u>	
Debt Service	\$0.79	(1)(2)
Maintenance	\$0.10	
City tax	\$0.27	(3)
Total District Taxes	\$1.16	(4)

Notes:

- (1) Based on a net effective interest rate of 5.44%, a 97% collection rate, no-growth to an assessed taxable valuation of \$238,139,718 and at least a 25% ending debt service fund balance.
- (2) The term "commission approved tax rate" in 30 TEXAS ADMINISTRATIVE CODE (TAC) Section 293.85 refers to an initial ad valorem debt service tax rate of at most \$0.79 per \$100.00 assessed evaluation.
- (3) Represents the City of Rosenberg's tax rate attributed to water, wastewater, drainage and/or recreation as presented in the engineering report.
- (4) Represents the combined no-growth tax rate as defined by 30 TAC Section 293.59(f).

Additional Financial Comments

The District is exempt from the 75% and 25% build-out requirements of 30 TAC Sections 293.59(1)(4) and 293.59(k)(7), respectively, based on its combined no-growth tax rate of \$1.16 being less than \$1.50 pursuant to 30 TAC Sections 293.59(1) and 293.59(k)(11)(C).

C. ENGINEERING ANALYSIS

Water Supply

The water supply for this District is provided by the City of Rosenberg (“City”). Pursuant to the water supply and wastewater services agreement between the City and the District dated December 6, 2005, as amended May 1, 2007, the City will provide water service to the District up to a total of 2,490 ESFCs. Pursuant to the agreement, the District will convey ownership of the water facilities to the City as facilities are constructed and acquired and the City will operate and maintain the facilities. The agreement also states that the District will participate in the City’s Groundwater Reduction Plan for the conversion to surface water supply as required by the Fort Bend Subsidence District.

The City’s water supply facilities appear adequate to serve the existing 1,099 ESFCs upon which the feasibility of this bond issue is based.

Wastewater Treatment

Wastewater treatment for the District is provided by the City’s 4.5 million gallon per day (MGD) wastewater treatment plant no.2 (WWTP). The plant operates under TPDES Permit No.WQ0010607002, which authorizes a daily flow of up to 4.5 MGD. The District is funding impact fees for 10 ESFC’s with this bond issue.

The City’s wastewater treatment capacity appears adequate to serve the existing 1,099 ESFCs upon which the feasibility of this bond issue is based.

Storm Water Drainage

Storm water drainage for the District is collected by a system of underground storm sewers, detention ponds and City maintained drainage channels that discharge to Rabbs Bayou. This bond issue will fund underground storm sewers in the Brazos Town Center Phase Two and the Reserve at Brazos Town Center Section Two developments.

Purchase of Existing Facilities/Assumption of Existing Contracts

<u>Project</u>	<u>Contractor</u>	<u>% Complete</u> <u>Date</u>	<u>Contract</u> <u>Amount⁽¹⁾</u>	<u>Amt. Subj. to</u> <u>Distr. Contrib.</u>
Reserve at Brazos Town Center Phase 1	Joel Trimm	100%	\$1,178,505	\$1,178,505
	Construction	(9/07)		
Hampton Inn	Canyon	100%	\$281,097 ¹	\$281,097
	Construction	(11/06)		
Town Center Blvd. Phase 1	Hurtado	100%	\$1,264,391	\$660,892 ⁽²⁾
	Construction	(08/06)		
Waterline leads for Reserve at Brazos	Joel Trimm	100%	\$110,997	\$110,997
Town Center Sect. 1	Construction	(10/07)		

Lift Station Screening Fence	CRT Construction	100% (05/09)	\$24,500	\$24,500
------------------------------	---------------------	-----------------	----------	----------

Notes:

- (1) Represents the original contract amount plus or minus adjustments.
- (2) Represents an adjustment for non-eligible construction items. Adjustments are for construction items serving areas outside the District, a box culver conveying non District drainage, and miscellaneous work associated with these items.

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

Facilities to be Constructed

None.

Inspection

The District was inspected by a member of the Districts Section staff on January 29, 2015. Streets and utilities appeared to be complete within the sections to be funded. District name signs were properly posted.

D. SUMMARY OF COSTS

<u>Construction Costs and Detention Land Costs</u>	<u>District's Share</u>	(1)
<u>A. Developer Contribution Items</u>		
1. Reserve at Brazos Town Center Section 1	\$1,178,505	
2. Hampton Inn	\$281,097	
3. Town Center Blvd. Section 1	\$660,892	
4. Waterline Leads Reserve at Brazos Town Center Section 1	\$110,997	
5. Lift Station Screening Fence	\$24,500	
6. Engineering, Testing and Surveying (15.07% of items 1-5)	\$339,884	
Total Developer Contribution Items	\$2,595,875	
<u>B. District Items</u>		
1. Water and Wastewater Impact Fees (10) units	\$45,338	(2)
Total District Items	\$45,338	
Total Construction Costs (73.9% of BIR)	\$2,641,213	
<u>Non-Construction Costs</u>		
A. Legal Fees (2.9%)	\$104,375	(3)
B. Fiscal Agent Fees (1.95% of Bond)	\$70,063	(4)
<u>C. Interest</u>		
1. Capitalized Interest (12 months @ 5.25%)	\$187,688	
2. Developer Interest	\$365,825	(5)

D. Bond Discount (3%)	\$107,250	
E. Bond Issuance Expenses	\$46,073	
F. Attorney General's Fee (0.10%)	\$3,575	
G. Bond Application	\$40,000	
H. TCEQ Bond Issuance Fee (0.25%)	\$8,938	
Total Non-Construction Costs (26.1% of BIR)	\$933,787	
Total Bond Issue Requirement	\$3,575,000	

Notes:

- (1) The District has requested a waiver of the 30% developer contribution requirement.
- (2) Represents 10 water and wastewater impact fees at \$4,533.75 per ESFC.
- (3) Contract provided indicates fee to be 3% for the first \$3,000,000 of bonds issued, 2.5% for the next \$2,000,000 and 2% for the amount above \$5,000,000.
- (4) Contract provided indicates fee to be 2% of the first \$3,000,000 of the bond amount issued plus 1.75% of the amount over \$3,000,000 up to \$5,000,000.
- (5) Based on an estimated interest rate of 5.25% and a funding date of March 1, 2015, or at a maximum of two years in accordance with 30 TAC Section 293.50(a).

E. SPECIAL CONSIDERATIONS

The District has requested a waiver of the 30% developer contribution requirement 30 TAC section 293.47) pursuant to 30 TAC section 293.47(a)(1), based on the District having a debt to assessed valuation ratio of 10% or less. The District's existing water, wastewater, and drainage debt of \$13,190,000, Road Debt of \$6,310,000 and proposed debt equate to \$23,075,000. The District has provided a certificate from the Fort Bend Central Appraisal District indicating an estimated assessed valuation of \$238,139,718 as of August 1, 2014; therefore, its debt to assessed valuation ratio is 9.69%. The District's request for a waiver of the 30% developer contribution requirement should be granted pursuant to 30 TAC Section 293.47(a) (1).

F. CONCLUSIONS

1. Based on \$48,000,000 in unlimited tax bonds approved by voters and \$14,010,000 previously approved by the Commission and issued by the District, the District has sufficient voter authorized bonds (\$33,990,000) for the proposed bond issue.
2. Based on the review of the engineering report, plans, specifications, and supporting documents, the bond issue is considered feasible and meets the criteria established by the TCEQ economic feasibility rules, 30 TAC SECTION 293.59.
3. The recommendations are made under authority delegated by the Executive Director of the Texas Commission on Environmental Quality.

G. RECOMMENDATIONS

1. Approve the bond issue in the amount of \$3,575,000 in accordance with the recommended summary of costs at a maximum net effective interest rate of 5.44%.
2. Grant a waiver of the 30% developer contribution pursuant to 30 TAC Section 293.47(a) (1).
3. Standard recommendations regarding purchase of facilities, developer interest, consultant fees, surplus proceeds, time of approval, and bond proceeds fee apply.



CITY COUNCIL COMMUNICATION

April 21, 2015

ITEM #	ITEM TITLE
2	Ordinance No. 2015-10 – Granting a Gas Franchise to SiEnergy, L.P.

ITEM/MOTION

Consideration of and action on a third reading and final of Ordinance 2015-10, an Ordinance granting to SiEnergy, L.P., a franchise to furnish and supply gas to the general public in the City of Rosenberg, Fort Bend County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said Municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; requiring compliance with all regulatory ordinances of the City; and providing for all other provisions related to the subject matter hereof.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

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

SUPPORTING DOCUMENTS:

1. Ordinance No. 2015-10
2. Charter Excerpt – Article XII, Section 12.03
3. SiEnergy Distribution System Map
4. City Council Meeting Draft Minute Excerpt – 04-07-15
5. City Council Meeting Minute Excerpt – 03-17-15

MUD #: N/A

APPROVALS

Submitted by:

John Maresh
Assistant City Manager of
Public Services

Reviewed by:

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

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

It was recently determined that SiEnergy, L.P., is providing natural gas service to areas that are now located within a portion of the Rosenberg City Limits. Therefore, SiEnergy, L.P., is required to obtain a franchise agreement from the City. In accordance with Article XII of the City Charter, the City Attorney has prepared Ordinance No. 2015-10 which will grant said franchise to furnish and supply gas to the general public.

Article XII, Section 12.03 of the City Charter identifies specific procedures for approval of franchise ordinances which are summarized below:

- Ordinances shall not be passed finally until its third and final reading
- Ordinances shall be read at three separate regular meetings of the City Council, the last of which shall take place not less than thirty days from the first
- No ordinance granting a franchise shall pass any reading except by a vote of the majority of the City Council
- Ordinances shall not take effect until sixty days after its adoption on its third and final reading
- Any time before the ordinance shall finally take effect, a petition can be presented to the City Council signed by not less than twenty percent of the voters voting at the last regular municipal

election, but in no event less than one hundred fifty bona fide qualified voters, requiring the City Council submit the question of granting said franchise to a vote of the qualified voters of the City

SiEnergy, L.P., has reviewed the Ordinance and has no objections to any of the terms. City Council considered and approved the first reading of Ordinance No. 2015-10 at the March 17, 2015 Regular Meeting. The second reading was unanimously approved by City Council at the April 07, 2015 meeting. Staff recommends approval of Ordinance No. 2015-10 as presented on this the third and final reading.

ORDINANCE NO. 2015-10

GAS SUPPLY FRANCHISE ORDINANCE

AN ORDINANCE GRANTING TO SIENERGY, L.P., A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; REQUIRING COMPLIANCE WITH ALL REGULATORY ORDINANCES OF THE CITY; AND PROVIDING FOR OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, Chapter 121 of the Texas Utilities Code authorizes municipalities to adopt ordinances that establish conditions for mapping, inventorying, locating, or relocating pipelines over, under, along, or across a public street or alley or private residential area in the boundaries of the municipality; and

WHEREAS, the City of Rosenberg, Texas ("City"), strives to promote orderly and safe development within the territorial limits of the City; and

WHEREAS, the City Council finds that this franchise agreement with SiEnergy, L.P., a Texas Limited Partnership, (hereinafter referred to as "SiEnergy" or "the Company") is in the best interest of the health, safety, and welfare of the citizens of the City; now, therefore,

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

Section 1. - Grant of authority.

- (a) Subject to the reasonable and timely compliance by SiEnergy with the provisions contained herein, the City of Rosenberg, Texas, hereinafter called "city," hereby grants to SiEnergy, hereinafter called "company," its successors and assigns, consent to use and occupy the present and future public rights-of-way, for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment needed and necessary to deliver, transport, and distribute gas in, out of, and through city and to sell gas to persons, firms, and corporations, including all the general public, within the city corporate limits, as such limits may be amended from time to time during the term of this ordinance.
- (b) This franchise is granted for a term of ten (10) years from and after the effective date of this Ordinance.
- (c) This franchise covers the geographical area of the entire corporate limits of the City of Rosenberg, Texas. The company agrees that the corporate limits are subject to expansion or reduction by annexation and contraction of municipal boundaries and that the company has no vested right in a specific area. The company hereby agrees to provide service to any and all areas that may be annexed to the city under the

same terms and conditions of this agreement as the current areas now covered by this agreement. If the city approves any corporate limits expansion or reduction by annexation or contraction, the city will provide written notice to the company. The company must revise its payments due to any expansion or reduction by annexation or contraction within a reasonable time after notice by the city, but no later than sixty (60) days after receipt of notice.

- (d) This franchise is granted subject to and in accordance with Article XII – Franchises and Public Utilities, Sections 12.01-12.10 as provided in the City Charter.

Section 2. - Definitions.

For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) "Gross revenues" means:
 - i. All revenues charged by company for the sale of gas, including compressed gas, within the city to all customers within city;
 - ii. All revenues charged by company for the transportation of gas through the pipeline system of company within the city to customers within the city regardless of the origination of the gas within the company's system of lines; and
 - iii. The total cost of gas transported by company for transport customers through the pipeline system of company within city.

Gross revenues shall not be reduced by bad debts, unless and until such debts are actually charged off. Abandoned deposits shall be applied as an offset to bad debts for purposes of this agreement. No revenues shall be excluded from gross revenues unless such revenues are specifically excluded by this agreement.

- (b) "Public right-of-way" means all of the public streets, alleys, highways, bridges, easements, drainage ways, and sidewalks of the city, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the city, or in such territory as may hereafter be added to, consolidated or annexed to the city.
- (c) "Transport customer" means any person or entity for whom company transports gas through the pipeline system of company within the city to consumers.

Section 3. - Conditions of occupancy.

- (a) All activities of company in the public rights-of-way shall conform with all the applicable city codes and ordinances, as amended, with city infrastructure standards for design, construction and repair, as amended, and with all other city regulatory requirements as such may be adopted and amended from time to time, including but not limited to requirements regarding the acquisition of permits and the payment of fees therefor. Except in emergencies, before company shall be authorized or required

to extend, repair, or relay its existing gas mains or street service lines, it shall file with the director of public works a written statement showing the nature and character of the extensions to be made, obtain a permit for such work, and pay the required permit fees; provided however, company may make emergency repairs and replacements without prior filing with the director of public works but it shall file a written statement promptly thereafter. In addition, the company shall assess and report on the impact of its proposed construction on the city environment. Such plans and reports may be reviewed by the city to ensure that, among other items, (i) aesthetic and good planning principles have been given due consideration, (ii) adverse impact on the environment has been minimized, and (iii) that all applicable laws, including building and zoning codes, as applicable and air and water pollution regulations, are complied with. Reasonable changes suggested by the city shall be incorporated into the company's plans.

- (b) The company shall, upon the written request of the City, relocate its facilities situated within any street, sidewalks, drainage ways, and alleys, at no expense to the City, where reasonable and necessary to accommodate street construction or widening or other city improvement projects. When the company is required by city to remove or relocate its mains, laterals, and other facilities to accommodate construction of streets, sidewalks, drainage ways, and alleys by city, and company is eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by company as a result of such removal or relocation, and such reimbursement is required to be handled through city, company costs and expenses shall be included in any application by city for reimbursement, if company submits its cost and expense documentation to city prior to the filing of the application. City shall provide reasonable notice to company of the deadline for company to submit documentation of the costs and expenses of such relocation to city. If the company is required by city to remove or relocate its mains, laterals, or other facilities for any reason other than the construction of streets, alleys, drainage ways, and public infrastructure associated therewith by city, company shall be entitled to reimbursement from others of the cost and expense of such removal or relocation.
- (c) If city abandons any public right-of-way in which company has facilities, when feasible, company shall have the right to maintain its use of the former public right-of-way upon conditions to be determined by the city.
- (d) The company shall at all times keep on file with the city a current map or set of maps of the company's facilities within the city. Such maps shall indicate subdivision locations and locations of company's customers. As extensions or modifications of facilities are made from time to time, the company shall file with the city maps or plans showing those extensions or modifications so that the city will at all times have current and accurate maps and plans of the company's facilities. In addition to showing the location of company's facilities and customers, such maps shall also identify the depth and size of any buried facilities, as well as the type of cover overlaying those facilities. The company shall furnish the city "as built" drawings not later than sixty (60) days after construction has been completed. Drawings shall be drawn to a scale of one inch (1") equals one hundred feet (100') using the standard format adopted by the city. State plane coordinates shall be shown for benchmarks, curb lines, and structures. The company shall provide one (1) set of blue or black line "as built"

drawings to the city and one (1) set of the maps on computer diskettes with G.I.S. data in an electronic/digital format designated by the city.

- (e) The company shall provide, on a quarterly basis and at the same time that the quarterly payments and reports required in section 9 are submitted, a comprehensive listing of its customers on a subdivision basis. The location information shall also be shown on either a map or a subdivision plat, and may be combined with the maps required in paragraph 3(d) above. Company shall further cooperate with city in determining the correct jurisdictional coding of all of company's customers in the city and its environs.
- (f) The company agrees to provide, at its cost, information requested by the city to assist in a determination of any changes in conditions, practices, or services provided by the company through the use of the public rights-of-way.

Section 4. - Regulations for service.

- (a) In addition to the rates charged for gas supplied, company may make and enforce reasonable charges, rules and regulations for service rendered in the conduct of its business, including a charge for services rendered in the inauguration of natural gas service, and may require, before furnishing service, the execution of a contract for such service. All charges, rules, and regulations of company involving any consumer of gas within the city shall be subject to regulation, supervision, and approval by the city, as appropriate.
- (b) Company shall have the right to contract with each customer with reference to the installation of, and payment for, any and all of the gas piping from the connection thereof with the company's main in the public rights-of-way to and throughout the customer's premises.
- (c) Company shall own, operate and maintain all service lines, which are defined as the supply lines extending from the company's main to the customer's meter where gas is measured by company. The customer shall own, operate, and maintain all yard lines and house piping. Yard lines are defined as the supply lines extending from the point of connection with company's customer meter to the point of connection with customer's house piping.

Section 5. - Main extension.

Company shall be required at its own expense to extend distribution mains in any public rights-of-way up to one hundred (100) feet to a residential customer. Company shall not be required to extend transmission mains in any public rights-of-way within city or to make a tap on any transmission main within city unless company agrees to such extension by a written agreement between company and a customer.

Section 6. - Deposits.

Company shall be entitled to require each and every customer of gas, before gas service is commenced or reinstated, to satisfactorily establish credit pursuant to the company's quality of service rules as may be in effect during the term of this franchise. Said deposit shall be retained and refunded in accordance with such quality of service

rules and shall bear interest, as provided in Chapter 183, Texas Utilities Code, as such may be amended from time to time. Upon termination of service, company shall be entitled to apply said deposit, with accrued interest, to any indebtedness owed Company by the customer making the deposit.

Section 7. - Indemnity.

IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, COMPANY AGREES THAT CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND COMPANY DOES HEREBY RELEASE, AGREE TO INDEMNIFY AND HOLD HARMLESS CITY FROM AND AGAINST ALL SUITS, ACTIONS, OR CLAIMS OF INJURY TO ANY PERSON OR PERSONS, OR DAMAGES TO ANY PROPERTY BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY DEATH, INJURIES TO, OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR FOR DAMAGE TO OR LOSS OF PROPERTY ARISING OUT OF, OR OCCASIONED BY THE CONSTRUCTION, OPERATION, OR MAINTENANCE OF THE GAS DISTRIBUTION PLANT OR SYSTEM OF COMPANY, EXCEPT THAT THIS INDEMNITY AND HOLD HARMLESS AGREEMENT SHALL NOT APPLY TO ANY SITUATION WHEREIN CITY IS SOLELY LIABLE FOR THE ACTIONS, SUITS, OR CLAIMS OF INJURY OR DAMAGE BROUGHT AGAINST IT. IN THE EVENT THAT ANY ACTION, SUIT, OR PROCEEDING IS BROUGHT AGAINST CITY UPON ANY LIABILITY ARISING OUT OF THE CONSTRUCTION, OPERATIONS, OR MAINTENANCE OF THE COMPANY'S FACILITIES, CITY SHALL GIVE NOTICE IN WRITING TO COMPANY BY REGISTERED OR CERTIFIED MAIL. UPON RECEIPT OF SUCH NOTICE, THE COMPANY, AT ITS OWN EXPENSE, SHALL DEFEND SUCH ACTION AND TAKE ALL SUCH STEPS AS MAY BE NECESSARY OR PROPER TO PREVENT THE OBTAINING OF A JUDGMENT AGAINST THE CITY AND/OR TO SATISFY SAID JUDGMENT. CITY AGREES TO COOPERATE WITH COMPANY IN CONNECTION WITH SUCH DEFENSE.

Section 8. - Non-exclusive.

- (a) The rights, privileges, and franchise granted by this ordinance are not to be considered exclusive, and city hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for city and the inhabitants thereof. City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for the city and the inhabitants thereof.
- (b) If, on the effective date of this franchise, there is in effect a similar gas franchise granted by the city to another company that provides for a franchise fee in a lower amount than the amount required to be paid by company herein, then company's obligations under section 9 hereof shall be limited to the lower amount contained in the other franchise. City shall give company notice on the effective date of such other franchise affecting company's obligations under section 9 and of the franchise fee required under such other franchise. Company shall thereafter be allowed to calculate its franchise fee payments to the city based upon the lower fee required in the other franchise.

- (c) If company's required franchise fee is lowered as provided in paragraph (b), above, and the city subsequently grants or renews a gas franchise to another company that requires a franchise fee in the amount of four (4) percent or greater of the franchisee's gross revenues, then company's franchise fee obligations shall be as provided in section 9 hereof. City shall give company notice of such subsequent franchise or renewal affecting company's obligations under section 9 and of the franchise fee required under such subsequent franchise or renewal. Company shall thereafter be required to calculate its franchise fee payments to the city based upon the requirements of section 9 hereof, beginning with the next full calendar quarter after receipt of the notice from the city.

Section 9. - Compensation.

- (a) In consideration of the right granted by city to company to use and occupy the rights-of-way in the city for the conduct of its business, company, its successors and assigns, agrees to pay to the city franchise fees in the amount and manner described herein. Such payments shall be made on a quarterly basis, on or before the twentieth (20th) day following the end of each calendar quarter. The franchise fee shall be a sum of money which shall be equivalent to four (4) percent of the company's quarterly gross revenues.
- (b) For franchise fee payments beginning on the effective date of this ordinance, payment shall be made by wire transfer on or before the close of business on the payment due date. If any payment due date required herein falls on a weekend or declared bank holiday, payment shall be made by wire transfer on or before the close of business of the last working day prior to the payment due date. Payment shall be considered timely made if company requests the wire transfer by the wire transfer deadline of its bank on the payment due date.
- (c) At the time of each quarterly payment, company shall also submit to the city a sworn statement showing: (i) its gross revenues for the preceding calendar quarter upon which franchise fees are calculated, including the amount of revenues received by company for the transportation of gas; (ii) the coded identity of company's transport customers during the preceding calendar quarter; and (iii) the cost, volume, and transport fee of gas transported during the preceding calendar quarter for such transport customers, calculated in accordance with section 9(f) below. Upon request, city shall have access at company's office to the actual identity of company's transport customers and their suppliers as long as such information shall remain confidential, and no copies of such information may be made.
- (d) The aforesaid franchise fee payments shall not affect or reduce the company's obligations with respect to the following: (i) to reimburse the city for street repairs; (ii) the payment of taxes or fees to the state; or (iii) the payment of general or special ad valorem taxes that the city is authorized to levy and impose upon real and personal property. None of the aforementioned obligations of the city shall operate as credits or reductions to the amounts due by the company to the city hereunder.
- (e) The payments by the company under the provisions of this ordinance are in lieu of any and all other and additional street rental charges or fees. However, the company is required to obtain all appropriate permits for work in the public rights-of-way and

pay the appropriate fees therefor. Should city not have the legal power to agree that the payment of the franchise fee shall be in lieu of street rental charges, then city agrees that it will apply so much of said sums of money paid as may be necessary to satisfy company's obligations, if any, to pay such rental charges.

- (f) The cost of gas transported by company for transport customers shall be determined as set forth in this paragraph. In the absence of documentary evidence to the contrary provided by company to city, the cost of gas so transported shall be presumed to be equal to the total volume of gas transported for such transport customer times one hundred ten (110) percent of the index of prices for large packages of gas per MMBtu published each month in *Inside FERC's Gas Market Report* in the table titled, "Delivered Spot-Gas Prices," for gas delivered at Houston Ship Channel/Beaumont, Texas, or a mutually agreeable successor publication and index, for the period of time the transportation service is performed. If company submits documents to the city to indicate the actual cost of gas transported by company, the company may remove therefrom any information that would disclose either the identity of the customer or other information deemed confidential by company, so long as such removal does not prevent the city from determining the monetary cost of the gas transported. Company agrees to give the city, upon request, access to the confidential information so removed in order for the city to verify the accuracy of the information provided to the city under the provisions of this paragraph. Company shall use all due diligence in collecting from transport customers any and all fees required by this franchise ordinance, but shall not be responsible for paying the fees to city if company's transport customer refuses to pay. Provided, however, that if company's transport customer refuses to pay the fee imposed on the cost of gas transported for such transport customer, and remains delinquent in payment of such fee for a period of greater than thirty (30) days, company shall be responsible for the uncollected fee on any gas thereafter transported through the rights-of-way of city to company's transport customer, but in no event shall the customer be relieved of its obligation to reimburse company for any fees paid to city.

Section 10. - Accounting; audit; inspection.

- (a) The company shall maintain, at its local office or principal place of business within the state, adequate books and records relating to the performance of its obligations under this franchise. The company shall maintain separate records in a form sufficient to identify its investment, revenues, and expenses related to its performance under this franchise, intending thereby to separate the accounting records of its system in the city from its other systems. The records of the company applicable to its performance under this franchise shall be made available for inspection by the city at any time during normal working hours.
- (b) City may cause, upon reasonable notice, an audit to be made of the books and records of the company relating to the company's performance under this franchise or any portion of any of its other operations that may be allocated or charged to its operations in the city. The omission by the city to exercise its rights to any audit at any time shall not constitute a waiver of such right. In the event city elects to exercise its right of audit, city shall provide to the company written notice of such election at least forty-eight (48) hours in advance of the time of such audit. City shall retain an

independent auditor of its selection to perform the audit. The company shall make available to the auditor such personnel and records as the city may in its reasonable discretion request in order to complete such audit, and shall make no charge to the city therefor. The company shall assist the city during any audit conducted under this franchise, including answering questions and providing any requested records or information within five (5) working days of having received a written request therefor. The cost of an audit pursuant to this provision shall be borne by the city, unless the audit reveals an underpayment of fees paid during the audit period in excess of three (3) percent, in which case the company shall pay for the audit. In the event any overpayment is discovered, such overpayment will credit toward current and/or future payments owed, without interest.

- (c) Upon request by the city, but no less often than annually, the company will prepare a statement of its estimate of the company's gross revenues by revenue account for the period covered by the statement signed by an authorized representative of the company, in such reasonable form and detail as city may from time to time prescribe, sufficient to show the source and method of calculation of the company's gross revenues. The acceptance of any statement or payment shall not estop the city from asserting that the amount paid is not the amount due or from recovering any deficit, including interest, by any lawful proceeding.
- (d) Upon completion of the audit, the city shall make the audit report available to the company, and shall give the company an opportunity to respond to the audit findings. If requested by either party, the city and the company shall meet and attempt in good faith to resolve any disputed issues arising out of the audit report. In the event the company shall be determined to have under-remitted the fee required by this franchise, the company shall pay, in addition to the underpayments, interest on the underpayments at the rate of ten (10) percent per annum from the time of the underpayment until payment is made. Underpayment of fees by the company may also subject the company to penalties for noncompliance with this franchise. After reviewing the company's response to the audit findings, the city shall make an initial determination as to whether the company shall also be required to pay a penalty for noncompliance. The amount of the penalty, if any, shall not exceed ten (10) percent of the total underpayment. The city council shall make the final determination of whether a penalty shall be required, and the amount of same.
- (e) If any of the records to be provided by company or to be made available by company are considered by the company to be proprietary in nature or if such records are confidential under federal, state or local law, upon request by the company such information shall be treated by the city as confidential, and shall be made available only to those persons who must have access to perform their duties on behalf of the city, including but not limited to the finance director, the city attorney, and the council members. City shall promptly notify company of any requests for public disclosure of such records under Chapter 552, Texas Government Code, and company shall have the sole responsibility to assert its claims regarding the proprietary or confidential nature of such records.

Section 11. - Reservation of rights.

- (a) The city reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of company's rates and services to insure the rendering of efficient public service at reasonable rates, and the maintenance of company's property in good repair throughout the term of this franchise. Company shall maintain on file with the city copies of its current tariffs, schedules of rates and charges, customer service provisions, and line extension policies. Company shall notify the city of the identity of any customer of company that changes from a tariffed rate to a contract rate within forty-five (45) days of such change.
- (b) In granting this franchise, the city does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of the city, and it is expressly provided that nothing herein shall impair the right of the city to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by company to residential consumers, commercial consumers, industrial consumers, or to any combination of such consumers, within the territorial limits of the city as same now exist or as such limits may be extended from time to time hereafter.

Section 12. - Termination.

- (a) In addition to any rights set out elsewhere in this ordinance, the city reserves the right to terminate the franchise and all rights and privileges pertaining thereto, in the event that the company violates any material provision of the franchise or the company becomes insolvent, or is adjudged as bankrupt.
- (b) Upon failure of the company to comply with the material terms of the franchise, the city may by ordinance terminate the franchise in accordance with the procedures set forth in this section. Upon termination, all rights of the company shall immediately be divested without further act upon the part of the city. If the city requires the company to remove its facilities from the public rights-of-way, the company shall forthwith remove its structures or property from the public rights-of-way and restore it to the approximate original condition. Upon failure to do so, the city may perform the work and collect the cost thereof from the company. The cost thereof shall be a lien upon all facilities and property of the company.
- (c) Procedures for termination.
 - (i) The city shall give written notice to the company of the existence of a material violation or failure to comply with the franchise. Company shall have a period of thirty (30) days after receipt of such notice from the city in which to cease such violation and comply with the terms and provisions hereof. In the event company fails to cease such violation or to otherwise comply with the terms hereof, then company's franchise is subject to termination under the following provisions. Provided, however, that, if the company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such

curative work is completed, then such violations shall cease to exist, and the franchise will not be terminated.

- (ii) Termination shall be declared only by a written decision of the city council after an appropriate public proceeding whereby the company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The company shall be provided at least ten (10) days prior written notice of any public hearing concerning the termination of the franchise. In addition, ten (10) day notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the company.
 - (iii) The city, after full public hearing, and upon finding a material violation or failure to comply, may in its discretion terminate the franchise or excuse the violation or failure to comply upon a showing by the company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the city council. The failure of the company to comply with the terms of this franchise after due notice and hearing and the providing of adequate time for company to comply with said terms, shall entitle the city to compel compliance by suit in any court of competent jurisdiction and upon culmination of the suit, if the company still fails to comply with the terms of the franchise, the city may compel compliance upon penalty of forfeiture thereof, with the city having an option to purchase company's property located in the city at a reasonable fair value should forfeiture occur.
- (d) In the event the city purchases company's property under penalty of forfeiture and the city and company cannot agree upon the reasonable fair value of the property, then the reasonable fair value of the company's property shall be established by a majority vote of three appraisers with one appraiser selected by company, one appraiser selected by city, and one appraiser selected by the other two appraisers. If the two appraisers are unable to agree upon the third appraiser, then the third appraiser shall be selected by order of a court of competent jurisdiction. The company further agrees that if for any reason the company fails to pay the franchise fee as provided in this franchise within thirty (30) days following written notice from the city that company has failed to make such payment, such failure shall be sufficient to permit the city to forfeit the franchise without court action.

Section 13. - Renegotiation.

- (a) Should technological, market-driven, regulatory, or similar changes occur in the natural gas industry which create classes or categories of usage different from those enumerated in section 1 of this ordinance, or should company alter the means, methods, or types of uses of the public rights-of-way in the city, or should the city reasonably believe that the franchise fee provision should be amended in order to not impair the city's ability to receive an adequate franchise fee pursuant to this ordinance, then the city may initiate the renegotiation of the franchise fee provision of this ordinance.
- (b) If, during the term of the franchise granted hereunder, the nature of competition in the provision of gas utility services in the city changes to the extent that company

reasonably believes that the franchise fee provisions of this ordinance cause the company to be placed at a competitive disadvantage in the conduct of its business within the city, then the company may request the renegotiation of the franchise fee provisions of this ordinance.

- (c) Should either the city or the company request a change in the franchise fee provision of this ordinance, both parties agree to enter into a good faith negotiation. "Good faith," for the purpose of this ordinance, shall mean an objective, diligent, timely, and responsible discourse on the issue(s) involved and a resolute attempt to settle said issue(s). Should, as a result of renegotiation, city and company agree to a change in a provision of this ordinance, the change shall become effective upon passage of an ordinance by the city in accordance with the City Charter and acceptance of the amendment by the company. Both parties agree that passage and acceptance will be a mandatory act following negotiation and agreement. Company agrees to provide any and all information requested by city to assist in a determination of any changes in conditions, practices, or services provided by company through the use of the public rights-of-way of the city.

Section 14. - Regulatory expenses.

Company agrees that city may, at any time during the term of this franchise, employ at the expense of company expert assistance and advice in determining fair, just, and reasonable rates to be charged by company to its consumers in the city, and in determining the extent to which company is complying with the terms and conditions of this ordinance. Company agrees to pay reasonable expenses in connection therewith, or reimburse city for the same, which expense company shall be entitled to recover through its rates and tariffs.

Section 15. - Acceptance.

In order to accept this franchise, company must file its written acceptance of this franchise ordinance within forty-five (45) days after its final adoption by the city, in a form acceptable to the City Attorney's office. If this franchise ordinance is not accepted by company within forty-five (45) days, the franchise ordinance shall be rendered null and void.

Section 16. - Assignment or transfer.

Company may not assign or transfer this franchise, and the rights granted thereby, to any entity without the prior consent and approval of the city given by written resolution, which consent and approval shall not be unreasonably withheld.

Section 17. Notices.

Every notice, order, petition, documents or other direction or communication to be served upon the City or the Company shall be deemed sufficiently given if sent by registered or certified mail, return receipt requested. Every such communication to the Company shall be sent to:

SiEnergy, L.P.
June M. Dively, Chief Executive Officer
3 Lakeway Centre Court, Suite 110
Lakeway, TX 78734

Every such communication to the City or the City Council shall be sent to the:

Mayor, City of Rosenberg
2110 4th Street
P.O. Box 32
Rosenberg, Texas 77471

With copies to:

City Manager
2110 4th Street
P.O. Box 32
Rosenberg, Texas 77471

Section 18. Severability.

If any provision, section, subsection, sentence, clause or phrase of this Franchise is for any reason held to be unconstitutional, void, or invalid or for any reason unenforceable, the validity of the remaining portions of this Franchise shall not be affected thereby, it being the intent the City of Rosenberg, in adopting this Franchise, that no portion hereof or provision hereof shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation and, to this end, all provisions of this ordinance are declared to be severable.

Section 19. Repeal.

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

Section 20. Governmental Function.

All of the regulations and activities required by this Franchise are hereby declared to be governmental and for the health, safety and welfare of the general public.

Section 21. Effective date.

This franchise shall be effective sixty days after its adoption on its third reading within thirty days of its first reading, and further conditional upon receipt by the city of company's acceptance, as provided in section 15 herein, and upon all other conditions as provided by the City Charter, as applicable.

PASSED AND APPROVED by a vote of six (6) “ayes” in favor and zero (0) “noes” against on this first reading in full compliance with the provisions of Section 3.10 and Section 12.03 of the Charter of the City of Rosenberg on the 17th day of March 2015.

PASSED AND APPROVED by a vote of seven (7) “ayes” in favor and zero (0) “noes” against on this second reading in full compliance with the provisions of Section 3.10 and Section 12.03 of the Charter of the City of Rosenberg on the 7th day of April 2015.

PASSED AND APPROVED by a vote of _____ “ayes” in favor and _____ “noes” against on this third and final reading in full compliance with the provisions of Section 3.10 and Section 12.03 of the Charter of the City of Rosenberg on the _____ day of _____ 2015.

ATTEST:

APPROVED:

Anne Stark, **Assistant City Secretary**

Cynthia McConathy, **Mayor Pro Tem**

APPROVED AS TO FORM:

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

CITY OF ROSENBERG CODE OF ORDINANCES EXCERPT
PART I - THE CHARTER
ARTICLE XII. - FRANCHISES AND PUBLIC UTILITIES

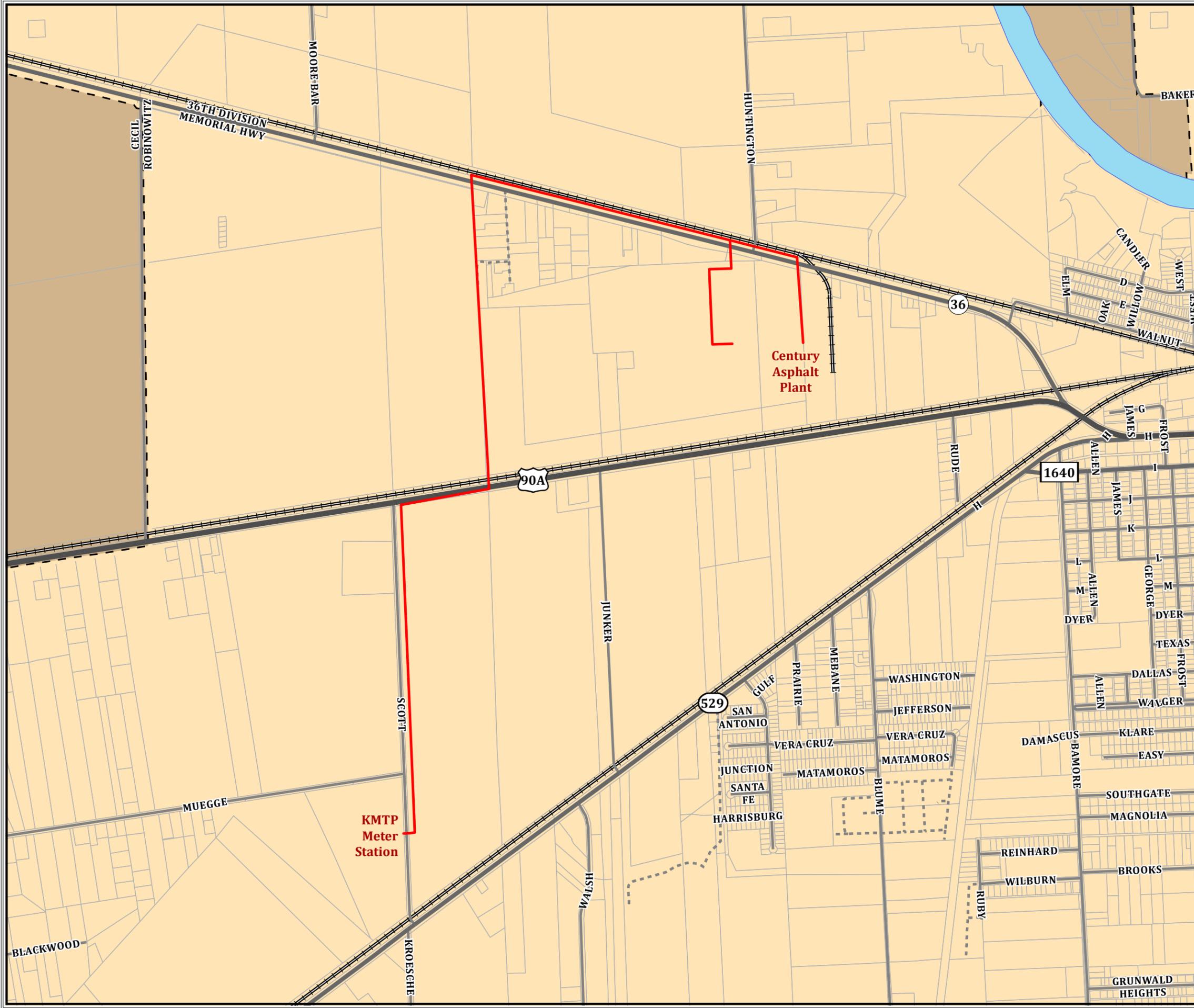
Sec. 12.03. - Procedure for passing franchise ordinances.

The City of Rosenberg shall have the power by ordinance to grant any franchise or right mentioned in the preceding sections hereof, which ordinance shall not be passed finally until its third and final reading, said ordinances shall be read at three separate regular meetings of the city council of the City of Rosenberg, the last of which shall take place not less than thirty days from the first. No ordinance granting a franchise shall pass any reading except by a vote of the majority of the city council, and such ordinance shall not take effect until sixty days after its adoption on its third and final reading; provided, however, that if at any time before such ordinance shall finally take effect, a petition shall be presented to the city council signed by not less than twenty percent of the voters voting at the last regular municipal election but in no event less than one hundred fifty of the bona fide qualified voters of the city, then the city council shall submit the question of the granting of said franchise to a vote of the qualified voters of the City of Rosenberg at the next succeeding regular municipal election to be held in said city; provided that notice thereof shall be published over a period of at least twenty-one days in a newspaper of general circulation published in the City of Rosenberg, prior to the holding of said election. Ballots shall be used, briefly describing the franchise to be voted on and the terms thereof and containing the words, "For the granting of a franchise," and, "Against the granting of a franchise." The votes shall be canvassed by the city council, and should it result in a majority of those voting thereon casting their votes "For the granting of a franchise," then by order entered in its minutes, the city council shall so declare and said franchise shall at once take effect. But should a majority of such votes be cast "Against the granting of a franchise," as ascertained by the city council, then said city council by order entered in its minutes shall so declare and such franchise shall not take effect. In case a franchise is refused by the city council, then the matter may be submitted to the qualified voters on petition, as hereinbefore provided, and a failure to finally pass on an application within twelve months after the filing of such application, shall be construed as a refusal. The city council in passing an ordinance granting a franchise may provide therein that it shall not take effect until the same shall have been submitted to and approved by a majority of the qualified voters voting thereon at a regular municipal election. All expenses of publication shall be borne by the applicant for the franchise, who shall make a deposit in advance to cover the estimated cost of publication, to be determined by the city manager.

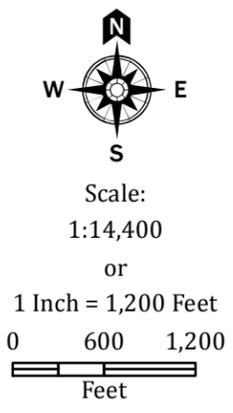
(Ord. No. 60-4, § 21, 9-6-60; Ord. No. 85-8, § 21, 6-18-85)

SiEnergy Gas Distribution Pipeline

City of Rosenberg, Texas



- Pipeline
- Interstate
- US Highway
- State Highway/FM
- Public Road
- Private Road
- Rosenberg City Limits
- Rosenberg ETJ



The pipeline location depicted is based off GIS data from the Railroad Commission of Texas (RRC). The data has been cross checked with information provided by SiEnergy to insure that it shows the approximate location and layout of the pipeline (appropriate to the map scale).

Created by: City of Rosenberg GIS - Cory Vardaman
Date Created: March 09, 2015
Original Size: 11" x 17"
K:\GIS\MAPS\Utilities\2015\SiEnergy_Pipeline_11x17_2015Mar09.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.



Action: Councilor Barta made a motion, seconded by Councilor Grigar to approve the draft correspondence in support of House Bill No. 4126, creating MUD No. 218. The motion carried by a unanimous vote.

5. **CONSIDERATION OF AND ACTION ON A SECOND READING OF ORDINANCE NO. 2015-10, AN ORDINANCE GRANTING TO SIENERGY, L.P., A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; REQUIRING COMPLIANCE WITH ALL REGULATORY ORDINANCES OF THE CITY; AND PROVIDING FOR ALL OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.**

Executive Summary: It was recently determined that SiEnergy, L.P., is providing natural gas service to areas that are now located within a portion of the Rosenberg City Limits. Therefore, SiEnergy, L.P., is required to obtain a franchise agreement from the City. In accordance with Article XII of the City Charter, the City Attorney has prepared Ordinance No. 2015-10 which will grant said franchise to furnish and supply gas to the general public.

Article XII, Section 12.03 of the City Charter identifies specific procedures for approval of franchise ordinances which are summarized below:

- Ordinances shall not be passed finally until its third and final reading
- Ordinances shall be read at three separate regular meetings of the City Council, the last of which shall take place not less than thirty days from the first
- No ordinance granting a franchise shall pass any reading except by a vote of the majority of the City Council
- Ordinances shall not take effect until sixty days after its adoption on its third and final reading
- Any time before the ordinance shall finally take effect, a petition can be presented to the City Council signed by not less than twenty percent of the voters voting at the last regular municipal election, but in no event less than one hundred fifty bona fide qualified voters, requiring the City Council submit the question of granting said franchise to a vote of the qualified voters of the City

SiEnergy, L.P., has reviewed the Ordinance and has no objections to any of the terms. City Council considered and approved the first reading of Ordinance No. 2015-10 at the March 17, 2015 Regular Meeting. Staff recommends approval of this second reading of Ordinance No. 2015-10 as presented.

Key Discussion Points: John Maresh, Assistant City Manager of Public Services read the Executive Summary.

Action: Councilor Benton made a motion, seconded by Councilor Grigar to approve the second reading of Ordinance No. 2015-10, an Ordinance granting to SiEnergy, L.P., a franchise to furnish and supply gas to the general public in the City of Rosenberg, Fort Bend County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said Municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; requiring compliance with all regulatory ordinances of the City; and providing for all other provisions related to the subject matter hereof. The motion carried by a unanimous vote.

6. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1945, A RESOLUTION AWARDED BID NO. 2015-08 FOR TREE TRIMMING 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.**

Executive Summary: On Wednesday, March 18, 2015, bids were received and opened for Bid No. 2015-08 for the Tree Trimming Services Contract in Council District No. 4. The City received three (3) bids, the lowest from Bio Landscape and Maintenance, Inc., in the amount of \$19,250.00. The prices that Bio Landscape and Maintenance, Inc., submitted were compared to previous tree trimming done by various vendors for the City and found to be favorable. References were

The application will include a request for CDBG funding for approximately \$300,000.00. The application will indicate a proposed local match of 10% for construction contingency and the City will pay for engineering. If the application is approved for funding, the local matching funds would be included in a future budget. Requests must be submitted no later than March 20, 2015. Staff recommends approval of the project application submission as proposed in Resolution No. R-1936.

Key Discussion Points: John Maresh, Assistant City Manager of Public Services read the Executive Summary. The general consensus of Council was that this is a worthwhile improvement project.

Action: Councilor Benton made a motion, seconded by Councilor Grigar to approve Resolution No. R-1936, a Resolution authorizing the City Manager to execute and submit an application to the Community Development Block Grant Fund for North Rosenberg Water Distribution Improvements - Phase III for approximately \$300,000.00. The motion carried by a unanimous vote of those present.

5. **CONSIDERATION OF AND ACTION ON A FIRST READING OF ORDINANCE 2015-10, AN ORDINANCE GRANTING TO SIENERGY, L.P., A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; REQUIRING COMPLIANCE WITH ALL REGULATORY ORDINANCES OF THE CITY; AND PROVIDING FOR ALL OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.**

Executive Summary: It was recently determined that SiEnergy, L.P., is providing natural gas service to areas that are now located within a portion of the Rosenberg city limits. Therefore, SiEnergy, L.P., is required to obtain a franchise agreement from the City. In accordance with Article XII of the City Charter, the City Attorney has prepared Ordinance No. 2015-10 which will grant said franchise to furnish and supply gas to the general public.

Article XII, Section 12.03 of the City Charter identifies specific procedures for approval of franchise ordinances which are summarized below:

- Ordinances shall not be passed finally until its third and final reading
- Ordinances shall be read at three separate regular meetings of the City Council, the last of which shall take place not less than thirty days from the first
- No ordinance granting a franchise shall pass any reading except by a vote of the majority of the City Council
- Ordinances shall not take effect until sixty days after its adoption on its third and final reading
- Any time before the ordinance shall finally take effect, a petition can be presented to the City Council signed by not less than twenty percent of the voters voting at the last regular municipal election, but in no event less than one hundred fifty bona fide qualified voters, requiring the City Council submit the question of granting said franchise to a vote of the qualified voters of the City

SiEnergy, L.P., has reviewed the Ordinance and has no objections to any of the terms. Staff recommends approval of Ordinance No. 2015-10 as presented.

Key Discussion Points: John Maresh read the Executive Summary and gave an overview of the item.

Action: Councilor Benton made a motion, seconded by Councilor McConathy to approve the first reading of Ordinance 2015-10, an Ordinance granting to SiEnergy, L.P., a franchise to furnish and supply gas to the general public in the City of Rosenberg, Fort Bend County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said Municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; requiring compliance with all regulatory ordinances of the City; and providing for all other provisions related to the subject matter hereof. The motion carried by a unanimous vote of those present.



CITY COUNCIL COMMUNICATION

April 21, 2015

ITEM #	ITEM TITLE
3	Resolution No. R-1955 - Denial of CenterPoint Entex Rate Increase

ITEM/MOTION

Consideration of and action on Resolution No. R-1955, a Resolution finding that CenterPoint Energy Entex's ("CenterPoint" or "Company") Statement of Intent to Increase Rates filing within the City should be denied; finding that the City's reasonable rate case expenses shall be reimbursed by the Company; finding that the meeting at which this Resolution is passed is open to the public as required by law; and requiring notice of this Resolution to the Company and legal counsel.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
 Recurring
 N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

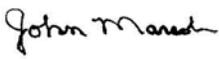
- District 1
 District 2
 District 3
 District 4
 City-wide
 N/A

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

- Resolution No. R-1955
- Brocato Correspondence – 03-31-15
- Notice of CenterPoint Rate Increase – 03-27-15

APPROVALS

Submitted by:


 John Maresh
 Assistant City Manager of
 Public Services

Reviewed by:

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

Approved for Submittal to City Council:


 Robert Gracia
 City Manager

EXECUTIVE SUMMARY

On March 27, 2015, CenterPoint Energy Texas Gas ("CenterPoint") filed a Statement of Intent to Change Rates in its Texas Coast Division with each of the Gulf Coast Coalition of Cities ("GCCC") with original jurisdiction. In the filing, the CenterPoint asserts that it is entitled to a \$6.77 million increase or an 11.3% increase in base revenues.

In late March, the GCCC engaged the services of a consultant, Mr. Karl Nalepa, to review CenterPoint's filing. Mr. Nalepa will review the filing and identify adjustments that should be made to CenterPoint's request. The GCCC is recommending that the cities deny the requested relief.

The City of Rosenberg must deny the application by April 30, 2015, or the rate increase requested by CenterPoint will become effective on May 1, 2015. Accordingly, GCCC's legal counsel is requesting that each GCCC city adopt a resolution to deny CenterPoint's request for a rate increase. If the Resolution is adopted, CenterPoint will have thirty (30) days to appeal the decision to the Railroad Commission where the appeal will be considered with CenterPoint's filing for the environs and those cities that have relinquished their original jurisdiction currently pending at the Commission.

Resolution No. R-1955 has been included to allow City Council the opportunity to deny CenterPoint's request for a rate increase.

RESOLUTION NO. R-1955

A RESOLUTION OF THE CITY OF ROSENBERG, TEXAS, FINDING THAT CENTERPOINT ENERGY ENTEX'S ("CENTERPOINT" OR "COMPANY") STATEMENT OF INTENT TO INCREASE RATES FILING WITHIN THE CITY SHOULD BE DENIED; FINDING THAT THE CITY'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

* * * * *

WHEREAS, the City of Rosenberg, Texas ("City"), is a gas utility customer of CenterPoint Energy Entex, Texas Coast Division ("CenterPoint" or "Company"), and a regulatory authority with an interest in the rates and charges of CenterPoint; and,

WHEREAS, the City is a member of the Gulf Coast Coalition of Cities ("GCCC") (such participating cities are referred to herein as "GCCC"), a coalition of similarly situated cities served by CenterPoint that have joined together to efficiently and cost effectively review and respond to natural gas issues affecting rates charged in the CenterPoint's Texas Coast Division service area; and,

WHEREAS, on or about March 27, 2015, CenterPoint filed with the City a Statement of Intent to Increase Rates seeking to increase natural gas rates by \$6.77 million annually and to all customers residing in the City; and,

WHEREAS, GCCC is coordinating its review of CenterPoint's Statement of Intent filing and designated attorneys and consultants to resolve issues in the Company's filing; and,

WHEREAS, through review of the application, GCCC's consultant determined that CenterPoint's existing rates are excessive; and,

WHEREAS, the GCCC's members and attorneys recommend that GCCC members deny the Statement of Intent; now, therefore,

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

Section 1. That the rates proposed by CenterPoint to be recovered through its gas rates charged to customers located within the City Limits, are hereby found to be unreasonable and shall be denied.

Section 2. That the Company shall continue to charge its existing rates to customers within the City.

Section 3. That the City's reasonable rate case expenses shall be reimbursed in full by CenterPoint within 30 days of the adoption of this Resolution.

Section 4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

Section 5. That a copy of this Resolution shall be sent to CenterPoint and to Thomas Brocato, General Counsel to the Gulf Coast Coalition of Cities, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

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

ATTEST:

APPROVED:

Anne Stark, **Assistant City Secretary**

Cynthia McConathy, **MAYOR PRO TEM**

APPROVED AS TO FORM:

Scott Tschirhart, **CITY ATTORNEY**
Denton Navarro Rocha Bernal Hyde & Zech, P.C.

Mr. Brocato's Direct Line: (512) 322-5857
Email: tbrocato@lglawfirm.com

MEMORANDUM

TO: Gulf Coast Coalition of Cities (CenterPoint Gas Texas Coast Division)

FROM: Thomas Brocato

DATE: March 31, 2015

RE: CenterPoint Energy Gas – Texas Coast Division Statement of Intent Filing

CITY ACTION REQUIRED NO LATER THAN APRIL 30

On March 27, 2015, CenterPoint Energy Gas (“CenterPoint” or “Company”) filed a Statement of Intent to Change Rates in its Texas Coast Division with each of the Gulf Coast Coalition of Cities (“GCCC”) with original jurisdiction. In the filing, the Company asserts that it is entitled to a \$6.77 million increase or an 11.3% increase in base revenues.

In late March, the GCCC engaged the services of a consultant, Mr. Karl Nalepa, to review the Company’s filing. Mr. Nalepa will review the filing and identify adjustments that should be made to the Company’s request. We are recommending that the Cities deny the requested relief.

Unless Cities deny the application by April 30, 2015, the rate increase requested by CenterPoint will become effective on May 1, 2015. **Accordingly, we request that each city schedule the draft resolution attached to this memorandum for consideration at their next council meeting.**

If you have any concerns or question please do not hesitate to contact me at (512) 322-5857. We appreciate your continued support.



CenterPoint Energy
1111 Louisiana Street
Houston, TX 77002-5231
P.O. Box 2628
Houston, TX 77252-2628

March 27, 2015

Mayor and City Council
City of Rosenberg
Rosenberg, Texas

Re: Statement of Intent to Increase Rates for CenterPoint Texas' Texas Coast Division

Ladies and Gentleman:

CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas ("CenterPoint Texas" or the "Company") files this Statement of Intent to Increase Rates ("Statement of Intent") for the City of Rosenberg, Texas ("City"), which is a part of CenterPoint Texas' Texas Coast Division. CenterPoint Texas is a gas utility as defined by the Gas Utility Regulatory Act ("GURA"),¹ and the cities within CenterPoint Texas' Texas Coast Division, including the City, have exclusive original jurisdiction to set rates for the utility pursuant to § 103.001 of GURA. Within its Texas Coast Division, CenterPoint Texas provides service to an average of 279,572 customers, as adjusted. Of this total, CenterPoint Texas serves approximately 6,335 residential customers, 505 small commercial and 17 large volume customers in the City. By this Statement of Intent, CenterPoint Texas notifies the City of its intent to increase its rates effective May 1, 2015, which is 35 days from the date of this filing. Simultaneously with this filing, CenterPoint Texas is filing with the Railroad Commission of Texas ("Commission") a Statement of Intent to Increase Rates on a Division-Wide Basis in the Texas Coast Division.²

For many years, CenterPoint Texas has provided the City with safe, adequate and reliable natural gas service at reasonable rates. The Company's existing Standard Rate Schedules for the Texas Coast Division have been in effect on a division-wide basis since the Company's 2011 COSA filing. Since that time, the O&M costs of its system have gone up, and the Company has had to continue to make significant capital investments in the system to support economic development in the Texas Coast Division and to maintain system safety and reliability. While the Company has worked hard to control its operating costs while continuing to provide safe, adequate, and reliable service at reasonable rates, the Company's costs for labor, materials and supplies, and other operating expenses necessary to sustain that level of service have continued to rise and its revenues from the provision of that service have not risen sufficiently to cover the increased cost of service. In addition, the Company has made significant capital investments to expand its facilities, support customer growth and economic development in its Texas Coast Division and maintain its gas distribution system to ensure the continued provision of safe and reliable service. As a result of these capital investments and cost increases, CenterPoint Texas' current rates for service to Texas Coast Division customers no longer provide a reasonable opportunity for CenterPoint Texas to recover its operating costs and earn a fair return on its investment.

¹ TEX. UTIL. CODE ANN. §§ 101.001, *et seq.*

² The Commission filing also includes certain municipalities that have ceded their original jurisdiction over rates to the Commission.

Accordingly, pursuant to GURA § 104.102, CenterPoint Texas files this Statement of Intent with attached Rate Schedules containing the proposed revisions to the Company's rates and terms and conditions of service applicable in your City. Specifically, CenterPoint Texas proposes changes to its rates included in Residential Service Rate Schedule (R-2092), General Service-Small Rate Schedule (GSS-2092), and General Service-Large Volume Rate Schedule (GSLV-623). The proposed Rate Schedules appear in Exhibit A. The cost of service schedules evidencing the need for the requested revenue increase are included in Exhibit B. The effect of the Company's proposed new rate schedules and tariff changes is to increase CenterPoint Texas' net annual revenues in the Texas Coast Division by approximately \$6.8 million per year, of which amount approximately \$3,887,562 will be collected from customers in the City. If approved, the proposed revisions to the rate schedules amount to an increase per month of approximately \$1.23 for the average residential customer in your City. The changes represent a total increase to the Company's division-wide aggregate revenues of approximately 4.5% with gas cost and 11.3% without gas cost, and constitute a "major change" as that term is defined in GURA § 104.101.

In addition to the proposed change in rates for the residential, small commercial and large volume classes, CenterPoint Texas is proposing certain other modifications to its tariffs. For instance, the Company will consolidate its schedules currently applicable to its COSA-2 and COSA-3 customers and implement them for all incorporated and unincorporated areas within the Texas Coast Division. In addition, Rate Schedules R-2092, GSS-2092 and GSLV-623 have been updated to include language relating to rate case expense recovery, and Rate Schedules R-2092 and GSS-2092 have been updated to include language relating to bill payment. CenterPoint Texas also proposes changes to its Purchased Gas Adjustment ("PGA") Rate Schedule to change the carrying cost on its over/under recovery of gas cost expense to 6.0%, consistent with schedules previously approved for the Company's other divisions, and to provide for the recovery of carrying costs associated with its investment in storage gas equal to the pre-tax rate of return established as a result of this proceeding, consistent with schedules previously approved for Company's other divisions as well as for customers served under the existing COSA-3 Rate Schedule PGA-7 in the Texas Coast Division.

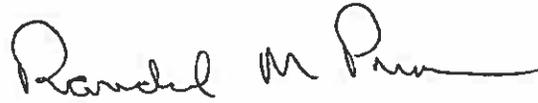
In addition, the Company is proposing revenue-neutral changes to its Tax Adjustment and Franchise Fee Adjustment schedules and Schedule of Miscellaneous Service Charges in order to make the tariffs consistent with those applicable for CenterPoint Texas' other Texas divisions. The revised Tax Adjustment schedule will allow the Company to collect from customers in each jurisdiction the actual tax expense levied on the Company by that jurisdiction. The revised Franchise Fee Adjustment schedule will require the Company to maintain on file with the Commission a current listing of cities within the Texas Coast Division and their applicable franchise fees. The revised Schedule of Miscellaneous Service Charges clarifies certain provisions related to meter testing, disconnections, and collection calls.

Finally, the Company is proposing a tariff to recover the rate case expenses incurred in this proceeding as authorized by the regulatory authority. This schedule is consistent with the rate case expense schedules currently in place in the Company's Beaumont/East Texas Division. The amount of rate case expenses to be recovered, if any, is not known at this time.

Publication of required notice containing information relative to this Statement of Intent will be made in accordance with applicable statutes, rules and other requirements.

If you desire any additional information concerning these changes, we will be available at any time to discuss them with you.

Very truly yours,



Randal M. Pryor
Vice President – Regional Operations

Enclosures

DELIVERED TO:

Anne Stark, Assistant City Secretary of
NAME OFFICE (Mayor, City Secretary, etc.)

the City of Rosenberg on this 27th day of March 2015.

Anne Stark
SIGNATURE

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
RESIDENTIAL SERVICE
RATE SCHEDULE NO. R-2092**

APPLICATION OF SCHEDULE

This schedule is applicable to any customer to whom service is supplied in a single private dwelling unit and its appurtenances, the major use of which is for household appliances, and for the personal comfort and convenience of those residing therein.

Natural gas supplied hereunder is for the individual use of the customer at one point of delivery and shall not be resold or shared with others.

MONTHLY RATE

For bills rendered on and after the effective date of this rate schedule, the monthly rate for each customer receiving service under this rate schedule shall be the sum of the following:

- (a) The Base Rate consisting of:
 - (1) Customer Charge – \$16.00;
 - (2) Commodity Charge –
All Ccf \$0.0695 per Ccf
- (b) Tax Adjustment – The Tax Adjustment will be calculated and adjusted periodically as defined in the Company's applicable Tax Adjustment Rate Schedule and Franchise Fee Adjustment Rate Schedule.
- (c) Gas Cost Adjustment – The applicable Purchased Gas Adjustment (PGA) Rate – as calculated on a per Ccf basis and adjusted periodically under the applicable Purchased Gas Adjustment (PGA) Rate Schedule – for all gas used.
- (d) Rate Case Expense Recovery – Rate Case Expense Recovery will be calculated and adjusted periodically as defined in the Company's applicable Rate Case Expense Recovery Rate Schedule.

PAYMENT

Due date of the bill for service shall not be less than 15 days after issuance or such other period of time as may be provided by order of the regulatory authority. A bill for utility service is delinquent if unpaid by the due date.

RULES AND REGULATIONS

Service under this schedule shall be furnished in accordance with the Company's General Rules and Regulations, as such rules may be amended from time to time. A copy of the Company's General Rules and Regulations may be obtained from Company's office located at 1111 Louisiana Street, Houston, Texas.

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
GENERAL SERVICE-SMALL
RATE SCHEDULE NO. GSS-2092**

APPLICATION OF SCHEDULE

This schedule is applicable to natural gas service to any customer engaging in any business, professional or institutional activity, for all uses of gas, including cooking, heating, refrigeration, water heating, air conditioning, and power.

This schedule is applicable to any general service customer for commercial uses and industrial uses, except standby service, whose average monthly usage for the prior calendar year is 150,000 cubic feet or less. Natural gas supplied hereunder is for the individual use of the customer at one point of delivery and shall not be resold or shared with others.

MONTHLY RATE

For bills rendered on and after the effective date of this rate schedule, the monthly rate for each customer receiving service under this rate schedule shall be the sum of the following:

(a) The Base Rate consisting of:

- (1) Customer Charge – \$16.75;
- (2) Commodity Charge –
All Ccf \$0.0614 per Ccf

(b) Tax Adjustment – The Tax Adjustment will be calculated and adjusted periodically as defined in the Company's applicable Tax Adjustment Rate Schedule and Franchise Fee Adjustment Rate Schedule.

(c) Gas Cost Adjustment – The applicable Purchased Gas Adjustment (PGA) Rate – as calculated on a per Ccf basis and adjusted periodically under the applicable Purchased Gas Adjustment (PGA) Rate Schedule – for all gas used.

(d) Rate Case Expense Recovery – Rate Case Expense Recovery will be calculated and adjusted periodically as defined in the Company's applicable Rate Case Expense Recovery Rate Schedule.

PAYMENT

Due date of the bill for service shall not be less than 15 days after issuance or such other period of time as may be provided by order of the regulatory authority. A bill for utility service is delinquent if unpaid by the due date.

RULES AND REGULATIONS

Service under this schedule shall be furnished in accordance with the Company's General Rules and Regulations, as such rules may be amended from time to time. A copy of the Company's General Rules and Regulations may be obtained from Company's office located at 1111 Louisiana Street, Houston, Texas.

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
GENERAL SERVICE-LARGE VOLUME
RATE SCHEDULE NO. GSLV-623**

AVAILABILITY

This schedule is available at points on existing facilities of adequate capacity and suitable pressure in the area designated in the Rate Book of **CENTERPOINT ENERGY RESOURCES CORP., D/B/A CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS** (hereinafter called "Company").

APPLICATION OF SCHEDULE

This schedule is applicable to any general service customer for commercial uses and industrial uses whose average monthly usage for the prior calendar year is more than 150,000 cubic feet. Gas supplied hereunder is for the individual use of the Consumer at one point of delivery and shall not be resold or shared with others. If the Consumer has a written contract with Company, the terms and provision of such contract shall be controlling.

MONTHLY RATE

For bills rendered on and after the effective date of this rate schedule, the monthly rate for each customer receiving service under this rate schedule shall be the sum of the following:

(a) The Base Rate consisting of:

(1) Customer Charge – \$47.75;

(2) Commodity Charge –

All Ccf \$0.0414 per Ccf

(b) Tax Adjustment – The Tax Adjustment will be calculated and adjusted periodically as defined in the Company's applicable Tax Adjustment Rate Schedule and Franchise Fee Adjustment Rate Schedule.

(c) Gas Cost Adjustment – The applicable Purchased Gas Adjustment (PGA) Rate – as calculated on a per Mcf basis and adjusted periodically under the applicable Purchased Gas Adjustment (PGA) Rate Schedule – for all gas used.

(d) Rate Case Expense Recovery – Rate Case Expense Recovery will be calculated and adjusted periodically as defined in the Company's applicable Rate Case Expense Recovery Rate Schedule.

WRITTEN CONTRACT

In order to receive a delivery from Company of more than 25 Mcf during any one day, the Consumer must execute a written contract with Company on Company's form of contract covering the sale of gas by Company to it. In the case of existing Consumers, the maximum gas usage during any one day shall be obtained from the records of the Company, except in cases where the existing Consumer will be purchasing increased volumes of gas from Company because of expansions or for any other reasons, in which event the Company may estimate usage by such Consumer. Also in the case of new Consumers, the Company may estimate usage by the Consumer. Any such estimates made by Company shall be binding on Consumer in determining whether or not a contract is required. Such written contract shall be executed by Consumer upon request of Company and Company shall not be obligated to serve any

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
GENERAL SERVICE-LARGE VOLUME
RATE SCHEDULE NO. GSLV-623**

such Consumer more than 25 Mcf during any one day until such written contract is executed and delivered by Consumer.

MEASUREMENT

The term "cubic foot of gas" for the purpose of measurement of the gas delivered and for all other purposes is the amount of gas necessary to fill a cubic foot of space when the gas is at an absolute pressure of 14.65 pounds per square inch and at a base temperature of sixty (60) degrees Fahrenheit.

The term "Mcf" shall mean 1,000 cubic feet of gas.

The Sales Unit shall be one Mcf.

Assumed Atmospheric Pressure - The average atmospheric pressure shall be assumed to be fourteen and seven-tenths (14.7) pounds per square inch, irrespective of actual elevation or location of the point of delivery above sea level or variation in such atmospheric pressure from time to time.

Orifice Meters - When orifice meters are used for the measurement of gas, such orifice meters shall be constructed and installed, and the computations of volume made, in accordance with the provisions of Gas Measurement Committee Report No. 3 of the American Gas Association as revised September, 1969 ("A.G.A. Report No. 3), with any subsequent amendments or revisions which may be mutually acceptable.

The temperature of the gas shall be determined by a recording thermometer so installed that it may record the temperature of the gas flowing through the meter or meters. The average of the record to the nearest one (1) degree Fahrenheit, obtained while gas is being delivered, shall be the applicable flowing gas temperature for the period under consideration.

The specific gravity of the gas shall be determined by a recording gravitometer owned and operated by the pipeline company from whom Company purchases its gas, so installed that it may record the specific gravity of the gas flowing through the meter or meters; provided, however, that the results of spot tests made by the pipeline company with a standard type specific gravity instrument shall be used at locations where the pipeline company does not have a recording gravitometer in service. If the recording gravitometer is used, the average of the record to the nearest one-thousandth (0.001), obtained while gas is being delivered, shall be the applicable specific gravity of the gas for the period under consideration. If the spot test method is used, the specific gravity of the gas delivered hereunder shall be determined once monthly, the result obtained, to the nearest one-thousandth (0.001), to be applicable during the succeeding billing month.

Adjustment for the effect of supercompressibility shall be made according to the provisions of A.G.A. Report No. 3, hereinabove identified, for the average conditions of pressure, flowing temperature and specific gravity at which the gas was measured during the period under consideration, and with the proportionate value of each carbon dioxide and nitrogen in the gas delivered included in the computation of the applicable supercompressibility factors. Company shall obtain appropriate carbon dioxide and nitrogen fraction values as may be required from time to time.

Positive Displacement Meters and Turbine Meters - When positive displacement meters and/or turbine meters are used for the measurement of gas, the flowing temperature of the gas metered shall be assumed to be sixty (60) degrees Fahrenheit, and no correction shall be made for any variation therefrom; provided however, that company shall have the option of installing a recording thermometer, and if company exercises such option, corrections shall be made for each degree variation in the applicable flowing temperature for the period under consideration.

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
GENERAL SERVICE-LARGE VOLUME
RATE SCHEDULE NO. GSLV-623**

The volumes of gas determined shall be adjusted for the effect of supercompressibility as follows:

- (A) When the flowing temperature of gas is assumed to be sixty (60) degrees Fahrenheit, the supercompressibility factor shall be the square of the factor, F_{pv} , computed in accordance with the principles of the A.G. A. Report No. 3, hereinabove identified, for a pure hydrocarbon gas of six-tenths (0.6) specific gravity and for the average pressure at which the gas was measured.
- (B) When the flowing gas temperature is recorded and applied according to the option above, the supercompressibility factor shall be the square of the factor, F_{pv} , computed in accordance with the principles of the American Gas Association Gas Measurement Committee Report No. 3, hereinabove identified, for a pure hydrocarbon gas of six-tenths (0.6) specific gravity and for the average conditions of pressure and flowing temperature at which the gas was measured.

SUPPLY INTERRUPTIONS

Total or partial interruption of gas deliveries due to acts of God, the elements, requirements for residential and other uses declared superior to Consumers by law, or to other causes or contingencies beyond the control of Company or not proximately caused by Company's negligence, shall not be the basis for claims-delivery and receipt of gas to be resumed whenever any such cause or contingency shall end.

CHARGES FOR UNAUTHORIZED OVER-RUN GAS

Any gas taken during any day by Consumer which exceeds the maximum daily quantity specified in Consumer's contract with Company shall be considered to be unauthorized over-run gas. Any gas taken by Consumer after the effective hour of an order calling for a complete curtailment of all gas deliveries, and prior to the authorized resumption of natural gas service, hereunder shall be considered to be unauthorized over-run gas. Any gas taken by Consumer after the effective hour of an order calling for a partial curtailment, and prior to the authorized resumption of natural gas service, which exceeds the stated amount of gas deliveries Consumer may take during such partial curtailment, shall be considered to be unauthorized over-run gas. Company shall bill, and Consumer shall pay for unauthorized over-run gas at the rate of \$10.00 per Mcf, in addition to the Monthly Rate specified herein for such gas. The payment of such additional charge for unauthorized over-run gas shall not, under any circumstances, be considered as giving the Consumer the right to take unauthorized over-run gas, nor shall such payment be considered to exclude or limit any other remedies available to Company against the Consumer for exceeding the maximum daily quantity specified in Consumer's contract with Company, or for failure to comply with curtailment orders issued by Company hereunder.

The additional amount specified above charged for unauthorized over-run gas shall be adjusted, either plus or minus, to conform to the change made by Company's supplier in its rate schedule under which Company purchases its gas supply for resale under this schedule.

RULES AND REGULATIONS

Service under this schedule shall be furnished in accordance with the Company's General Rules and Regulations, as such rules may be amended from time to time. A copy of the Company's General Rules and Regulations may be obtained from Company's office located at 1111 Louisiana Street, Houston, Texas.

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
PURCHASED GAS ADJUSTMENT
RATE SCHEDULE NO. PGA-12**

1. PURCHASED GAS ADJUSTMENT (PGA) APPLICABILITY

The Monthly Rate contained in the Company's total billing to residential and general service customers shall include the cost of natural gas purchased for resale hereunder.

2. RATE CALCULATION

The Purchased Gas Adjustment (PGA) Rate shall be calculated according to the following formula and included in the Monthly Rate:

$$\text{PGA Rate (per Mcf sold)} = [(G \cdot R) \pm DA] \text{ rounded to the nearest } \$0.0001$$

$$\text{PGA Rate (per Ccf sold)} = \text{PGA Rate (per Mcf sold)} \div 10$$

Definitions:

- G =** The Company's best estimate of the cost of natural gas (per Mcf) to be purchased for resale hereunder during the period that the PGA Rate is to be effective. The cost of natural gas shall include the cost of gas supplies purchased for resale hereunder, upstream transportation charges, storage charges, the cost of gas withdrawn from storage less the cost of gas injected into storage, and any transaction-related fees, gains or losses and other transaction costs associated with the use of various financial instruments used by the Company to stabilize prices.
- R =** Ratio derived by dividing the actual Mcf purchased for the customers billed hereunder for the twelve months ended the preceding August by the actual Mcf sold to the customers billed hereunder during the same period.
- DA =** Surcharge or surcredit, calculated on a per Mcf basis, relating to Deferred Purchased Gas Cost Accounts, as defined below.

3. PGA FILINGS

PGA filings shall be filed with the Railroad Commission of Texas (the "Regulatory Authority") by the last business day of the month immediately preceding the month the proposed new PGA factor will be implemented. The PGA filing shall include a calculation of the estimated PGA Rate together with supporting documents. Each such tentative PGA Rate shall become effective for bills rendered on and after the first day of the calendar month and shall continue to be in effect until the next filing, unless after the PGA filing, the Regulatory Authority takes action to disapprove or modify such PGA rate. In the event that the Regulatory Authority takes such action, then the PGA rate shall be in effect on an interim basis pending the final decision of the Regulatory Authority, and any person designated by the Regulatory Authority shall have the right and power to order the filing of any reasonable additional information. Any adjustment to the PGA Rate relating to a prior period shall be made prospectively.

4. DEFERRED PURCHASED GAS COST ACCOUNTS

The Company shall establish and maintain Deferred Gas Cost Account(s) in which shall be recorded: (a) the balance of over or under recoveries of the cost of gas purchased for resale hereunder, determined for the period ending on the last day prior to the effective day of this revised Purchased Gas Adjustment rate schedule, including subsequent corrections and amendments thereto; and (b) any over or under recovery of the cost of gas purchased for resale hereunder resulting from the operation of the PGA procedure

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
PURCHASED GAS ADJUSTMENT
RATE SCHEDULE NO. PGA-12**

commencing with the first day of this revised purchased gas cost adjustment. Such ongoing over or under recovery shall include: (a) gas cost revenue recovery amounts for the revenue month; (b) the cost of gas purchased for resale hereunder for the same month as the revenue month; (c) carrying charge or credit amounts calculated based on the arithmetic average of the beginning and ending month balance of under or over recovery for the revenue-cost month times six percent (6%); and (d) carrying charge calculated based on the arithmetic average of the beginning and ending balance of gas in storage inventory for the prior calendar month times the pre-tax rate of return as determined in Docket No. GUD_____.

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
TAX ADJUSTMENT
RATE SCHEDULE NO. TA-11**

The Customers shall reimburse the Company for the Customers' proportionate part of any tax, charge, impost, assessment or fee of whatever kind and by whatever name (except ad valorem taxes and income taxes) levied upon the Company by any governmental authority under any law, rule, regulation, ordinance, or agreement (hereinafter referred to as "the Tax"). If the law, rule, regulation, ordinance, or agreement levying the Tax specifies a method of collection from Customers, then the method so specified shall be utilized provided such method results in the collection of taxes from the Customers equal to the taxes levied on the Company. If no method of collection is specified, then the Company shall collect an amount calculated as a percentage of the Customers' bills applicable directly to those Customers located solely within the jurisdiction imposing the tax and/or within the jurisdiction where the tax is applicable. The percentage shall be determined so that the collection from Customers within the Company's different legal jurisdictions (municipal or otherwise defined) encompassing the Texas Coast Division is equal to the taxes levied on the Company.

The initial Tax Adjustment Rate shall be based on the Taxes that are levied upon the Company on the effective date of this Rate Schedule. The Company will initiate a new or changed Tax Adjustment Rate beginning with the billing cycle immediately following the effective date of the new or changed Tax as specified by the applicable law, rule, regulation, ordinance, or agreement, provided that the Company has the customer billing data necessary to bill and collect the Tax. If at any time there is a significant change that will cause an unreasonable over or under collection of the Tax, the Company will adjust the Tax Adjustment Rate so that such over or under collection will be minimized. The Tax Adjustment Rate (calculated on a per Ccf or per Mcf basis, as appropriate) shall be reported to the applicable governmental authority by the last business day of the month in which the Tax Adjustment Rate became effective.

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
FRANCHISE FEE ADJUSTMENT
RATE SCHEDULE NO. FFA-5**

APPLICATION

Applicable to Customers inside the corporate limits of an incorporated municipality that imposes a municipal franchise fee upon Company for the Gas Service provided to Customer.

MONTHLY ADJUSTMENT

Company will adjust Customer's bill each month in an amount equal to the municipal franchise fees payable for the Gas Service provided to Customer by Company. Municipal franchise fees are determined by each municipality's franchise ordinance. Each municipality's franchise ordinance will specify the percentage and applicability of franchise fees.

RAILROAD COMMISSION REPORTING

CenterPoint shall maintain on file with the Commission a current listing of Cities and applicable franchise fees.

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
SCHEDULE OF MISCELLANEOUS SERVICE CHARGES
RATE SCHEDULE NO. MISC-13**

GAS SERVICE

1.	Institution of service to residential or general service	\$40
	After-hours surcharge for each after-hours service call	\$47
2.	Restore service after termination for non-payment, cut-off by customer or agent or for convenience of customer	\$40
	After-hours surcharge for each after-hours service call	\$47
3.	Turning off service to active meter – account not finalled (per trip)	\$20
	After-hours surcharge for each after-hours service call	\$47
4.	Special meter test at customer's request (see General Rules and Regulations for special situations) – same customer at same location is allowed one test free of charge every four years	\$15
5.	Change customer meter	\$55
6.	Change residential meter location: Minimum charge	\$350
	Additional meters in manifold each	\$55
	(Plus cost of materials)	
7.	Tap Charge	N.C.*
8.	Installation of remote read device where company cannot get access to read meter	\$180
9.	Disconnect service at main	\$300
	(Plus any costs arising out of any city ordinance or regulation or governing work in city streets)	
	(Plus other related costs)	
10.	Restore service at main after termination for non-payment	\$300
	(Plus cost of materials)	
11.	Temporary transfer of individually metered multi-family service from vacating tenant to apartment complex owner. (Applicable to read and transfer transactions only. Precedent written agreement required.)	N.C.

*Except where Company is required to pay tap charge to pipeline supplier to serve the consumer, the consumer shall reimburse Company.

OTHER CHARGES

12.	Collection call - trip charge (not collected under miscellaneous service item no. 3 – Turning off service to active meter)	\$20
13.	Returned check	\$20

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
SCHEDULE OF MISCELLANEOUS SERVICE CHARGES
RATE SCHEDULE NO. MISC-13**

DEPOSITS

Up to the maximum amount allowed under the Railroad Commission of Texas Quality of Service Rule §7.45(5)(C)(ii) (the "one-sixth rule"). If there is no billing history on the customer's account, then the one-sixth rule will be applied to the customer's account based on similarly-situated customers located in the geographic area.

TAX ADJUSTMENT

The Tax Adjustment will be calculated and adjusted periodically as defined in the Company's Tax Adjustment Rate Schedule and Franchise Fee Adjustment Rate Schedule.

**CENTERPOINT ENERGY RESOURCES CORP.
D/B/A CENTERPOINT ENERGY ENTEX
AND CENTERPOINT ENERGY TEXAS GAS
TEXAS COAST DIVISION
RATE SHEET
RATE CASE EXPENSE RECOVERY RATE SCHEDULE NO. RCE-9**

APPLICATION OF SCHEDULE

This schedule applies to all residential, small commercial, and large volume customers in the Texas Coast Division impacted by the Company's Statement of Intent to Increase Rates filed on _____, 2015 that resulted in the Final Order issued in GUD No. _____, and consolidated cases.

This rate schedule is for the recovery of rate case expense and shall be in effect beginning on or after _____, for a ____ () month period or until all approved expenses are collected.

MONTHLY RATE RECOVERY FACTOR:

Residential	\$ _____ per bill
General Service-Small	\$ _____ per bill
General Service-Large	\$ _____ per bill

RULES AND REGULATIONS

Service under this schedule shall be furnished in accordance with the Company's General Rules and Regulations, as such rules may be amended from time to time. A copy of the Company's General Rules and Regulations may be obtained from Company's office located at 1111 Louisiana Street, Houston, Texas.

COMPLIANCE

The Company will file annually, due on the ___ of each _____, a report with the RRC Gas Services Division. The report shall detail the monthly collections for RCE surcharge by customer class and show the outstanding balance.

**CenterPoint Energy
Texas Coast Division
Revenue Requirement
For the Test Year Ended September 30, 2014**

(A)	(B)
Line No.	Standard
1 Adjusted Rate Base	① \$ 132,291,677
2 Rate of Return	② <u>8.3682%</u>
3 Revenue Requirement	\$ 11,070,432
4 Net income	③ <u>6,710,902</u>
5 Return Deficiency	\$ <u>4,359,530</u>
6 Tax Factor (1-35.65% Income Tax Rate)	④ <u>0.6435</u>
7 Revenue Increase (Line 5/Line 6)	<u>\$ 6,774,717</u>

- From:
- ① Schedule 2
 - ② Schedule 3
 - ③ Schedule 4a
 - ④ Workpaper 1a

CenterPoint Energy
Texas Coast Division
Rate Base
For the Test Year Ended September 30, 2014

Line No.	(A) Description	(B) 9/30/2014 Test Year	(C) Known and Measureable Adjustments	(D) 9/30/2014 Adjusted (B plus C)	(E) Standard Rate Classes	(F) Special Contract Classes
	Original Cost					
1	Intangible Plant	\$ 11,240,696		\$ 11,240,696		
2	General Plant	27,613,476		27,613,476		
3	Distribution Plant	253,583,840		253,583,840		
4	Total Original Cost	\$ 292,438,012	\$ -	\$ 292,438,012	\$ -	\$ -
	Deduct:					
5	Reserve for Depreciation	(111,751,904)	-	(111,751,904)		
6	Total Net Plant	\$ 180,686,108	\$ -	\$ 180,686,108	\$ 175,816,488	\$ 4,869,620
	Add:					
7	Cash Working Capital	(4,298,525)	-	(4,298,525)	(4,177,751)	(120,774)
8	Materials and Supplies**	277,094	-	277,094	289,309	7,785
9	Storage Gas*	8,201,827	(8,201,627)	-	-	-
10	Prepayments**	487,288	-	487,288	473,597	13,691
11	Deferred Benefit Asset	165,905	-	165,905	161,244	4,661
12	Retirement Plan Asset	7,751,461	-	7,751,461	7,533,671	217,790
13	Total Working Capital	\$ 12,584,850	\$ (8,201,627)	\$ 4,383,223	\$ 4,260,069	\$ 123,154
	Less:					
14	Customer Deposits	(5,896,352)	-	(5,896,352)	(5,737,441)	(158,911)
15	Customer Advances	-	-	-	-	-
16	Accumulated Deferred Income Taxes	(38,590,038)	-	(38,590,038)	(37,550,009)	(1,040,029)
17	Bad Debt Reserve	(223,637)	-	(223,637)	(217,610)	(6,027)
18	Injuries, Damages, Workers Comp Reserves	(1,186,664)	-	(1,186,664)	(1,153,323)	(33,341)
19	Employee Expense Related Reserves	(3,216,881)	-	(3,216,881)	(3,126,487)	(90,384)
20	Total Rate Base	\$ 144,157,386	\$ (8,201,627)	\$ 135,955,759	\$ 132,291,677	\$ 3,664,082

- From:
- ① Workpaper 2a Plant In Service
 - ② Workpaper 2b Accumulated Reserve
 - ③ Workpaper 2c Cash Working Capital
 - ④ Workpaper 2d Materials and Supplies
 - ⑤ Workpaper 2i Storage Gas
 - ⑥ Workpaper 2e Prepayments
 - ⑦ Workpaper 2m Deferred Benefit Asset
 - ⑧ Workpaper 2f Customer Deposits
 - ⑨ Workpaper 2g Customer Advances
 - ⑩ Workpaper 2h ADIT-TXC
 - ⑪ Workpaper 2j Bad Debt Reserves
 - ⑫ Workpaper 2l Injuries, Damages and Workers Compensation Reserves
 - ⑬ Workpaper 2k Employee Expense Related Reserves
 - ⑭ Workpaper 2n Retirement Plan Asset

To:
⑮ Schedule 1

* Based on a 12 month average
** Based on a 13 month average

**CenterPoint Energy
Texas Coast Division
Cost of Capital
For The Test Year Ended September 30, 2014**

Line No.	(A) Class of Capital	(B) Percent	(C) Cost	(D) Weighted Cost of Capital
1	Long-Term Debt	Ⓐ 45.50%	Ⓛ 6.1141%	2.7819%
2	Common Equity	54.50%	10.2500%	5.5863%
3	Weighted Average Cost of Capital	<u>100.00%</u>		<u>8.3682%</u> Ⓜ

Ⓐ REFER TO PREPARED TESTIMONY AND EXHIBITS OF ROBERT HEVERT FOR DETAILED SUPPORT.

From:
Ⓛ Workpaper 3a

To:
Ⓜ Schedule 1

CenterPoint Energy
Texas Coast Division
Net Income by FERC Account
For the Test Year Ended September 30, 2014

Line No.	(A) Account/Description	(B) 12 ME Test Year	(C) Total Adjustments	(D) Adjusted Total	(E) Standard Rate Classes	(F) Transport/Special Contract Classes	(G) Rate Adjustment	(H) Test Year Adjusted
	OPERATING REVENUES:							
1	4800 Gas Residential Sale	\$ 144,288,870	\$ (92,278,413)	\$ 52,020,457	52,020,457	-	\$ 6,526,785	
2	4811 Gas S Comm Sales	28,074,889	(24,663,887)	3,411,002	3,411,002	-	445,088	
3	4812 Gas L Comm Sales	(13,335)	783,421	770,086	770,086	-	(197,131)	
4	4813 Gas LV Comm Sales							
5	4814 Gas SV Ind Sales	1,188,088	(1,085,856)	90,130	90,130	-		
6	4850 Gas Intraco Transfer	1,068	(1,068)	-	-	-		
7	4870 Gas Forfeited Disc	(778)	778	-	-	-		
8	4880 Gas Misc Service Rev	3,524,108	40	3,524,148	3,510,937	13,211		
9	4883 Transp Rev-Distrib	3,278,564	280,714	3,540,278		3,540,278		
10	4830 Rent From Gas Properties							
11	4850 Other Gas Revs	378,742	(378,742)	-	-	-		
12	Total Operating Revenues	\$ 180,727,214	\$ (117,371,113)	\$ 63,356,101	\$ 59,802,812	\$ 3,553,489	\$ 6,774,722	\$ 68,577,335
	OPERATING EXPENSE:							
13	8040 Gas City Gate Purch	\$ 78,478,131	\$ (78,478,131)	\$ -				
14	8051 Pur Gas Adjustments	3,261,374	(3,261,374)	-				
15	8081 Gas Storage - Debit	15,989,288	(15,989,288)	-				
16	8082 Gas Storage - Credit	(15,015,478)	15,015,478	-				
17	8580 Transmission of Gas	27,053,759	(27,053,759)	-				
18	Total Gas Cost	\$ 109,787,072	\$ (109,787,072)	\$ -	\$ -	\$ -	\$ -	\$ -
19	8700 Oper Supv & Eng	\$ 448,028	\$ (3,408)	\$ 444,620	\$ 431,089	\$ 13,531		\$ 431,089
20	8710 Distr Load Dispatch	80,887	(2,387)	78,520	78,356	2,164		78,356
21	8740 Mains & Services Exp	2,880,885	11,121	2,891,808	2,639,558	52,248		2,639,558
22	8750 Meas & Reg Sta Exps	16,630	(894)	15,738	15,302	434		15,302
23	8760 Meas & Reg Sta Exps	54,763	3,288	58,029	56,429	1,600		56,429
24	8770 Meas & Reg Sta Exps							
25	8780 Meter & House Reg	2,816,938	42,424	2,859,362	2,485,472	173,890		2,485,472
26	8780 Customer Install Exp	1,088,291	53,817	1,142,108	1,141,124	984		1,141,124
27	8800 Other Utility Expense	2,663,036	12,297	2,875,333	2,593,913	81,420		2,593,913
28	8810 Rents	375,807	(82,803)	292,804	283,893	8,911		283,893
29	Distribution Expenses	\$ 10,024,865	\$ 33,453	\$ 10,058,318	\$ 9,723,136	\$ 335,182	\$ -	\$ 9,723,136
30	9010 Supervision	\$ 188,222	\$ 585	\$ 188,787	\$ 188,624	\$ 163		\$ 188,624
31	9020 Meter Reading Exp	854,879	(321,213)	533,616	519,235	14,381		519,235
32	9030 Cust Records & Colle	5,855,567	35,880	5,891,427	5,732,649	158,778		5,732,649
33	9040 Uncollectible Accts	589,141	857	589,998	574,097	15,901		574,097
34	9050 Misc Cust Accts Exp	89,390	(1,826)	87,564	87,489	75		87,489
35	Customer Accounts Expense	\$ 7,577,149	\$ (285,757)	\$ 7,291,392	\$ 7,102,094	\$ 189,298	\$ -	\$ 7,102,094

CenterPoint Energy
Texas Coast Division
Net Income by FERC Account
For the Test Year Ended September 30, 2014

Line No.	(A) Account/Description	(B) 12 ME Test Year	(C) Total Adjustments	(D) Adjusted Total	(E) Standard Rate Classes	(F) Transport/Special Contract Classes	(G) Rate Adjustment	(H) Test Year Adjusted
36	9090 Info & Instruc. Adv	\$ 325,468	\$ 202	\$ 325,670	\$ 325,380	\$ 280	\$ -	\$ 325,380
37	9100 Misc Cust Srv & Info	162,279	480	162,759	162,619	140	\$ -	162,818.82
38	Customer Service & Info Expense	487,747	682	488,429	488,008	421	\$ -	488,008
39	9110 Supervision	\$ 162,279	\$ 502	\$ 162,781	\$ 162,641	\$ 140	\$ -	\$ 162,641
40	9120 Demo & Selling Exps	23,183	75	23,258	23,238	20	\$ -	23,237.97
41	9130 Advertising Exps						\$ -	
42	9160 Misc Sales Exps	46,365	151	46,516	46,476	40	\$ -	46,475.94
43	Sales Expense	231,827	728	232,555	232,355	200	\$ -	232,355
44	9200 Admin & Gen Salaries	\$ 579,924	\$ (72,535)	\$ 507,389	\$ 493,133	\$ 14,256	\$ -	\$ 493,133
45	9210 Office Supplies & Ex	1,030,560	(4,885)	1,025,675	996,957	28,718	\$ -	996,856.97
46	9230 Outside Services Emp	28,961	-	28,961	28,147	814	\$ -	28,147.29
47	9240 Property Insurance	24,425	809	25,234	24,554	680	\$ -	24,553.93
48	9250 Injuries & Damages	1,469,773	25,341	1,495,114	1,453,108	42,008	\$ -	1,453,108.31
49	9260 Emp'l Pensions&Ben	3,261,620	1,589,063	4,850,683	4,714,395	136,288	\$ -	4,714,395.06
50	9260 Regulatory Comm Exp	(32)	32	-	-	-	\$ -	-
51	9301 Gen Advertising Exp	6,928	46	6,974	6,968	6	\$ -	6,967.99
52	9302 Misc General Exps	5,834,688	(112,132)	5,722,556	5,561,771	160,785	\$ -	5,561,771.35
53	9310 Rents	222,004	3,298	225,300	218,970	6,330	\$ -	218,969.82
54	9320 Maint Gen Plant	257,584	-	257,584	250,347	7,237	\$ -	250,346.75
55	Administrative & General Expenses	12,716,435	1,429,035	14,145,470	13,746,249	397,221	\$ -	13,746,249
56	Total Operations Expense	140,805,095	(108,588,931)	32,216,164	31,283,841	922,323	\$ -	31,283,841
MAINTENANCE EXPENSE:								
57	8850 Maint Supr & Erg	\$ 413,288	\$ 1,491	\$ 414,779	\$ 402,156	\$ 12,623	\$ -	\$ 402,156
58	8870 Maintenance of Mains	2,219,785	45,814	2,265,599	2,203,147	62,452	\$ -	2,203,146.80
59	8880 Maint of Meas & Reg	331,430	6,486	337,926	328,611	9,315	\$ -	328,610.93
60	8900 Maint-Meas & Reg Sta	31,431	943	32,374	31,482	892	\$ -	31,481.60
61	8910 Maint-Meas & Reg-Cit	50,761	(96)	50,665	49,268	1,397	\$ -	49,268.40
62	8920 Maint of Services	1,449,356	17,829	1,467,187	1,458,307	8,880	\$ -	1,458,306.69
63	8930 Maint-Mir & Hous Reg	407,174	4,922	412,096	385,150	26,946	\$ -	385,149.94
64	8940 Maint of Oth Equip	113,428	5,039	118,467	114,862	3,605	\$ -	114,861.64
65	Total Maintenance Expense	5,016,655	82,438	5,099,093	4,972,982	126,111	\$ -	4,972,982

CenterPoint Energy
Texas Coast Division
Net Income by FERC Account
For the Test Year Ended September 30, 2014

Line No.	(A) Account/Description	(B) 12 ME Test Year	(C) Total Adjustments	(D) Adjusted Total	(E) Standard Rate Classes	(F) Transport/Special Contract Classes	(G) Rate Adjustment	(H) Test Year Adjusted
66	4030 Depreciation	\$ 8,481,853	\$ 1	\$ 9,880,668				
67	4043 Amrt Lmt-Tm Gas Plant	103	6,692	8,785				
68	4050 Amort Other Plant	574,280	1,233,062	1,807,352				
69	4073 Amort Property Loss, Unrecov. Plant		333,898	333,898				
70	Depreciation & Amortization	\$ 10,066,346	\$ 1,942,387	\$ 12,008,713	\$ 11,889,383	\$ 319,330	\$ -	\$ 11,686,383
71	4081 Other Taxes-Non-Inc	\$ 8,488,489	\$ 1	\$ 2,988,932	\$ 2,905,575	\$ 81,357		\$ 2,905,575
72	Taxes Other Than Income Taxes	\$ 8,488,489	\$ (5,499,557)	\$ 2,988,932	\$ 2,905,575	\$ 81,357		\$ 2,905,575
73	Utility Income Before Taxes	\$ 16,352,629	\$ (5,307,430)	\$ 11,045,199	\$ 8,940,831	\$ 2,104,368	\$ 8,774,722	\$ 15,715,553
74	4091 Inc Taxes-Oper Inc	\$ 1,402,201	\$ 1	\$ 308,210				
75	4101 Prov For Def Inc Tax	2,847,870	(1,095,991)	2,847,870				
76	Income Taxes	\$ 4,049,871	\$ (1,095,991)	\$ 2,953,880	\$ 2,229,929	\$ 723,951	\$ 2,415,189	\$ 4,645,118
77	Net Utility Income	\$ 12,302,758	\$ (4,211,439)	\$ 8,091,319	\$ 6,710,902	\$ 1,380,417	\$ 4,359,533	\$ 11,070,435

From: ¹ Schedule 4b To: ² Schedule 1

CenterPoint Energy
Texas Coast Division
Summary of Income Statement Adjustments
For the Test Year Ended September 30, 2014

Line No.	(A) Account/Description	(B) Total Adjustments	(C) 4b 1 Revenue Adjustment	(D) 4b 2 Cost of Gas Adjustment	(E) 4b 3 Franchise & GR Tax Adjustment	(F) 4b 4 Benefits Adjustment	(G) 4b 5a Auto & General Adjustment	(H) 4b 5b Workers Comp Adjustment	(I) 4b 6 Pipeline Safety Fee Adjustment	(J) 4b 7 Hurricane Ite Adjustment	(K) 4b 8 Interest on Customer Deposits
	OPERATING REVENUE										
1	4900 Gas Residential Sale	\$ (92,278,413)	\$ (92,278,413)								
2	4811 Gas S Comm Sales	\$ (24,663,887)	\$ (24,663,887)								
3	4812 Gas L Comm Sales	\$ 763,421	\$ 763,421								
4	4813 Gas LV Comm Sales	\$ -	\$ -								
5	4814 Gas SV Ind Sales	\$ (1,095,956)	\$ (1,095,956)								
6	4850 Gas Intraco Transfer	\$ (1,066)	\$ (1,066)								
7	4870 Gas Forfeited Disc	\$ 776	\$ 776								
8	4880 Gas Misc Service Rev	\$ 40	\$ 40								
9	4893 Transp Rev-Dialzb	\$ 260,714	\$ 260,714								
10	4930 Rent From Gas Properties	\$ -	\$ -								
11	4950 Other Gas Revs	\$ (378,742)	\$ (78,749)						\$ (280,993)		
12	TOTAL OPERATING REVENUE	\$ (117,371,113)	\$ (117,074,120)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (280,993)	\$ -	\$ -
	OPERATION & MAINTENANCE EXPENSE										
	OTHER GAS SUPPLY AND TRANSMISSION EXPENSE										
13	8040 Gas City Gate Purch	\$ (76,478,131)	\$ -	\$ (76,478,131)							
14	8051 Pur Gas Adjustments	\$ (3,281,374)		\$ (3,281,374)							
15	8081 Gas Storage - Debit	\$ (15,989,286)		\$ (15,989,286)							
16	8082 Gas Storage - Credit	\$ 15,015,478		\$ 15,015,478							
17	8580 Transmission of Gas	\$ (27,053,759)		\$ (27,053,759)							
18	Total Other Gas Supply and Transmission Expense	\$ (109,787,072)	\$ -	\$ (109,787,072)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	DIVISION OPERATIONS EXPENSE										
19	8700 Oper Supv & Eng	\$ (3,408)		\$ -		\$ 92					
20	8710 Distr Load Dispatch	\$ (2,367)		\$ -		\$ 4					
21	8740 Maint & Services Exp	\$ 11,121		\$ -		\$ 811					
22	8750 Meas & Reg Sls Exps	\$ (894)		\$ -		\$ -					
23	8760 Meas & Reg Sls Exps	\$ 3,286		\$ -		\$ 173					
24	8770 Meas & Reg Sls Exps	\$ -		\$ -		\$ -					
25	8780 Meter & House Reg	\$ 42,424		\$ -		\$ 2,551					
26	8790 Customer Initial Exp	\$ 53,817		\$ -		\$ 2,897					
27	8800 Other Utility Expense	\$ 12,287		\$ -		\$ 7					
28	8810 Rents	\$ (82,803)		\$ -		\$ -	\$ 8,335				
29	Total Division Operations Expense	\$ 33,453	\$ -	\$ -	\$ -	\$ -	\$ 8,335	\$ -	\$ -	\$ -	\$ -

CenterPoint Energy
Texas Coast Division
Summary of Income Statement Adjustments
For the Year Ended September 30, 2014

Line No.	(A) Account/Description	(B) Total Adjustments	Worksheet Ref. Number										(K) Interest on Customer Deposits	
			(C) 4b 1 Revenue Adjustment	(D) 4b 2 Cost of Gas Adjustment	(E) 4b 3 Franchise & GR Tax Adjustment	(F) 4b 4 Benefits Adjustment	(G) 4b 5a Auto & General Adjustment	(H) 4b 6b Workers Comp Adjustment	(I) 4b 6 Pipeline Safety Fee Adjustment	(J) 4b 7 Hurricane Ite Adjustment	(K) 4b 8			
DIVISION MAINTENANCE EXPENSE														
30	8850 Maint Supv & Eng	\$ 1,491												
31	8870 Maintenance of Mains	\$ 45,814						\$ 179						
32	8890 Maint of Meas & Reg	\$ 8,496						2,439						
33	8900 Maint-Meas & Reg Sta	\$ 943						342						
34	8910 Maint-Meas & Reg-Clt	\$ (96)						49						
35	8920 Maint of Services	\$ 17,829						1,025						
36	8930 Maint-Mtr & Hour Reg	\$ 4,922						288						
37	8940 Maint of Oth Equip	\$ 5,039						240						
38	Total Division Maintenance Expense	\$ 82,438						\$ 4,560						
CUSTOMER ACCOUNTS EXPENSE														
39	9010 Supervision	\$ 565												
40	9020 Meter Reading Exp	\$ (321,213)												
41	9030 Cust Records & Coll	\$ 35,860												
42	9040 Uncollectible Accts	\$ 857												
43	9050 Misc Cust Accts Exp	\$ (1,826)												
44	Total Customer Accounts Expense	\$ (285,757)												4,127
CUSTOMER SERVICE EXPENSE														
45	9090 Info & Instruc Adv	\$ 202												
46	9100 Misc Cust Srv & Info	\$ 480												
47	Total Customer Service Expense	\$ 682												
SALES PROMOTION EXPENSE														
48	9110 Supervision	\$ 502												
49	9120 Demo & Selling Exps	\$ 75												
50	9130 Advertising Exps	\$ -												
51	9160 Misc Sales Exps	\$ 151												
52	Total Sales Promotion Expense	\$ 728												
ADMINISTRATIVE AND GENERAL EXPENSE														
53	9200 Admin & Gen Salaries	\$ (72,535)												
54	9210 Office Supplies & Ex	\$ (4,885)												
55	9230 Outside Services Emp	\$ -												
56	9240 Property Insurance	\$ 809												
57	9250 Injuries & Damages	\$ 25,341												
58	9280 Empl Pensions&Ben	\$ 1,589,063												
59	9280 Regulatory Comm Exp	\$ 32												
60	9301 Gen Advertising Exp	\$ 48												
61	9302 Misc General Exps	\$ (112,132)												
62	9310 Rents	\$ 3,298												
63	9320 Maint Gen Plant	\$ -												
64	Total Administrative and General Expense	\$ 1,428,035						\$ 617,247		\$ 30,755		\$ (5,414)		\$ (5,414)

CenterPoint Energy
Texas Coast Division
Summary of Income Statement Adjustments
For the Test Year Ended September 30, 2014

Line No.	(A) Account/Description	(B) Total Adjustments	(C) 4b 1 Revenue Adjustment	(D) 4b 2 Cost of Gas Adjustment	(E) 4b 3 Franchise & GR Tax Adjustment	(F) 4b 4 Benefits Adjustment	(G) 4b 5a Auto & General Adjustment	(H) 4b 5b Workers Comp Adjustment	(I) 4b 6 Pipeline Safety Fee Adjustment	(J) 4b 7 Hurricane Ite Adjustment	(K) 4b 8 Interest on Customer Deposits
DEPRECIATION AND AMORTIZATION EXPENSES											
65	4030 Depreciation	\$ 388,715									
66	4043 Amort Unit-Term Gas Plant	\$ 8,682									
67	4050 Amort Other Plant	\$ 1,233,062									
68	4073 Amort Property Loss, Unrecov. Plant	\$ 333,898								333,898	
69	Total Depreciation and Amortization	\$ 1,942,367	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 333,898	\$ -
TAXES OTHER THAN INCOME TAX											
70	4081 Other Taxes-Non-Inc	\$ (5,499,557)			\$ (5,247,152)				\$ (268,782)		
71	Total Taxes Other Than Income Taxes	\$ (5,499,557)	\$ -	\$ -	\$ (5,247,152)	\$ -	\$ -	\$ -	\$ (268,782)	\$ -	\$ -
72	Total O&M Expense	\$ (112,063,683)	\$ -	\$ (109,787,072)	\$ (5,247,152)	\$ 818,827	\$ (42,792)	\$ (5,414)	\$ (268,782)	\$ (333,898)	\$ 4,127
73	Net Utility Operating Income Before Income Tax	\$ (5,307,430)	\$ (117,074,120)	\$ 109,787,072	\$ 5,247,152	\$ (818,827)	\$ (42,792)	\$ 5,414	\$ (28,211)	\$ (333,898)	\$ (4,127)
INCOME TAXES											
74	4081 Inc Taxes-Oper, Inc	\$ (1,095,991)									
75	4101 Prov For Def Inc Tax Income Taxes	\$ (1,095,991)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
76	Net Utility Income	\$ (4,211,439)	\$ (117,074,120)	\$ 109,787,072	\$ 5,247,152	\$ (818,827)	\$ (42,792)	\$ 5,414	\$ (28,211)	\$ (333,898)	\$ (4,127)

To
Schedule 4a

CenterPoint Energy
Texas Coast Division
Summary of Income Statement Adjustments
For the Test Year Ended September 30, 2014

Line No.	(A) Account/Description	(B) Total Adjustments	(L) 4b 9 Contributions Memberships Entertainment Adjustment	(M) 4b 10 Investor Relations Adjustment	(N) 4b 11 Bad Debt Adjustment	(O) 4b 12 Depreciation Adjustment	(P) 4b 13 Transportation Depreciation Adjustment	(C) 4b 14 Meals & Travel Adjustment	(R) 4b 15 Amortization of Deferred Benefit Adjustment	(S) 4b 16 Short Term Incentive Adjustment	(T) 4b 17 Factoring Expense Adjustment
OPERATING REVENUE											
1	4800 Gas Residential Sale	\$ (92,278,413)									
2	4811 Gas S Comm Sales	\$ (24,663,887)									
3	4812 Gas L Comm Sales	\$ 783,421									
4	4813 Gas LV Comm Sales	\$ -									
5	4814 Gas SV Ind Sales	\$ (1,095,956)									
6	4850 Gas Intraco Transfer	\$ (1,066)									
7	4870 Gas Forfeited Disc	\$ 778									
8	4880 Gas Misc Service Rev	\$ 40									
9	4893 Transp Rev-Distrib	\$ 260,714									
10	4930 Rent From Gas Properties	\$ -									
11	4950 Other Gas Revs	\$ (376,742)									
12	TOTAL OPERATING REVENUE	\$ (117,371,113)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
OPERATION & MAINTENANCE EXPENSE											
OTHER GAS SUPPLY AND TRANSMISSION EXPENSE											
13	8040 Gas City Gate Purch	\$ (78,478,131)									
14	8051 Pur Gas Adjustments	\$ (3,261,374)									
15	8081 Gas Storage - Debit	\$ (15,989,266)									
16	8082 Gas Storage - Credit	\$ 15,015,478									
17	8560 Transmission of Gas	\$ (27,053,759)									
18	Total Other Gas Supply and Transmission Expense	\$ (109,787,072)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
DIVISION OPERATIONS EXPENSE											
19	8700 Oper Supv & Eng	\$ (3,408)	\$ (515)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
20	8710 Distr Load Dispatch	\$ (2,367)							\$ 1,637	\$ (3,184)	
21	8740 Maint & Services Exp	\$ 11,121	\$ (484)						\$ 65	\$ (2,566)	
22	8750 Mess & Reg Sia Exps	\$ (894)							\$ 14,521	\$ (5,221)	
23	8760 Mess & Reg Sia Exps	\$ 3,266							\$ (46)	\$ (848)	
24	8770 Mess & Reg Sia Exps	\$ -							\$ 3,102	\$ (8)	
25	8780 Meter & House Reg	\$ 42,424	\$ (464)						\$ 45,854	\$ (5,477)	
26	8790 Customer Initial Exp	\$ 53,817							\$ 48,261	\$ (122)	
27	8800 Other Utility Expense	\$ 12,297	\$ (3)						\$ 129	\$ (1,552)	
28	8810 Rents	\$ (82,803)									
29	Total Division Operations Expense	\$ 33,453	\$ (1,486)	\$ -	\$ -	\$ -	\$ -	\$ (14,380)	\$ 113,369	\$ (6,588)	\$ -

CenterPoint Energy
Texas Coast Division
Summary of Income Statement Adjustments
For the Test Year Ended September 30, 2014

Line No.	(A) Account/Description	(B) Total Adjustments	(L) 4b 9 Contributions Memberships Entertainment Adjustment	(M) 4b 10 Investor Relations Adjustment	(N) 4b 11 Bad Debt Adjustment	(O) 4b 12 Depreciation Adjustment	(F) 4b 13 Transportation Depreciation Adjustment	(C) 4b 14 Meals & Travel Adjustment	(R) 4b 15 Amortization of Deferred Benefit Adjustment	(S) 4b 16 Short Term Incentive Adjustment	(T) 4b 17 Factoring Expense Adjustment
DIVISION MAINTENANCE EXPENSE											
30	8850 Maint Supv & Eng	\$ 1,481	\$ (515)					\$ 3,210	\$ (1,965.00)		
31	8870 Maintenance of Mains	\$ 45,814	\$ (487)					\$ 43,650	\$ (3,694)		
32	8890 Maint of Meas & Reg	\$ 6,496						\$ 6,119	\$ (180)		
33	8900 Maint-Meas & Reg Sla	\$ 943						\$ 883	\$ (35)		
34	8910 Maint-Meas & Reg-Cit	\$ (98)						\$ (96)			
35	8920 Maint of Services	\$ 17,829	\$ (484)					\$ 18,335	\$ (2,974)		
36	8930 Maint-Mtr & Hour Reg	\$ 4,922	\$ (3)					\$ 5,128	\$ (1,011)		
37	8940 Maint of Oth Equip	\$ 5,039						\$ 4,287	\$ (120)		
38	Total Division Maintenance Expense	\$ 82,438	\$ (1,489)	\$ -	\$ -	\$ -	\$ -	\$ 81,612	\$ (10,055)	\$ -	\$ (1,698)
CUSTOMER ACCOUNTS EXPENSE											
39	9010 Supervision	\$ 565	\$ (323)					\$ 848	\$ (940)		
40	9020 Meter Reading Exp	\$ (321,213)						\$ 6,550	\$ (1,683)		
41	9030 Cust Records & Cole	\$ 35,860			857			\$ 10,772	\$ (106)		20,485
42	9040 Uncollectible Accts	\$ 857									
43	9050 Misc Cust Accts Exp	\$ (1,829)							\$ (119)		
44	Total Customer Accounts Expense	\$ (285,737)	\$ (323)	\$ -	\$ 857	\$ -	\$ -	\$ 17,988	\$ (2,827)	\$ -	\$ 20,485
CUSTOMER SERVICE EXPENSE											
45	9090 Info & Instructv Adv	\$ 202	\$ (6)					\$ 366	\$ (138)		\$ (40)
46	9100 Misc Cust Srv & Info	\$ 460	\$ (15)					\$ 662	\$ (321)		\$ (93)
47	Total Customer Service Expense	\$ 662	\$ (21)	\$ -	\$ -	\$ -	\$ -	\$ 1,228	\$ (459)	\$ -	\$ (133)
SALES PROMOTION EXPENSE											
48	9110 Supervision	\$ 502	\$ (15)					\$ 883	\$ (321)		\$ (93)
49	9120 Demo & Selling Exps	\$ 75	\$ (2)					\$ 129	\$ (46)		\$ (13)
50	9130 Advertising Exps	\$ -									
51	9160 Misc Sales Exps	\$ 151	\$ (4)					\$ 259	\$ (92)		\$ (28)
52	Total Sales Promotion Expense	\$ 728	\$ (21)	\$ -	\$ -	\$ -	\$ -	\$ 1,271	\$ (459)	\$ -	\$ (132)
ADMINISTRATIVE AND GENERAL EXPENSE											
53	9200 Admin & Gen Salaries	\$ (72,535)								\$ -	\$ (72,535)
54	9210 Office Supplies & Ex	\$ (4,865)	\$ (307)						\$ (4,578)		
55	9230 Outside Services Emp	\$ -									
56	9240 Property Insurance	\$ 809									
57	9250 Injuries & Damages	\$ 25,341								90,609	
58	9260 Empl Pensions&Ben	\$ 1,589,063									
59	9280 Regulatory Comm Exp	\$ 32									
60	9301 Gen Advertising Exp	\$ 48									
61	9302 Misc General Exps	\$ (112,132)	\$ (11,293)								\$ (35,308)
62	9310 Rents	\$ 3,286									
63	9320 Maint Gen Plant	\$ -									
64	Total Administrative and General Expense	\$ 1,429,035	\$ (11,600)	\$ (66,732)	\$ -	\$ -	\$ -	\$ -	\$ (4,578)	\$ 55,301	\$ (72,535)

CenterPoint Energy
Texas Coast Division
Summary of Income Statement Adjustments
For the Test Year Ended September 30, 2014

Line No.	(A) Account/Description	(B) Total Adjustments	(L) 4b 9 Contributions Memberships Entertainment Adjustment	(M) 4b 10 Investor Relations Adjustment	(N) 4b 11 Bad Debt Adjustment	(O) 4b 12 Depreciation Adjustment	(P) 4b 13 Transportation Depreciation Adjustment	(Q) 4b 14 Meals & Travel Adjustment	(R) 4b 15 Amortization of Deferred Benefit Adjustment	(S) 4b 16 Short Term Incentive Adjustment	(T) 4b 17 Factoring Expense Adjustment
DEPRECIATION AND AMORTIZATION EXPENSES											
65	4030 Depreciation	\$ 368,715				\$ 355,357					
66	4043 Amort Limit-Term Gas Plant	\$ 6,892				6,892					
67	4050 Amort Other Plant	\$ 1,233,062				1,233,062					
68	4073 Amort Property Loss, Unrecov. Plant	\$ 333,898									
69	Total Depreciation and Amortization	\$ 1,942,367	\$ -	\$ -	\$ -	\$ 1,595,111	\$ -	\$ -	\$ -	\$ -	\$ -
TAXES OTHER THAN INCOME TAX											
70	4081 Other Taxes-Non-Inc	\$ (5,499,557)									
71	Total Taxes Other Than Income Taxes	\$ (5,499,557)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
72	Total O&M Expense	\$ (112,063,863)	\$ (14,940)	\$ (66,732)	\$ 857	\$ 1,595,111	\$ 215,448	\$ (32,756)	\$ 55,301	\$ (81,096)	\$ 20,465
73	Net Utility Operating Income Before Income Tax	\$ (5,307,430)	\$ 14,940	\$ 66,732	\$ (857)	\$ (1,595,111)	\$ (215,448)	\$ 32,756	\$ (55,301)	\$ 81,096	\$ (20,465)
INCOME TAXES											
74	4081 Inc Taxes-Oper, Inc	\$ (1,095,991)									
75	4101 Prov For Def Inc Tax	\$ -									
	Income Taxes	\$ (1,095,991)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
76	Net Utility Income	\$ (4,211,439)	\$ 14,940	\$ 66,732	\$ (857)	\$ (1,595,111)	\$ (215,448)	\$ 32,756	\$ (55,301)	\$ 81,096	\$ (20,465)

To
Schedule 4a

CenterPoint Energy
Texas Coast Division
Summary of Income Statement Adjustments
For the Test Year Ended September 30, 2014

Line No.	(A) Account/Description	(B) Total Adjustments	(U) Federal & State Tax Adjustment	(V) Meter Reading Adjustment	(W) Severance Adjustment	(X) Rent Expense Adjustment	(Y) Legislative Advocacy	(Z) Postretirement Amortization	(AA) COSA Expenses	(AB) Total Adjustments
	Worksheet Ref. Number	4b 18	4b 19	4b 20	4b 21	4b 22	4b 23	4b 24		
OPERATING REVENUE										
1	4800 Gas Residential Sale	\$ (92,278,413)								\$ (92,278,413)
2	4811 Gas S Comm Sales	\$ (24,663,867)								\$ (24,663,867)
3	4812 Gas L Comm Sales	\$ 783,421								\$ 783,421
4	4813 Gas LV Comm Sales	\$ -								\$ -
5	4814 Gas SV Ind Sales	\$ (1,095,956)								\$ (1,095,956)
6	4850 Gas Intraco Transfer	\$ (1,066)								\$ (1,066)
7	4870 Gas Forfeited Disc	\$ 778								\$ 778
8	4880 Gas Misc Service Rev	\$ 40								\$ 40
9	4893 Transp Rev-Distrib	\$ 260,714								\$ 260,714
10	4830 Rent From Gas Properties	\$ -								\$ -
11	4950 Other Gas Revs	\$ (376,742)								\$ (376,742)
12	TOTAL OPERATING REVENUE	\$ (117,371,113)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (117,371,113)
OPERATION & MAINTENANCE EXPENSE										
OTHER GAS SUPPLY AND TRANSMISSION EXPENSE										
13	8040 Gas City Gate Purch	\$ (78,478,131)								\$ (78,478,131)
14	8051 Pur Gas Adjustments	\$ (3,281,374)								\$ (3,281,374)
15	8081 Gas Storage - Debit	\$ (15,989,286)								\$ (15,989,286)
16	8082 Gas Storage - Credit	\$ 15,015,478								\$ 15,015,478
17	8960 Transmission of Gas	\$ (27,053,759)								\$ (27,053,759)
18	Total Other Gas Supply and Transmission Expense	\$ (109,787,072)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (109,787,072)
DIVISION OPERATIONS EXPENSE										
19	8700 Oper Suprv & Eng	\$ (3,408)								\$ (3,408)
20	8710 Distr Load Dispatch	\$ (2,367)								\$ (2,367)
21	8740 Mains & Services Exp	\$ 11,121								\$ 11,121
22	8750 Meas & Reg Sia Exps	\$ (894)								\$ (894)
23	8760 Meas & Reg Sia Exps	\$ 3,266								\$ 3,266
24	8770 Meas & Reg Sia Exps	\$ -								\$ -
25	8780 Meter & House Reg	\$ 42,424								\$ 42,424
26	8790 Customer Install Exp	\$ 53,817								\$ 53,817
27	8600 Other Utility Expense	\$ 12,297								\$ 12,297
28	8610 Rents	\$ (82,803)								\$ (82,803)
29	Total Division Operations Expense	\$ 33,453	\$ -	\$ -	\$ -	\$ (156)	\$ -	\$ -	\$ -	\$ (82,803)
										\$ 33,453

CenterPoint Energy
Texas Coast Division
Summary of Income Statement Adjustments
For the Test Year Ended September 30, 2014

Line No.	(A) Account/Description	(B) Total Adjustments	(U) Federal & State Tax Adjustment	(V) Meter Reading Adjustment	(W) Severance Adjustment	(X) Rent Expense Adjustment	(Y) Legislative Advocacy	(Z) Postretirement Amortization	(AA) COSA Expenses	(AB) Total Adjustments
	Workpaper Ref. Number	4b 18	4b 19	4b 20	4b 21	4b 22	4b 23	4b 24		
DIVISION MAINTENANCE EXPENSE										
30	8850 Maint Supv & Eng	\$ 1,491				\$ 634.00	\$ (52.00)			\$ 1,491.00
31	8870 Maintenance of Mains	\$ 45,814				3,958	(52)			\$ 45,814
32	8890 Maint of Meas & Reg	\$ 6,496				195				\$ 6,496
33	8900 Maint-Meas & Reg Sia	\$ 943				46				\$ 943
34	8910 Maint-Meas & Reg-Ct	\$ (88)								\$ (88)
35	8920 Maint of Services	\$ 17,829				1,979	(52)			\$ 17,829
36	8930 Maint-Mtr & Hous Reg	\$ 4,922				2,220				\$ 4,922
37	8940 Maint of Oth Equip	\$ 5,039				632				\$ 5,039
38	Total Division Maintenance Expense	\$ 82,438	\$ -	\$ -	\$ -	\$ 9,864	\$ (158)			\$ 82,438
CUSTOMER ACCOUNTS EXPENSE										
39	9010 Supervision	\$ 565				\$ 1,181	(35)			\$ 565
40	9020 Meter Reading Exp	\$ (321,213)		(410,501)	84,035					\$ (321,213)
41	9030 Cust Records & Coll	\$ 35,860								\$ 35,860
42	9040 Uncollectible Accts	\$ 857								\$ 857
43	9050 Misc Cust Accts Exp	\$ (1,826)				(1,708)				\$ (1,826)
44	Total Customer Accounts Expense	\$ (285,757)	\$ -	\$ (410,501)	\$ 84,035	\$ (527)	\$ (35)			\$ (285,757)
CUSTOMER SERVICE EXPENSE										
45	9090 Info & Instruc Adv	\$ 202								\$ 202
46	9100 Misc Cust Srv & Into	\$ 480					(1)			\$ 480
47	Total Customer Service Expense	\$ 682	\$ -	\$ -	\$ -	\$ -	(1)			\$ 682
SALES PROMOTION EXPENSE										
48	9110 Supervision	\$ 502				\$ -	(1)			\$ 502
49	9120 Demo & Selling Exps	\$ 75								\$ 75
50	9130 Advertising Exps	\$ -								\$ -
51	9160 Misc Sales Exps	\$ 151								\$ 151
52	Total Sales Promotion Expense	\$ 728	\$ -	\$ -	\$ -	\$ -	(1)			\$ 728
ADMINISTRATIVE AND GENERAL EXPENSE										
53	9200 Admin & Gen Salaries	\$ (72,535)								\$ (72,535)
54	9210 Office Supplies & Ex	\$ (4,885)								\$ (4,885)
55	9230 Outside Services Emp	\$ -								\$ -
56	9240 Property Insurance	\$ 809				809				\$ 809
57	9250 Injuries & Damages	\$ 25,341								\$ 25,341
58	9260 Empl Pensions&Ben	\$ 1,589,063					861,207			\$ 1,589,063
59	9280 Regulatory Comm Exp	\$ 32							32	\$ 32
60	9301 Gen Advertising Exp	\$ 46				46				\$ 46
61	9302 Misc General Exps	\$ (112,132)					(379)			\$ (112,132)
62	9310 Rents	\$ 3,296		3,296						\$ 3,296
63	9320 Maint Gen Plant	\$ -								\$ -
64	Total Administrative and General Expense	\$ 1,428,035	\$ -	\$ 3,296	\$ -	\$ 855	\$ (379)	\$ 861,207	\$ 32	\$ 1,428,035

CenterPoint Energy
Texas Coast Division
Summary of Income Statement Adjustments
For the Test Year Ended September 30, 2014

Line No.	Account/Description	Worksheet Ref. Number										Total Adjustments	Total Adjustments
		(A)	(U)	(V)	(W)	(X)	(Y)	(Z)	(AA)	(AB)			
		4b 18	4b 19	4b 20	4b 21	4b 22	4b 23	4b 24					
		Federal & State Tax Adjustment	Meter Reading Adjustment	Severance Adjustment	Rent Expense Adjustment	Legislative Advocacy	Postretirement Amortization	COSA Expense					
DEPRECIATION AND AMORTIZATION EXPENSES													
65	4030 Depreciation	\$ 388,715			\$ 13,358								\$ 388,715
66	4043 Amort-Lmt-Term Gas Plant	\$ 6,892											\$ 6,892
67	4050 Amort Other Plant	\$ 1,233,082											\$ 1,233,082
68	4073 Amort Property Loss, Unrecov. Plant	\$ 333,898											\$ 333,898
69	Total Depreciation and Amortization	\$ 1,942,387	\$ -	\$ -	\$ 13,358	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,942,387
TAXES OTHER THAN INCOME TAX													
70	4081 Other Taxes-Non-Inc	\$ (5,499,557)	\$ -	\$ -	\$ 18,377	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (5,499,557)
71	Total Taxes Other Than Income Taxes	\$ (5,499,557)	\$ -	\$ -	\$ 18,377	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (5,499,557)
72	Total O&M Expense	\$ (112,063,683)	\$ -	\$ (407,205)	\$ (84,035)	\$ (23,904)	\$ (728)	\$ (881,207)	\$ (32)	\$ (112,063,683)	\$ -	\$ -	\$ (112,063,683)
73	Net Utility Operating Income Before Income Tax	\$ (5,307,430)	\$ -	\$ 407,205	\$ (84,035)	\$ 23,904	\$ 728	\$ (881,207)	\$ (32)	\$ (5,307,430)	\$ -	\$ -	\$ (5,307,430)
INCOME TAXES													
74	4091 Inc Taxes-Oper Inc	\$ (1,095,991)	\$ (1,095,991)										\$ (1,095,991)
75	4101 Prev For Def Inc Tax	\$ -	\$ -										\$ -
	Income Taxes	\$ (1,095,991)	\$ (1,095,991)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1,095,991)
76	Net Utility Income	\$ (4,211,439)	\$ 1,095,991	\$ 407,205	\$ (84,035)	\$ 23,904	\$ 728	\$ (881,207)	\$ (32)	\$ (4,211,439)	\$ -	\$ -	\$ (4,211,439)

To
Schedule 4a



CITY COUNCIL COMMUNICATION

April 21, 2015

ITEM #	ITEM TITLE
4	Resolution No. R-1959 - Denial of CenterPoint Electric Rate Increase

ITEM/MOTION

Consideration of and action on Resolution No. R-1959, a Resolution finding that CenterPoint Energy Houston Electric, LLC's ("CenterPoint" or "Company") application for approval of a Distribution Cost Recovery Factor to increase distribution rates within the City should be denied; finding that the City's reasonable rate case expenses shall be reimbursed by the Company; finding that the meeting at which this Resolution is passed is open to the public as required by law; and requiring notice of this Resolution to the Company and legal counsel.

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

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

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

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

1. Resolution No. R-1959
2. Brocato/Brewster Correspondence – 04-06-15
3. Notice of CenterPoint Rate Increase – 04-06-15

APPROVALS

Submitted by:

John Maresh
Assistant City Manager of
Public Services

Reviewed by:

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

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

On April 06, 2015, CenterPoint Energy Houston Electric, LLC ("CenterPoint" or "Company") filed Application for Approval of a Distribution Cost Recovery Factor (DCRF) with each of the Gulf Coast Coalition of Cities (GCCC) that has retained jurisdiction over CenterPoint's rates. In the filing, CenterPoint asserts that it is entitled to a \$16,704,985 increase in distribution revenues.

GCCC has engaged the services of a consultant, Mr. Karl Nalepa, to review CenterPoint's filing. Mr. Nalepa will review the filing and identify adjustments that should be made to CenterPoint's request. The GCCC is recommending that the Cities deny the requested relief.

The City of Rosenberg must deny the application by June 05, 2015, or the rate increase requested by CenterPoint will become effective. Accordingly, GCCC's legal counsel is requesting that each GCCC city adopt the Resolution to deny CenterPoint's request for a rate increase. If the Resolution is adopted, CenterPoint will have thirty (30) days to appeal the decision to the Public Utility Commission where the appeal will be consolidated with CenterPoint's filing for the environs and those cities that have relinquished their original jurisdiction currently pending at the Commission.

Resolution No. R-1959 has been included to allow City Council the opportunity to deny CenterPoint's request for a rate increase.

RESOLUTION NO. R-1959

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, FINDING THAT CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC'S ("CENTERPOINT" OR "COMPANY") APPLICATION FOR APPROVAL OF A DISTRIBUTION COST RECOVERY FACTOR TO INCREASE DISTRIBUTION RATES WITHIN THE CITY SHOULD BE DENIED; FINDING THAT THE CITY'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

* * * * *

WHEREAS, the City of Rosenberg, Texas ("City") is an electric utility customer of CenterPoint Energy Houston Electric, LLC ("CenterPoint" or "Company"), and a regulatory authority with an interest in the rates and charges of CenterPoint; and,

WHEREAS, the City is a member of the Gulf Coast Coalition of Cities ("GCCC") (such participating cities are referred to herein as "GCCC"), a coalition of similarly situated cities served by CenterPoint that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in the CenterPoint's service area; and,

WHEREAS, on or about April 6, 2015, CenterPoint filed with the City Application for Approval of a Distribution Cost Recovery Factor ("DCRF") seeking to increase electric distribution rates by \$16,704,985 annually; and,

WHEREAS, all electric utility customers residing in the City will be impacted by this ratemaking proceeding if it is granted; and,

WHEREAS, GCCC is coordinating its review of CenterPoint's DCRF filing with designated attorneys and consultants to resolve issues in the Company's application; and,

WHEREAS, the GCCC's members and attorneys recommend that GCCC members deny the DCRF; now, therefore,

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

Section 1. That the rates proposed by CenterPoint to be recovered through its DCRF charged to customers located within the City limits, are hereby found to be unreasonable and shall be denied.

Section 2. That the Company shall continue to charge its existing rates to customers within the City.

Section 3. That the City's reasonable rate case expenses shall be reimbursed in full by CenterPoint within 30 days of the adoption of this Resolution.

Section 4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

Section 5. That a copy of this Resolution shall be sent to CenterPoint and to Thomas Brocato, General Counsel to the Gulf Coast Coalition of Cities, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

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

ATTEST:

APPROVED:

Anne Stark, **Assistant City Secretary**

Cynthia McConathy, **Mayor Pro Tem**

APPROVED AS TO FORM:

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

Mr. Brocato's Direct Line: (512) 322-5857
Email: tbrocato@lglawfirm.com

MEMORANDUM

TO: Gulf Coast Coalition of Cities (CenterPoint Electric)
FROM: Thomas Brocato
Chris Brewster
DATE: April 6, 2015
RE: CenterPoint Energy – Distribution Cost Recovery Factor filing

CITY ACTION REQUIRED NO LATER THAN JUNE 5

On April 6, 2015, CenterPoint Energy Houston Electric, LLC (“CenterPoint” or “Company”) filed Application for Approval of a Distribution Cost Recovery Factor (“DCRF”) with each of the Gulf Coast Coalition of Cities (“GCCC”) that has retained jurisdiction over CenterPoint’s rates. In the filing, the Company asserts that it is entitled to a \$16,704,985 increase in distribution revenues.

GCCC has engaged the services of a consultant, Mr. Karl Nalepa, to review the Company’s filing. Mr. Nalepa will review the filing and identify adjustments that should be made to the Company’s request. We are recommending that the Cities deny the requested relief.

Unless Cities deny the application by June 5, 2015 the rate increase requested by CenterPoint will become effective. **Accordingly, we request that each city schedule the draft resolution attached to this memorandum for consideration at their next council meeting.**

If you have any concerns or question please do not hesitate to contact me at (512) 322-5857. We appreciate your continued support.



CenterPoint Energy
P.O. Box 1700
Houston, TX 77251-1700

April 6, 2015

Mayor and City Council Members
City of Rosenberg
Rosenberg, Texas

Re: Application of CenterPoint Energy Houston Electric, LLC for Approval of a
Distribution Cost Recovery Factor

Mayor and City Council Members:

CenterPoint Energy Houston Electric, LLC ("CenterPoint Houston" or the "Company") files this Application for Approval of a Distribution Cost Recovery Factor ("DCRF") pursuant to Section 36.210 of the Public Utility Regulatory Act ("PURA") and Substantive Rule 25.243 and asks that its regulatory authorities, which include your city and the Public Utility Commission of Texas ("Commission") approve CenterPoint Houston's proposed Rider DCRF. The Company's proposed effective date for rates under Rider DCRF is September 1, 2015.

CenterPoint Houston is filing this Application simultaneously with the Commission and all municipal authorities that have retained jurisdiction over CenterPoint Houston's rates. As explained in the accompanying DCRF filing package, this is CenterPoint Houston's first DCRF filing. The Company's requested DCRF takes into account changes in the Company's net distribution system invested capital from the period January 1, 2010 through December 31, 2014. If the DCRF requested in this Application is approved, CenterPoint Houston's distribution revenues will increase by approximately \$16,704,985 on an annual basis as compared to the distribution revenues approved in its most recent rate case, Docket No. 38339.

Municipalities that have not ceded their jurisdiction to the Commission have exclusive original jurisdiction over this filing, as it affects service within their municipal boundaries. This jurisdiction extends for 60 days from the date of this filing. Pursuant to Commission Substantive Rule 25.243(c)(1)(B), on the 60th day after the filing of this Application with the city, the Application is deemed appealed to the Commission, regardless of whether the city approves or denies the application, and the appeal will be consolidated with the CenterPoint Houston's DCRF proceeding before the Commission.

If you desire any additional information concerning this filing, please contact Denise Gaw at (713) 207-5956.

Very truly yours,

A handwritten signature in black ink that reads "Keith L. Wall".

Keith L. Wall
Director of Regulatory Affairs

Enclosures

DELIVERED TO:

Sherril Nichols , Administrative Assistant of
NAME OFFICE (Mayor, City Secretary, etc.)

the City of Rosenberg on this 6 day of April 2015.

Sherril Nichols
SIGNATURE



CITY COUNCIL COMMUNICATION

April 21, 2015

ITEM #	ITEM TITLE
5	Resolution No. R-1956 – Commercial Load Management Standard Offer Program with CenterPoint Energy

ITEM/MOTION

Consideration of and action on Resolution No. R-1956, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a Commercial Load Management SOP Agreement, by and between the City and CenterPoint Energy Service Company, LLC, for the Commercial Load Management Standard Offer Program.

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

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds:

N/A

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

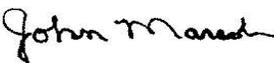
SUPPORTING DOCUMENTS:

1. Resolution No. R-1956
2. Resolution No. R-1317 – 05-17-11
3. City Council Meeting Minute Excerpt – 05-17-11

MUD #: N/A

APPROVALS

Submitted by:


John Maresh
Assistant City Manager of
Public Services

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

As part of the 2009 Siemens Energy Efficiency Project, CenterPoint Energy (CenterPoint) installed load management metering equipment at Wastewater Treatment Plant No. 2, located at 3650 N. Fairgrounds Road allowing the City to participate in the Commercial Load Management Standard Offer Program (Program). On May 17, 2011, City Council approved Resolution No. R-1317, authorizing the City Manager to execute the initial Agreement to participate in the Program. CenterPoint Energy is now requiring the approval of a new Agreement for Program years 2015 – 2020.

As in previous years, the Program only applies to the hours of 1:00 p.m. to 7:00 p.m., excluding weekends and Federal Holidays, during the months of June, July, August, and September. CenterPoint is limited to a maximum of four (4) unscheduled curtailments during the summer peak demand hours mentioned above and must provide a minimum of thirty (30) minutes notice before the curtailment start time. During the curtailment period, the City can fully operate Wastewater Treatment Plant No. 2 using standby generator power.

A copy of the Agreement is attached to Resolution No. R-1956 as Exhibit "A" for review. The base Contract is for a five (5) year term beginning in 2015, and ending in 2020. However, the Program operates on a year to year basis and the City will have to submit the load curtailment nomination to CenterPoint

along with an application annually for the duration of the Agreement term. By participating, the City has received the following cash incentives from CenterPoint Energy:

2010 - \$9,591.20

2011 - \$11,720.00

2012 - \$12,760.00

2013 - \$11,544.06

2014 – \$ 0.00 (Rosenberg application was not selected by CenterPoint to participate.)

The City has again applied for the 2015 Program and has been accepted by CenterPoint. Staff recommends approval of Resolution No. R-1956, authorizing the City Manager to execute, for and on behalf of the City, an Agreement, by and between the City and CenterPoint Energy Service Company, LLC, for the Commercial Load Management Standard Offer Program.

RESOLUTION NO. R-1956

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A COMMERCIAL LOAD MANAGEMENT SOP AGREEMENT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND CENTERPOINT ENERGY SERVICE COMPANY, LLC, FOR THE COMMERCIAL LOAD MANAGEMENT STANDARD OFFER PROGRAM.

* * * * *

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

Section 1. The City Manager is hereby authorized to execute a Commercial Load Management SOP Agreement (Agreement) regarding the Commercial Load Management Standard Offer Program, by and between the City of Rosenberg, Texas, and CenterPoint Energy Service Company, LLC.

Section 2. 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:

Anne Stark, **Assistant City Secretary**

Cynthia McConathy, **Mayor Pro Tem**

**COMMERCIAL LOAD MANAGEMENT SOP
AGREEMENT**

Participant/Contractor Name: City of Rosenberg

Address: 2110 4th Street, Rosenberg, TX 77471

Effective Date: February 9, 2015

Valid End Date: February 8, 2020

For and in consideration of the promises and mutual covenants contained herein, CenterPoint Energy Service Company, LLC, on behalf of itself and its parent company, CenterPoint Energy, Inc., and all of its subsidiaries and affiliates, (hereinafter jointly "CenterPoint Energy" or "Company") hereby enters into a Contract by and between City of Rosenberg, (Herein after "Contractor" or "Vendor") for Miscellaneous services related to the Commercial Load Management Standard Offer Program, all in accordance with the current program manual and with the following:

- Attachment 1: Compensation Schedule
- Attachment 2: Scope of Work
- Attachment 3: Terms and Conditions

NOTICE TO CONTRACTOR

This Contract is issued on a non-exclusive basis. Nothing herein shall limit or otherwise restrict CenterPoint Energy from procuring like or similar services from other Contractors.

The Commercial Load Management Standard Offer Program operates on an "annual program year" basis. Each Contractor must apply for participation in each program year. CenterPoint Energy will notify Contractor if/when specific projects are approved. Contractors are required to reference the Commercial Load Management Program Manual annually for current program guidelines and incentives.

THIS CONTRACT IS PLACED SUBJECT TO THE TERMS & CONDITIONS AS REFERENCED

Authorized Signature and Date – Vendor

Authorized Signature and Date – Company

ATTACHMENT 1

COMPENSATION SCHEDULE

Contractors will be paid based on the procedures outlined in Step Four (Monitoring and Verification) and Step Five (Incentive Payments) of the Program Manual, as set forth below.

CenterPoint Energy will perform the Verification Process after any curtailment (scheduled or unscheduled) occurs. Demand savings and incentive payment amounts will be based on actual, verified Curtailable Load reduction.

Steps of the Verification Process

Following the billing period(s) during which a curtailment has occurred, the IDR (or Smart Meter) data will be accessed by the Load Management program manager or contractor to verify actual kW demand reduction during curtailment. Calculations are based on certain periods on the day of the curtailment and the four previous business days. These periods are:

1. Baseline: CenterPoint Energy will establish the baseline for each curtailment by using the average of a combination of data from five days (the day of curtailment and the four prior weekdays), as follows:
 - a. On the day of curtailment, the average kW during the one-hour period that begins 1 ½ hours before the start of the curtailment.
 - b. On the four previous weekdays, the daily averages of the demand recorded throughout the same time period as the curtailment.
 - c. The average kW demand over all hours during each of these five periods (equally weighted by period) shall establish the baseline for each curtailment.

EXAMPLE: assume a curtailment occurs on Friday, July 10, 2015, from 4:00 to 5:00 p.m. (intervals ending at “1615 to 1700 hours”). The first step in calculating the baseline is to average the four 15-minute kW readings between 2:30 p.m. and 3:30 p.m. (intervals ending at 1445 to 1530 hours) that day. Then, the average kW demand during the same time period as the curtailment period (in this case, 4:00 to 5:00 p.m., or 1615 to 1700 hours) will be computed for each of the previous four weekdays (Monday, July 6 through Thursday, July 9). These five periods (2:30-3:30 p.m. the day of curtailment and 4-5 p.m. on the other four days) are averaged together to establish the baseline average. The five periods are treated equally in the calculation (e.g., not weighted by the number of hours).

2. Curtailment Period kW: The average kW throughout the curtailment period is subtracted from the Baseline to determine the Demand Savings for that curtailment event.
3. Demand Savings used to calculate the Incentive Payment (i.e., the Performance Period Incentive Payment) will be based on the average Curtailed kW during all curtailments, whether Scheduled or Unscheduled. The Incentive Payment will be derived from the average

verified Demand Savings of all of the curtailments during the summer peak demand period, not to exceed the Contracted kW.¹

- In the event no Unscheduled Curtailments occur, the demand savings used to calculate the Performance Period Payment will be the verified demand savings from the yearly Scheduled Curtailment, provided however, that CenterPoint expects and intends to call at least two Unscheduled Curtailments each year.

The following representative IDR excerpt demonstrates how the data may appear in the M&V calculation (one-hour duration is used as an example only).

Date	End Time	"kW-qt" (kW per quarter hour)	Day of Curtailment Only
07/12/2013	14:45	1419.1	These four intervals are averaged for "day of curtailment"
07/12/2013	15:00	1419.9	
07/12/2013	15:15	1406.3	
07/12/2013	15:30	1408.7	
(one-hour average: 1413.5 kW)			
07/12/2013	15:45	1397.4	Notice Period:
07/12/2013	16:00	1343.4	(Not used in calculations)
07/12/2013	16:15	1108.0	These four intervals are averaged to determine the "Curtailment kW"
07/12/2013	16:30	1106.7	
07/12/2013	16:45	1197.1	
07/12/2013	17:00	1120.5	
(one-hour average: 1133.1 kW)			

The Curtailment kW average of 1,133 kW remains constant, but the Baseline Period average for the day of curtailment is an average of five periods to assure a reasonable baseline level. The "hour and one-half prior" average is used in this computation for the day of curtailment. On the four prior business days, the same period as the July 12 Sample Curtailment Period (4 to 5 p.m.) is used in the Baseline average. This is done so that weather and schedule-sensitive loads are captured as accurately as possible.

The average kW demand for each of the five days is then averaged to set the baseline, as shown below. The Curtailment kW (the average of the demand during throughout the curtailment period) is subtracted from the Baseline kW to determine Demand Savings. When completed, these calculations form the basis for the Incentive Payments discussed in Step Five of the Load Management Program Manual.

Day	Baseline Period KW - Curtailment Day KW	= Verified Demand Savings
July 10 (curtailment)	1,414 (2:30-3:30 pm)	1,133 (4-5 pm)
July 9	1,513 (4-5 pm)	
July 8	1,495 (4-5 pm)	
July 7	1,567 (4-5 pm)	
July 6	1,533 (4-5 pm)	
<hr/>		
CALCULATION:	1,504 (baseline avg) - 1,133 (curtailment)	= 371 kW Demand Savings

¹ THERE IS ONE EXCEPTION TO THIS RULE (SEE "INCENTIVE PAYMENT LIMITATIONS" IN A FOLLOWING SECTION.

CenterPoint Energy pays Project Sponsors the Incentive Payment in a single lump sum installment following the close of the season. The payment will be made as soon after September 30 as the calculations and payment procedures can be reasonably completed, usually by November.

CenterPoint Energy's payment of the Incentive Payment to Project Sponsor is expressly conditioned upon Project Sponsor's meeting its obligations, including receipt by CenterPoint Energy of all required notices, submittals and materials from Project Sponsor, as well as performance.

Incentive Prices

The SOP provides standard incentive prices per kW for demand savings each year of participation. These may vary from year to year.

Incentive Payment Limitations

To ensure that incentives are available to multiple customers and energy service providers, each participating Project Sponsor of CenterPoint will be limited to twenty percent (20%) of the annual program goal. Provided that if there are not sufficient Project Sponsor applications to fill CenterPoint Energy's annual demand savings goal, CenterPoint reserves the right to waive this limitation. CenterPoint Energy may require Project Sponsors to verify their affiliate status through an affidavit.

CenterPoint Energy will not be obligated to pay a Project Sponsor for verified demand savings that exceed the amount of estimated demand savings approved in the Project Sponsor's Application, provided that CenterPoint Energy, at its sole discretion and provided SOP funds are available, may revise a Project Sponsor's estimated contract kW upward and pay a Project Sponsor accordingly. The incentive rates are set prior to each application period and are subject to changes to PUCT rules or orders.

Payment Schedule (Scheduled and Unscheduled Curtailments)

All Verification Process activities for curtailments must be completed before the Contractor will receive the Incentive Payment. After successful participation in the scheduled curtailment, verification of the IDR data and demand savings, CenterPoint Energy shall pay the Contractor the then current Incentive per kW for the average of all Scheduled and Unscheduled Curtailments. Payment will be based upon the verified demand savings using the following equation:

Incentive Payment (\$) =	Incentive Rate x Average Verified Demand kW Savings for all curtailments
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Payment Schedule

CenterPoint Energy will typically make the Performance Period Payment in November, at the conclusion of the Performance Period and after CenterPoint Energy's approval of the IDR data for the Agreement year.

In the event no unscheduled curtailments are performed, the Performance Period Payment will be calculated by multiplying the verified kW savings of the Scheduled Curtailment(s) by the incentive rate for that Agreement year.

LIMITATIONS TO THE COMPENSATION SCHEDULE

1. Notwithstanding anything to the contrary, CenterPoint Energy may, at its sole discretion, revise the calculation of the Incentive Payment to allow payment to Contractor for an amount of peak demand reduction that exceeds the amount of Estimated Demand Savings and is less than or equal to the amount of Demand Savings, as detailed above.

The sum of the Scheduled Curtailment Payment and Performance Period Payment "Incentive Payment" to any Contractor may not exceed 20% of the Incentive Budget for that Project year unless CenterPoint Energy has determined it necessary to meet the overall annual Demand Savings goal. CenterPoint Energy's payment of Incentive Payment(s) to Contractor is expressly and specifically conditioned upon CenterPoint Energy receiving all required notices, submittals and materials from Contractor within the applicable period specified in this Agreement. Failure by Contractor to deliver any required notice, submittal, or material within the applicable period specified in this Agreement shall be deemed a material breach of this Agreement. 4. In accordance with the Public Utility Commission of Texas rule, a load-control standard offer program may not receive incentives under the utility program for the same demand reduction for which it is compensated under a demand response program conducted by an independent organization, independent system operator, or regional transmission operator.

ATTACHMENT 2

SCOPE OF WORK

- 1.0 All Work shall be accomplished herein and in accordance with this Scope of Work, the Load Management Project Manual, and Contractor's application, the latter two incorporated herein by reference only.
- 2.0 Contractor shall furnish everything necessary to provide Load Management services to CenterPoint Energy and hereby acknowledges that the rates and fees stipulated in the Compensation Schedule represent full and complete payment for service rendered, including, but not limited to, labor, materials, consumable materials, tools, equipment, transportation, parking, supervision, permits and insurance.
- 3.0 CenterPoint Energy will not withhold from any amounts payable under this Contract federal, state, local or other taxes. It is the responsibility of the Contractor to pay or withhold, as may be appropriate, all such taxes that shall be required pursuant to any law or governmental regulation or ruling.
- 4.0 Contractor shall not at any time wear, use or display CenterPoint Energy's company name including, but not limited to, CenterPoint Energy's logo.

ATTACHMENT 3
TERMS AND CONDITIONS FOR
ENERGY EFFICIENCY STANDARD OFFER PROGRAMS

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1 **DEFINITIONS**

- 1.1.1 **Acceptance** means the earliest to occur of (i) Company’s final payment of the Contract Price to Vendor and (ii) issuance of notice of acceptance from the Contract Administrator to Vendor, in each case following satisfactory completion and acceptance of the Work in accordance with the requirements of the Contract.
- 1.1.2 **Affiliate** with respect to any Person, means any other Person that directly or indirectly controls, is controlled by or is under common control with such Person, with control in such context meaning the ability to direct the management and policies of a Person through ownership of voting shares or other equity rights, pursuant to a written agreement or otherwise.
- 1.1.3 **Business Day** means Monday through Friday, 8:00 a.m. to 5:00 p.m. local time, excluding Company-recognized holidays.
- 1.1.4 **Company** means the Company entity whose name appears on the Contract Cover Sheet.
- 1.1.5 **Company’s Designated Point of Contact** means the Person assigned by Company to manage Company’s day-to-day activities under the Contract. However, such Person shall have no authority to amend any term or condition of the Contract.
- 1.1.6 **Contract** means, collectively, the entire agreement between Company and Vendor, and includes the Contract Cover Sheet, these Terms and Conditions, any Statement of Work, any Contract Amendment, and any other documents, which are by reference made a part of the Contract.
- 1.1.7 **Contract Administrator** means Company’s duly authorized agent who shall initiate and administer all activities related to Company’s rights and obligations under the Contract. Such Person is identified on the Contract Cover Sheet.
- 1.1.8 **Contract Amendment** means a written agreement, which incorporates an addition, change or deletion to the Contract that is duly executed by authorized representatives of the Parties. As used herein, the term Contract Amendment shall also include any document entitled “Contract Supplement” or “Change Order” and any subsequent Contract Cover Sheet.
- 1.1.9 **Contract Cover Sheet** means the Contract document, which sets forth the names of the Parties and their authorized agents, the Contract number, and any other mutually agreed-upon terms and conditions of the Contract, and acts as the signature page to the Contract.
- 1.1.10 **Contract Price** means the total amount payable to Vendor in consideration for the performance of the Work.
- 1.1.11 **Drawings** mean, collectively, all drawings, maps, and supplementary drawings and maps incorporated into the Contract, which illustrate the Work.

- 1.1.12 **Jobsite** means any property, warehouse, building or facility owned, leased or operated by Company from time to time, where any of the Work is performed or where Vendor or any Vendor Personnel is present for the purposes of performing the Work.
- 1.1.13 **Party** means either Company or Vendor, individually, and Parties means Company and Vendor, together.
- 1.1.14 **Person** means any individual, firm, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, or governmental authority or any other entity.
- 1.1.15 **Purchase Order** means a document issued by Company to Vendor, indicating types, quantities, and agreed-upon prices for the Work provided to Company by Vendor.
- 1.1.16 **Specifications** means, collectively, any technical and functional requirements, descriptions, samples, models, and documentation pertaining to the processes, workmanship, products, quantities and qualities of the Work to be furnished under the Contract.
- 1.1.17 **Statement of Work** means a formal document that sets forth a detailed description of the Work and which may include Vendor's deliverables, a timeline for performance of the Work, and any Drawings, Specifications, or pricing information. As used herein, the term Statement of Work shall also include any document entitled "Scope of Work".
- 1.1.18 **Subcontractor** means any Person, other than Vendor, that performs any portion of the Work (including any subcontractor of any tier, any Affiliates of Vendor that perform any of the Work, and any supplier of equipment and materials) in furtherance of Vendor's obligations under the Contract, whether by supplying labor, services, or equipment and materials or by performing some other activity.
- 1.1.19 **Vendor** means the Person with whom Company has entered into the Contract for the performance of the Work and whose name appears on the Contract Cover Sheet.
- 1.1.20 **Vendor Personnel** means Vendor's employees, agents, representatives, Subcontractors, Subcontractors' employees, agents or representatives, and anyone directly or indirectly employed by any of them performing Work under the Contract.
- 1.1.21 **Vendor's Designated Point of Contact** means the Person or their designee who is assigned by Vendor to manage Vendor's rights and obligations under the Contract, is responsible for Vendor's day-to-day activities, and has authority to alter or amend any term, condition, or provision under the Contract. Vendor's Designated Point of Contact shall also serve as Vendor's liaison with Company for day-to-day management of Vendor's activities under the Contract.
- 1.1.22 **Work** means, in whole or in part, the work, services, deliverables, duties and activities to be performed by Vendor under the Contract.

2 **PRIORITY, EXHIBITS AND HEADINGS**

2.1 **Contract Documents – Order of Priority**

2.1.1 The documents composing the Contract are intended to be complementary. What is set forth in any one document is binding as if set forth in each document, and it is intended that the terms of such documents be read together giving effect to all. If there is a conflict between any documents constituting a part of the Contract, that conflict will be resolved in accordance with the following order of precedence, with items higher in the list prevailing over items lower in the list:

Contract Amendment

Terms and Conditions

Compensation Schedule

Statement of Work

Contract Cover Sheet/Signature Page

2.1.2 Notwithstanding the foregoing, if the irreconcilable provisions pertain to the scope of the Work, applicable Specifications or matters of a technical nature to be provided by Vendor in connection with the performance of the Work, then the provisions of the Statement of Work shall govern, and if the irreconcilable provisions pertain to the rights, duties or obligations of the Parties, then the terms and conditions shall govern.

2.2 **Exhibits and Headings**

2.2.1 The section headings and the table of contents used herein are for reference and convenience only, and shall not affect the Contract’s construction or interpretation. Any exhibits referred to herein and attached (or to be attached) hereto, are incorporated herein by reference to the same extent as if set forth in full herein. The words “herein”, “hereof” and “hereunder” and other words of similar import refer to the Contract as a whole and not to any particular section or other subdivision.

3 **STANDARDS, CODES, LAWS, AND REGULATIONS**

3.1 **Compliance with Laws/Change in Laws**

3.1.1 Vendor shall, and shall cause each Vendor Personnel to, comply in all respects with all applicable laws, rules, regulations, codes and standards of all federal, state, local and municipal governmental authorities.

3.1.2 Vendor shall, and shall cause each Subcontractor to, comply in all respects with all applicable labor, employment and immigration statutes, rules, codes, regulations and guidelines, including the Immigration and Control Act of 1986 and Form I-9 Employment Eligibility Verification requirements. Without limiting the generality of the previous sentence, Vendor shall, and shall cause each Subcontractor to, perform all

required employment eligibility and verification checks and maintain all required employment records for any employees that will be performing the Work. Vendor shall, and shall cause each Subcontractor to, conduct adequate screening of its employees and agents prior to assigning any of those Persons to perform any of the Work. Vendor represents and warrants that (i) it maintains the required employment eligibility documentation, which complies with the immigration laws referred to above, and (ii) Vendor's employees are authorized to work in the United States in accordance with all such laws.

- 3.1.3 In addition, Vendor shall identify the impact of any changes in applicable laws and regulations on its ability to deliver the Work. Vendor shall promptly notify Company of such changes and shall work with Company to identify how such changes affect Company's use of the Work. Company and Vendor shall promptly make any resulting modifications to the Work as reasonably necessary because of such changes in applicable laws and regulations.

3.2 **Equal Employment Opportunity Compliance**

- 3.2.1 Vendor represents and warrants that it is in compliance with all applicable laws, regulations and orders with respect to equal employment opportunity and, upon Company's request, shall provide to Company any certifications and representations regarding equal employment opportunity that Company may require under such laws, regulations and orders.

- 3.2.2 Vendor and Subcontractors shall comply with the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

3.3 **Noncompliance Indemnity**

- 3.3.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY, ITS AFFILIATES AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (THE "COMPANY-INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL DAMAGES ("DAMAGES" MEANS THE AMOUNT OF ANY ACTUAL LIABILITY, LOSS, COST, EXPENSE, CLAIM, AWARD OR JUDGMENT INCURRED OR SUFFERED BY AN INDEMNIFIED PERSON ARISING OUT OF OR RESULTING FROM THE INDEMNIFIED MATTER, WHETHER ATTRIBUTABLE TO PERSONAL INJURY OR DEATH, PROPERTY DAMAGE, CONTRACT CLAIMS (INCLUDING CONTRACTUAL INDEMNITY CLAIMS), TORTS, OR OTHERWISE, INCLUDING COSTS OF ENFORCEMENT OF THE INDEMNITY AND (I) REASONABLE FEES AND**

EXPENSES OF ATTORNEYS, CONSULTANTS, ACCOUNTANTS OR OTHER AGENTS AND EXPERTS REASONABLY INCIDENT TO MATTERS INDEMNIFIED AGAINST, AND (II) THE COSTS OF INVESTIGATION AND/OR MONITORING OF SUCH MATTERS) INCURRED OR SUFFERED BY THE COMPANY-INDEMNIFIED PARTIES AS A RESULT OF NONCOMPLIANCE BY VENDOR OR VENDOR PERSONNEL WITH ANY APPLICABLE LAWS OR REGULATIONS RELATING TO OR ARISING OUT OF THEIR PERFORMANCE OF THE WORK, EVEN IF SUCH DAMAGES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, CONTRIBUTING, OR COMPARATIVE) STRICT LIABILITY, OR OTHER LEGAL FAULT OF THE COMPANY-INDEMNIFIED PARTIES.

3.3.2 **THE INDEMNITY PROVISIONS IN THIS SECTION (NONCOMPLIANCE INDEMNITY) SHALL SURVIVE ANY TERMINATION OF THE CONTRACT.**

4 **VENDOR**

4.1 **Independent Contractor**

4.1.1 Vendor and all Vendor Personnel are acting as independent contractors unrelated to Company or any of its Affiliates. Nothing in the Contract creates a relationship, express or implied, of employer-employee or principal-agent between Company and Vendor or any Vendor Personnel.

4.1.2 Company retains no control or direction over Vendor and Vendor Personnel regarding the detail, manner or methods of the performance of the Work by Vendor or Vendor Personnel.

4.1.3 No Vendor Personnel will be entitled to participate in any plans, arrangements, or distributions by Company relating to any pension, deferred compensation, bonus, stock bonus, hospitalization, insurance, or other benefits extended to Company's employees. Company shall not be required to make employee contributions provided for in Social Security or other laws on behalf of Vendor, Vendor Personnel, or their respective employees, agents, or consultants. Company shall not be responsible for withholding federal, state, or local income, Social Security, or other taxes from the amounts paid to Vendor.

4.1.4 Vendor shall be fully responsible for all acts and omissions of Vendor Personnel and shall be specifically responsible for sufficient and competent supervision and inspection to ensure Vendor Personnel's compliance in every respect with the Contract requirements.

4.2 **Subcontractor**

4.2.1 Vendor shall not enter into a subcontract agreement for performance of the Work without Company's prior consent. Without limiting the foregoing, Company may require submission of such subcontract agreement for Company's approval prior to award.

4.2.2 No subcontract shall bind or purport to bind Company. Vendor shall ensure that all Work performed by Subcontractors is pursuant to an appropriate written subcontract agreement containing provisions that (a) preserve and protect the rights of Company under the Contract and to the Work to be performed under the subcontract agreement, so that the subcontracting of the Work will not prejudice those rights; (b) require that the Work be performed in accordance with the applicable requirements of the Contract; and (c) require the Subcontractor to make reasonably available a representative with whom Company may discuss questions regarding the Work being performed by that Subcontractor. Vendor shall promptly provide all information requested by Company relating to the identity of the Subcontractors and the scope of their services or supply.

4.3 **Character and Skill of Personnel**

4.3.1 Vendor shall employ a sufficient number of qualified Persons so that Vendor may complete performance of the Work and Vendor's obligations under the Contract in an efficient, prompt, economical and professional manner. Vendor represents and warrants that all Vendor Personnel who will perform any portion of the Work have received all necessary training and possess all licenses and certifications required by law to perform the Work.

4.3.2 Vendor shall supervise, coordinate and direct the performance of the Work in accordance with industry standards. Vendor shall at all times enforce strict discipline and good order among all Vendor Personnel engaged in the performance of the Work and shall not employ in the Work any Person not skilled or qualified for the task(s) assigned to them.

4.4 **Vendor Representations and Warranties**

4.4.1 Vendor shall have the sole responsibility for, and hereby represents and warrants that it has, by careful examination, satisfied itself concerning the nature and location of Work and the general and local conditions of the Jobsite. Failure of Vendor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or costs of successfully performing the Work.

4.4.2 Vendor further represents and warrants that Vendor's progress schedule, if applicable, and compensation are based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation from Company. Company assumes no responsibility for any understanding or representation made or alleged to have been made by any of its representatives, unless such understanding or representation is expressly stated in the Contract.

4.4.3 Vendor shall carefully study and review the Contract prior to commencing any portion of the Work, shall carefully review applicable Drawings and Specifications, and shall

promptly notify Company by written notice of any conflict with applicable law or of any errors, inconsistencies or omissions it may discover.

4.4.4 Vendor represents and warrants that it has the full power and authority to execute, deliver and perform its obligations under the Contract and to engage in the business it presently conducts and contemplates conducting, and is and will be (i) duly licensed or qualified to do business and (ii) in good standing under the laws of the jurisdiction wherein the Work is to be performed.

4.4.5 Unless otherwise specified, all loss or damage to Vendor arising out of Vendor's performance of the Work in connection with the above-mentioned representations and warranties shall be sustained and borne by Vendor at its own cost and expense.

5 **ASSIGNMENT**

5.1.1 Vendor shall not assign any part of its rights or delegate any performance under the Contract, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without Company's prior written consent. Company may withhold consent for any or no reason in its sole and absolute discretion. For purposes of the Contract, (a) a "change in control" is deemed an assignment; (b) "control" means the power, directly or indirectly, to (i) vote at least fifty percent (50%) of the securities that have ordinary voting power for the election of Vendor's directors or managers, or (ii) direct or cause the direction of the management and policies of Vendor whether by voting power, contract or otherwise; and (c) "merger" refers to any merger in which Vendor participates, regardless of whether it is the surviving or disappearing entity.

5.1.2 No permitted assignment of the Contract or of any duties hereunder shall relieve Vendor of any of its obligations hereunder.

5.1.3 If Company permits Vendor's assignment of the Contract, the Contract shall be binding upon and shall inure to the benefit of the permitted assignee; however, Vendor shall provide prompt written notice of such changes or transfers.

5.1.4 Any purported assignment of rights or delegation of performance in violation of this section (Assignment) is void and of no effect.

5.1.5 Company is entitled to assign its rights or delegate performance under the Contract, in whole or in part.

6 **WORK**

6.1 **General**

6.1.1 Vendor shall, in consideration of the Contract Price payable in accordance with the Contract, provide or perform the Work, or cause the Work to be provided or performed, in accordance with the terms and conditions of the Contract.

6.2 **Authorization to Commence Work**

6.2.1 Vendor shall not commence the Work until Company has received a fully executed Contract Cover Sheet. Any Work performed before such time is at Vendor's sole risk and expense.

6.3 **Performance Schedule**

6.3.1 Vendor shall perform the Work to meet the schedule agreed upon by the Parties. The schedule shall be computed by excluding the first calendar day and including the last calendar day of said time frame. If the last calendar day of said time frame is a Sunday or Company-recognized holiday, the time frame shall end on the next Business Day.

6.3.2 Vendor shall be responsible for any damages that Company may incur due to delay in the completion of the Work, or delay in the completion of any other obligation of Vendor set forth herein, unless excused under the Force Majeure section.

6.4 **Company Inspection and Testing**

6.4.1 Vendor shall deliver the Work as specified in the Contract. Vendor shall cooperate with Company to carry out all tasks necessary for implementation, inspection, and testing of the Work.

6.4.2 Company may perform inspection and testing on the Work until it is satisfied that such Work conforms to the Specifications and any other requirements in the Contract. If Company discovers any deficiencies in the Work, Company shall notify Vendor, and Vendor, at its own expense, shall modify, repair, adjust or replace the Work within fifteen (15) calendar days after the date of Company's deficiency notice. Company may perform additional inspections and tests on the corrected Work. If the Work remains deficient, Company may reject the Work and repeat the procedure in this paragraph as often as necessary or, at its option, terminate all or a portion of the Contract in accordance with the provisions of the Termination for Cause section.

6.4.3 Inspection and testing by Company of any Work does not relieve Vendor from any responsibility regarding defects or other failures to meet the Contract requirements.

7 **JOBSITE**

7.1 **Safety and Health**

7.1.1 **Vendor Responsibility** – Vendor shall be solely responsible for the safety and health of Vendor Personnel and other Persons required in the performance of the Work, as well as for the protection of the improvements being erected and the property.

7.1.2 **Vendor Precautions** – Vendor shall take all precautions necessary to ensure the safety and health of all Vendor Personnel in their performance of the Work and any other Persons who may be affected thereby. Vendor shall also provide all protection necessary to prevent damage to any Work, materials, and equipment under the care, custody, or control of Vendor or Subcontractors.

7.1.3 **Hazardous Materials** – When the Work requires the use or storage of explosives or other hazardous materials or equipment, Vendor shall exercise a heightened standard of care and carry on such activities under the supervision of properly qualified Persons. Vendor shall obtain Company’s written consent prior to bringing any explosives or hazardous material onto the Jobsite or any other property owned, leased or controlled by Company.

7.1.4 **Safety Program** – Vendor shall maintain a safety program to ensure a safe workplace and compliance with the safety regulations and standards adopted under the Occupational Safety and Health Act of 1970 (“OSHA”), as now or hereafter amended and as set forth in 29 Code of Federal Regulations Sections 1926 and 1910, together with other applicable rules and regulations.

7.1.5 **Safe Work Environment** – Vendor and Subcontractors are responsible for providing and maintaining a safe working environment on the Jobsite. Vendor and Subcontractors shall implement appropriate measures, including their own alcohol and drug screening programs, to ensure a safe working environment.

7.1.6 **Safety Violations** – If Company verbally notifies Vendor of Vendor’s violations of OSHA requirements, Company safety and health programs or Vendor’s individual safety or health programs, Vendor shall immediately take corrective action. If Vendor does not respond appropriately and immediately, Company may issue a written notice to Vendor, requiring the suspension of Work until the noncompliance is corrected. **IN SITUATIONS WHERE THERE IS IMMINENT DANGER, WORK SHALL BE SUSPENDED IMMEDIATELY.**

7.1.7 **Safety Training** – Vendor shall be responsible for ensuring compliance with all applicable sections of the National Fire Codes, Occupational Safety and Health Standards for the Construction Industry (29 CFR 1926), and 29 CFR 1910, General Industry Safety and Health Standard applicable to the Work, any state or local laws or codes and any additional requirements imposed by Company. Vendor shall maintain documents or records verifying all the required qualifications and certifications of Vendor Personnel assigned to perform the Work.

7.2 **Right of Entry**

7.2.1 Company reserves the right to authorize its agents or designees to enter Vendor’s work area or any other portion of the Jobsite for any purpose. Vendor understands and agrees that representatives of any governmental authority may enter the Jobsite at any time. Vendor waives any right to additional compensation caused by such entry.

8 **WARRANTY**

8.1 **Warranty of Work**

8.1.1 Vendor represents and warrants that (a) the Work will be performed in accordance with the Contract; (b) Vendor shall use sound and professional principles and practices in accordance with consistently accepted industry standards in the performance of the Work hereunder; (c) performance of the Work by Vendor Personnel shall reflect sound professional knowledge, skill and judgment; and (d) Vendor shall, and shall cause Vendor Personnel to, perform the Work in accordance with applicable laws, rules and regulations, and required state and local licenses and permits.

8.1.2 Vendor represents and warrants that the Work covered by the Contract will (a) be suitable for the purpose intended and for any purposes for which its suitability is represented in writing by Vendor; (b) be free from defects in design, workmanship and materials; (c) conform to the Drawings and Specifications supplied to Vendor, if any; and (d) if installed by Vendor, be properly installed and activated. Vendor shall correct any defects in the Work, and all repairs, replacements, modifications or adjustments required under this warranty shall be at Vendor’s expense, including transportation, shipping and incidental expenses.

8.1.3 Remedies for breach of the warranties in this section (Warranty of Work) may include, at Company’s sole discretion and in addition to all other remedies available to Company at law or in equity, the repair or replacement of, or the reimbursement of the purchase price for, the applicable Work.

8.1.4 The warranties set forth in this section (Warranty of Work) are cumulative and in addition to any other warranty provided by law or equity.

9 **Indemnity**

9.1 **Indemnification**

9.1.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, Vendor shall defend, indemnify, and hold harmless COMPANY, ITS AFFILIATES AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (THE “Company-INDEMNIFIED PARTIES”) from and against ANY AND all DAMAGES (“DAMAGES” MEANS THE AMOUNT OF ANY ACTUAL LIABILITY, LOSS, COST, EXPENSE, CLAIM, AWARD OR JUDGMENT AN INDEMNIFIED PERSON ARISING OUT OF OR RESULTING FROM THE INDEMNIFIED MATTER, WHETHER ATTRIBUTABLE TO PERSONAL**

INJURY OR DEATH, PROPERTY DAMAGE, CONTRACT CLAIMS (INCLUDING CONTRACTUAL INDEMNITY CLAIMS), TORTS, OR OTHERWISE, INCLUDING COSTS OF ENFORCEMENT OF THE INDEMNITY AND (I) REASONABLE FEES AND EXPENSES OF ATTORNEYS, CONSULTANTS, ACCOUNTANTS OR OTHER AGENTS AND EXPERTS REASONABLY INCIDENT TO MATTERS INDEMNIFIED AGAINST, AND (II) THE COSTS OF INVESTIGATION AND/OR MONITORING OF SUCH MATTERS) INCURRED OR SUFFERED BY THE COMPANY-INDEMNIFIED PARTIES WITH RESPECT TO BODILY INJURY OR DEATH OF ANY PERSON, OR LOSS OF, DAMAGE TO OR DESTRUCTION OF REAL OR PERSONAL PROPERTY IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE WORK PERFORMED OR TO BE PERFORMED BY VENDOR HEREUNDER OR OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE PRESENCE OF VENDOR AND VENDOR PERSONNEL ON THE JOBSITE, IN EACH CASE TO THE EXTENT SUCH BODILY INJURY, DEATH OR DAMAGE IS CAUSED BY THE SOLE, JOINT, CONCURRENT, CONTRIBUTING, OR COMPARATIVE NEGLIGENCE OR OTHER LEGAL FAULT OF VENDOR OR VENDOR PERSONNEL.

9.1.2 **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, VENDOR SHALL ASSUME FULL RESPONSIBILITY FOR AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE COMPANY-INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL DAMAGES INCURRED OR SUFFERED BY THE COMPANY-INDEMNIFIED PARTIES WITH RESPECT TO THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF VENDOR, ITS AGENT, OR SUBCONTRACTOR IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE WORK PERFORMED OR TO BE PERFORMED BY VENDOR HEREUNDER OR OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE PRESENCE OF VENDOR AND VENDOR PERSONNEL ON THE JOBSITE, EVEN IF SUCH DAMAGES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, CONTRIBUTING, OR COMPARATIVE), STRICT LIABILITY, OR OTHER LEGAL FAULT OF THE COMPANY-INDEMNIFIED PARTIES**

9.2 **Intellectual Property Indemnification**

9.2.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE COMPANY, ITS AFFILIATES AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (THE “COMPANY-INDEMNIFIED PARTIES”) FROM AND AGAINST ANY AND ALL DAMAGES (“DAMAGES” MEANS THE AMOUNT OF ANY ACTUAL LIABILITY, LOSS, COST, EXPENSE, CLAIM, AWARD OR JUDGMENT INCURRED OR SUFFERED BY AN INDEMNIFIED PERSON ARISING OUT OF OR RESULTING FROM THE INDEMNIFIED MATTER, WHETHER ATTRIBUTABLE TO PERSONAL INJURY OR DEATH,**

PROPERTY DAMAGE, CONTRACT CLAIMS (INCLUDING CONTRACTUAL INDEMNITY CLAIMS), TORTS, OR OTHERWISE, INCLUDING COSTS OF ENFORCEMENT OF THE INDEMNITY AND (I) REASONABLE FEES AND EXPENSES OF ATTORNEYS, CONSULTANTS, ACCOUNTANTS OR OTHER AGENTS AND EXPERTS REASONABLY INCIDENT TO MATTERS INDEMNIFIED AGAINST, AND (II) THE COSTS OF INVESTIGATION AND/OR MONITORING OF SUCH MATTERS) INCURRED OR SUFFERED BY THE COMPANY-INDEMNIFIED PARTIES WHICH ARISE OUT OF OR ARE RELATED TO ANY CLAIM OR SUIT FOR INFRINGEMENT OR MISAPPROPRIATION OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT (“INTELLECTUAL PROPERTY” MEANS ALL PATENTS, DESIGN RIGHTS, COPYRIGHTS, DATABASE RIGHTS, TRADEMARKS, TRADE NAMES, RIGHTS IN INVENTIONS, KNOW-HOW, AND TRADE SECRETS, AND ALL OTHER INTELLECTUAL PROPERTY RIGHTS THROUGHOUT THE WORLD, WHETHER REGISTERED OR UNREGISTERED, AND INCLUDING ALL APPLICATIONS AND RIGHTS TO APPLY FOR ANY OF THE SAME) OF A THIRD PERSON IN CONNECTION WITH THE MANUFACTURE, SALE, USE OR OTHER DISPOSITION OF ANY ARTICLE, MATERIAL, EQUIPMENT OR INTELLECTUAL PROPERTY FURNISHED HEREUNDER BY VENDOR, OR THE PERFORMANCE OR USE OF THE WORK OR PART THEREOF, EVEN IF SUCH DAMAGES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, CONTRIBUTING, OR COMPARATIVE), STRICT LIABILITY, OR OTHER LEGAL FAULT OF THE COMPANY-INDEMNIFIED PARTIES. IF, BY REASON OF ANY SUCH CLAIM, SUIT OR THREATENED ACTION CONCERNING INTELLECTUAL PROPERTY, COMPANY IS ENJOINED FROM USING THE WORK OR ANY PART THEREOF, VENDOR SHALL, PROMPTLY AND AT ITS OWN EXPENSE, (A) DILIGENTLY PROCURE FOR COMPANY THE RIGHT TO USE THE WORK; (B) SUBSTITUTE EQUIVALENT BUT NON-INFRINGEMENT OR NON-MISAPPROPRIATING WORK SATISFACTORY TO COMPANY; OR (C) MODIFY THE WORK, IN A WAY SATISFACTORY TO COMPANY, SO IT BECOMES NON-INFRINGEMENT OR NON-MISAPPROPRIATING, PROVIDED THAT IF SUCH ACTIONS ARE NOT PRACTICABLE IN THE REASONABLE OPINION OF VENDOR, AFTER GIVING DUE CONSIDERATION TO ALL FACTORS INCLUDING FINANCIAL EXPENSE, VENDOR MAY ELECT TO REFUND TO COMPANY ALL AMOUNTS PAID BY COMPANY TO VENDOR HEREUNDER.

9.3 **Indemnification Actions**

9.3.1 All claims for indemnification under this section (Indemnity) and any other indemnity provision of the Contract shall be asserted and resolved as follows:

9.3.1.1 For purposes of this section (Indemnification Actions), (a) “Damages” means the amount of any actual liability, loss, cost, expense, claim, award or judgment incurred or suffered by an indemnified Person arising out of or resulting from the indemnified matter, whether

attributable to personal injury or death, property damage, contract claims (including contractual indemnity claims), torts, or otherwise, including costs of enforcement of the indemnity and (i) reasonable fees and expenses of attorneys, consultants, accountants or other agents and experts reasonably incident to matters indemnified against, and (ii) the costs of investigation and/or monitoring of such matters and (b) “Indemnified Person” means the Person or Persons having the right to be indemnified with respect to particular Damages by Vendor pursuant to the Contract.

9.3.1.2 In the case of a claim for indemnification based upon a Third Party Claim, Vendor shall have thirty (30) calendar days from its receipt of the Claim Notice to notify the Indemnified Person in writing whether it admits or denies its obligation to defend the Indemnified Person against such Third Party Claim. If Vendor does not provide such notice to the Indemnified Person within such thirty (30) day period, it shall be conclusively deemed obligated to provide such indemnification hereunder. The Indemnified Person is authorized, prior to and during such thirty (30) day period, to file any motion, answer or other pleading that it shall deem appropriate to protect its interests or those of Vendor.

9.3.1.3 If Vendor assumes control of a Third Party Claim, it shall have the right, for only so long as it conducts such defense with reasonable diligence, and obligation to diligently defend, at its sole cost and expense, the Third Party Claim, and shall have control of such defense and proceedings, including any compromise or settlement thereof, provided that if the Third Party Claim (i) consists of a demand for equitable relief, (ii) is a criminal proceeding or regulatory proceeding with potential criminal sanctions by any governmental authority against the Indemnified Person, (iii) would require an admission of guilt or wrongdoing on the part of the Indemnified Person, or (iv) would impose any continuing obligation on or require payment from the Indemnified Person, in each case, the Indemnified Person shall have the option, by notice to Vendor within the thirty (30) day period set forth above, to control such defense and proceedings. Vendor shall keep the Indemnified Person advised of the status and defense of any Third Party Claim on a current basis and shall consider in good-faith the recommendations made by the Indemnified Person with respect thereto. If requested by Vendor, the Indemnified Person agrees to use its commercially reasonable efforts to cooperate in contesting any Third Party Claim, which Vendor elects to assume the defense of (provided, however, that the Indemnified Person shall not be required to bring any counterclaim or cross-complaint against any Person). The Indemnified Person may at its own expense participate in, together with its own separate counsel, but not control, any defense or settlement of any Third Party Claim controlled by Vendor pursuant to this section (Indemnification Actions); provided that, notwithstanding the foregoing, Vendor shall pay the reasonable costs and expenses of such defense (including reasonable attorneys’ fees and expenses) of the Indemnified Person if (x) the Indemnified Person’s counsel reasonably concludes and advises that there are defenses available to such Indemnified Person that are different from or additional to those available to Vendor, or (y) the Indemnified Person’s counsel advises that there is a conflict of interest that could make it inappropriate under applicable standards of professional conduct to have common counsel for the Indemnified Person and Vendor. Vendor shall not, without the prior written consent of the Indemnified Person, settle or compromise any Third Party Claim or consent to the

entry of any judgment with respect thereto which (i) does not result in a final resolution of the Indemnified Person's liability with respect to the Third Party Claim (including, in the case of a settlement, an unconditional written release of the Indemnified Person from all further liability with respect to the Third Party Claim) or (ii) may materially and adversely affect the Indemnified Person (other than as a result of money damages covered by the indemnity).

- 9.3.1.4 If Vendor does not assume the defense of a Third Party Claim or assumes the defense of a Third Party Claim but fails to diligently defend or settle the Third Party Claim, then the Indemnified Person shall have the right to assume the defense of the Third Party Claim (at the sole cost and expense of Vendor), with counsel of the Indemnified Person's choosing, and shall have full control of such defense and proceedings, including any compromise or settlement thereof, provided that the prior written consent of Vendor to any such compromise or settlement shall be required if the Third Party Claim (i) consists of a demand for equitable relief on the part of Vendor, (ii) is a criminal proceeding or regulatory proceeding with potential criminal sanctions by any governmental authority against Vendor or (iii) would require an admission of guilt or wrongdoing on the part of Vendor.
- 9.3.1.5 In the case of a claim for indemnification not based upon a Third Party Claim, Vendor shall have thirty (30) calendar days from its receipt of the Claim Notice to (i) cure the Damages complained of (at no cost to any Indemnified Person), (ii) admit its obligation to provide indemnification with respect to such Damages or (iii) dispute the claim for such Damages. If Vendor does not notify the Indemnified Person within such thirty (30) calendar day period that it has cured the Damages or that it disputes the claim for such Damages, Vendor shall be conclusively deemed obligated to provide such indemnification hereunder.

9.4 **Indemnification Survival**

- 9.4.1 The indemnity obligations in this section (Indemnity) shall survive any termination of the Contract.

10 **TERMINATION**

10.1 **Termination for Cause**

- 10.1.1 Company shall have the right to terminate the Contract in whole or in part at any time by written notice to Vendor if Vendor (1) fails to perform any of its obligations under the Contract or to observe any provision of the Contract (including any provision of the Contract providing for payment of money to Company); (2) becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, makes any assignment for the benefit of creditors, or commences, or has commenced against it, any insolvency, receivership, reorganization, bankruptcy or similar proceedings; or (3) fails to make progress so as to give Company reason to believe that such failure to make progress may endanger performance of the Contract in accordance with its terms; and Vendor, in any of these circumstances, does not provide adequate

assurances of performance within a period of three (3)calendar days (or such longer period as Company may authorize in writing) after receipt of said notice from Company specifying such failure.

- 10.1.2 If, after Company delivers a notice of termination under the provisions of this section (Termination for Cause), it is determined that Vendor was not in default of the Contract or if Company elects to excuse such default but still desires to terminate the Contract, the rights and obligations of the Parties shall be the same as if notice of termination had been given pursuant to the Termination for Convenience section.

10.2 **Termination for Convenience**

- 10.2.1 The Contract may be terminated by Company at any time, in whole or in part, at Company's sole and absolute discretion, with or without cause. Any such termination shall be effected by written notice from Company to Vendor specifying the extent to which the Contract is terminated, and the date upon which such termination becomes effective.

- 10.2.2 After receipt of a notice of termination, Vendor shall submit to Company its final invoice, which shall be exclusive of any special, indirect, incidental or consequential damages, loss of profits, or expenses, in the form and with certification prescribed by Company. Any amounts payable by Company to Vendor shall be reasonable and based on actual incurred costs that are directly attributable to materials received and accepted in accordance with the Contract or Work timely and satisfactorily performed prior to the termination date. The responsibility of substantiating all costs and claims shall be borne by Vendor.

11 **FORCE MAJEURE**

- 11.1.1 Performance of the Contract by each Party shall be pursued with due diligence in all respects thereof. However, neither Party shall be liable for any loss or damage for delay or for non-performance due to (a) an act or event that (i) is beyond the reasonable control of and not the fault of the non-performing Party, (ii) was not reasonably foreseeable, and (iii) the non-performing Party has been unable to avoid or overcome by the exercise of commercially reasonable efforts; or (b) in the case of Company, Company or its Affiliates activates an Emergency Operation Plan due to a disaster or threatened disaster in any of their service territories, or Company or any of its Affiliates provides disaster assistance elsewhere in the United States in connection with a declared emergency. In the event of any delay resulting from such causes, the time for performance of each of the Parties hereto (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the effect of such delays and no further modification to other terms and conditions of the Contract shall occur. The Party claiming a force majeure delay shall use its best efforts to limit the duration and adverse effects of such event or occurrence and to promptly resume performance of its obligations under the Contract.

- 11.1.2 In the event of any delay or nonperformance caused by the above causes, the affected Party shall promptly notify the other Party in writing of the nature, cause, date of commencement and anticipated extent of such delay, and shall indicate whether it is anticipated that any completion dates will be affected thereby.

12 PROPRIETARY AND CONFIDENTIAL INFORMATION

12.1 Confidentiality and Non-Disclosure

- 12.1.1 Company has a proprietary interest in the Contract, the Work provided hereunder, and the work product derived therefrom. Vendor and Vendor Personnel may have access to and become familiar with various customer lists, trade secrets, and other confidential or proprietary information of Company or other parties, including formulas, patents, devices, secret inventions, processes and compilations of information, records, programs, software and source codes, which are owned by Company or subject to the confidential obligations of Company (all hereinafter referred to as "Confidential Information"). Confidential Information shall not include information which Vendor can demonstrate by competent proof (a) is now, or hereafter becomes generally known or available in the public domain (other than as a result of a disclosure directly or indirectly by Vendor or any Vendor Personnel in violation of this section, Proprietary and Confidential Information); (b) is known by Vendor or any Vendor Personnel on a non-confidential basis at the time of disclosure to Vendor by Company, so long as the source of such information is not under a contractual, legal, fiduciary or other obligation not to disclose such information; or (c) is independently developed by Vendor or Vendor Personnel without any breach of the Contract.
- 12.1.2 Vendor shall use Confidential Information solely for the purpose of performing the Work and not for any other purpose, including in any way detrimental or potentially detrimental to Company or any of its Affiliates. Vendor shall maintain the strict confidentiality of the terms of the Contract, the work product resulting from the Contract, and any Confidential Information provided to Vendor or any of its representatives and shall not disclose any of the foregoing, except that Vendor may disclose Confidential Information to those of its representatives and Subcontractors who have a reasonable need to know such information in order for Vendor to perform the Work if, prior to any such disclosure, (a) Vendor informs any such representative or Subcontractor of the terms of this section (Proprietary and Confidential Information) and (b) such representative or Subcontractor agrees in writing to preserve the confidentiality of the Confidential Information under the terms of this section (Proprietary and Confidential Information). Vendor shall cause its representatives and Subcontractors to comply with the terms of this section (Proprietary and Confidential Information), and shall be responsible for any breach of this section (Proprietary and Confidential Information) by any of its representatives or Subcontractors.
- 12.1.3 If Vendor, or any of its representatives or Subcontractors, becomes required by law or applicable legal process to disclose any Confidential Information, Vendor shall provide Company with prompt prior written notice of such requirement and the terms of and circumstances surrounding such requirement so that Company may seek an appropriate

protective order or other remedy, and Vendor shall provide, and shall cause such representative or Subcontractor to provide, such cooperation with respect to obtaining a protective order or other remedy as Company may reasonably request. If, in the absence of a protective order or other remedy or the receipt of a waiver by Company, Vendor or any of its representatives or Subcontractors are nonetheless, in the opinion of legal counsel to Vendor expressed in writing and reasonably acceptable in form and substance to Company, legally compelled to either disclose Confidential Information to any tribunal or stand liable for contempt or suffer other censure or penalty, Vendor or that representative or Subcontractor may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information that such counsel advises Vendor is legally required to be disclosed. Vendor shall exercise its best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such Confidential Information by such tribunal.

- 12.1.4 Company retains the entire right, interest and title to its Confidential Information. All files, records, documents, source codes, programs, software, equipment and similar items relating to the business of Company, no matter by whom prepared, shall remain the exclusive property of Company.
- 12.1.5 The covenants contained in this section (Proprietary and Confidential Information) shall be construed independently of any other provisions of the Contract and shall survive the termination of the Contract. The existence of any claim or cause of action of Vendor Personnel against Vendor, whether predicated on the Contract or otherwise, shall not constitute a defense to the enforcement by Vendor or Company of the covenants in this section (Proprietary and Confidential Information).
- 12.1.6 Vendor acknowledges that disclosure of any Confidential Information by Vendor or Vendor Personnel will give rise to irreparable injury to Company, inadequately compensable in damages. Accordingly, Company shall be entitled to seek and obtain injunctive relief, in addition to other legal remedies, which may be available in the event of any disclosure of Confidential Information by Vendor or Vendor Personnel.
- 12.1.7 Upon Company's request, Vendor shall, and shall cause Vendor Personnel to, (a) immediately cease using the Confidential Information and (b) promptly return or destroy (at Company's option) all Confidential Information, including materials prepared in whole or in part based on such Confidential Information, and all copies thereof. Upon Company's request, an authorized officer of Vendor supervising the return or destruction of Confidential Information shall certify that Vendor no longer has in its possession or under its control any Confidential Information in any form whatsoever, or any copy thereof.

13 **RECORDS AND AUDITS**

- 13.1.1 During the term of the Contract and for a period of four (4) years following the termination of the Contract, or longer as required by law, Vendor shall make, keep and maintain complete and accurate records relating to the Work. The records required to be made, kept and maintained by Vendor under the previous sentence include financial accounts, invoices, receipts, vouchers, books, schedules, written policies, safety records, personnel files, correspondence, instructions, plans, warranties, equipment maintenance records, drawings and memoranda of every description pertaining to the Work.
- 13.1.2 Vendor's records shall be open to inspection and subject to audit and reproduction, upon reasonable notice, during normal business working hours. Vendor shall provide Company with access to any and all information, materials and data of every kind and character that may in Company's reasonable judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Contract, to the extent necessary to adequately permit evaluation and verification of Vendor compliance with Contract requirements, and Company's business ethics policies and provisions for pricing change orders, invoices or claims submitted by Vendor or any of Vendor's payees. Such records shall include hard copy, as well as computer-readable data if available. Audits may be performed by Company's representative or an outside representative engaged by Company during the term of the Contract and for a period of four (4) years after the termination of the Contract or longer if required by law. Company's representative or designee shall have reasonable access to Vendor's facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with this section (Records and Audits).
- 13.1.3 Vendor's obligations under this section (Records and Audits) shall survive the termination of the Contract.

14 **MISCELLANEOUS**

14.1 **Governing Law; Jurisdiction; Venue**

- 14.1.1 The laws of the State of Texas, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to the Contract and all of the transactions it contemplates, including its validity, interpretation, construction, performance, and enforcement. Vendor hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of the State of Texas and of the United States of America located in the State of Texas, County of Harris, for any actions, suits, or proceedings arising out of or relating to the Contract. Vendor hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit, or proceeding arising out of the Contract, in the courts of the State of Texas or the United States of America located in the State of Texas, County of Harris, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

14.2 **Third Party Beneficiaries**

14.2.1 The Contract does not and is not intended to confer any rights or remedies upon any Person other than Vendor and Company, excepting those Persons expressly entitled to (1) indemnification under this Contract, or (2) any rights or benefits under the Insurance section. The Parties reserve the right to rescind, waive or vary the terms of the Contract without notice to or consent of any such third Person, even if, as a result, such third Person's right to enforce a term hereof will be varied or extinguished.

14.3 **Counterparts**

14.3.1 The Parties may sign the Contract in several counterparts, each of which will be deemed an original but all of which together will constitute one instrument. Any electronic signature by an authorized representative of a Party shall be a manifestation of assent and shall be given full effect. Any signature of the Contract delivered by facsimile or scanned document transmitted by email shall be deemed to be an original signature for all purposes.

14.4 **Supplier Diversity**

14.4.1 Company recognizes the importance of minority-owned and women-owned business enterprises ("MWBE") and small business concerns to the economies of the nation, the state, and the communities they serve, as well as Company itself. Company's objectives include actively and routinely seeking and utilizing qualified diverse suppliers, encouraging participation and support of supplier diversity initiatives by its prime suppliers, and assisting in the development and competitiveness of diverse suppliers.

14.4.2 Company seeks to include diverse supplier participation in its solicitations of goods and services. Non-diverse prime contractors should seek to include diverse suppliers in support of solicitations and contracts received from Company.

14.4.3 Company asks that Vendor be aware of the policies above and support them.

14.5 **Notices and Correspondence**

14.5.1 All notices or correspondence arising from or pertaining to the Contract must be in writing and delivered in person, or electronically, or sent by registered or certified mail or nationally or internationally recognized overnight courier, with all fees prepaid, to the receiving Party at the address identified on the Contract Cover Sheet.

14.5.2 Either Party may, at any time, change its mail or delivery address by giving the other Party ten (10) calendar days prior written notice.

14.5.3 The effective date of any written notice delivered or mailed pursuant to the Contract shall be the date of receipt by Company or Vendor, as applicable, if delivered, or the postmark date if mailed. If the receiving Party rejects or otherwise refuses to accept a notice, or if it cannot be delivered because of a change in address for which no notice was given, then notice will be deemed given upon that rejection, refusal or inability to deliver.

14.6 **Publicity**

14.6.1 Vendor shall not take any photographs, make any announcement or release any information concerning the Contract or any part thereof to any member of the public, the press or any third Person, unless prior written consent is obtained from Company. Vendor shall not, under any circumstances, represent itself as a Company-authorized contractor or a Company employee in any advertisement or telephone directory.

14.7 **Modification; Non-Waiver of Rights**

14.7.1 No amendment of the Contract will be effective unless it is in writing and signed by the Parties. No waiver of satisfaction of a condition or nonperformance of an obligation under the Contract will be effective unless it is in writing and signed by the Party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation. To be valid, any document signed by a Party in accordance with this section (Modification; Non-Waiver of Rights) must be signed by an officer or other authorized representative of that Party.

14.8 **Severability**

14.8.1 If any provision of the Contract is held invalid, illegal or unenforceable, (a) the remaining provisions of the Contract will remain in full force, if the essential terms and conditions of the Contract for both Parties remain valid, legal and enforceable; and (b) the court or other tribunal rendering the provision invalid, illegal or unenforceable shall modify the Contract so as to effect the original intent of the Parties to the fullest extent permitted by applicable law.

14.9 **Further Assurances**

14.9.1 If at any time after the date of the Contract any further action is necessary or appropriate to carry out the purposes of the Contract, Vendor shall take, or cause to be taken, that action.

14.10 **Complete Agreement**

14.10.1 The furnishing of Work hereunder, or any other definite and reasonable expression of acceptance by Vendor, shall operate as an acceptance of these Terms and Conditions by Vendor, and the effect of such acceptance shall be to make a contract on Company's terms as set forth in this document.

14.10.2 The terms and conditions of the Contract prevail over any terms and conditions contained in any other document and expressly exclude any of Vendor's general terms and conditions. Additional or different terms and conditions will not become a part of the Contract unless mutually agreed to in writing by the Parties.

14.10.3 The Contract contains the entire agreement between the Parties, and is the complete and exclusive expression of the Parties' agreement on the subject matter of the Contract. The Contract supersedes all other oral or written agreements relating to the Contract. The

provisions of the Contract may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings or performance. In entering into the Contract, neither Party has relied upon any statement, representation, warranty, or agreement of the other Party except for those expressly contained in the Contract.

RESOLUTION NO. R-1317

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A CONTRACT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND CENTERPOINT ENERGY SERVICE COMPANY, LLC, FOR THE LOAD MANAGEMENT STANDARD OFFER PROGRAM.

* * * * *

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

Section 1. The City Manager is hereby authorized to execute a Contract regarding the Load Management Standard Offer Program, by and between the City of Rosenberg, Texas, and CenterPoint Energy Service Company, LLC.

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

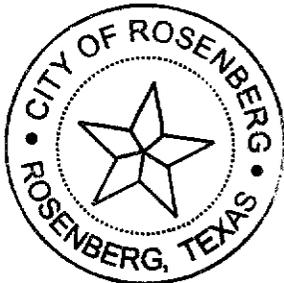
PASSED, APPROVED, AND RESOLVED this 17th day of May 2011.

ATTEST:

APPROVED:

Linda Cernosek
Linda Cernosek, CITY SECRETARY

Joe M. Gurecky
Joe M. Gurecky, MAYOR



CenterPoint Energy Service Company, LLC

Exhibit "A" to Resolution
No. R-1317

P. O. Box 4567
Houston, TX 77210

Agreement Date: 04/25/2011
Current Date: 04/25/2011

Contract Number:	4600025436
-------------------------	-------------------

CONTRACT

To: CITY OF ROSENBERG
2110 4TH ST
ROSENBERG, TX 77471-5124

Direct All Correspondence To:

Contact: Terry Munder
Telephone: 713-207-6398
Fax: 713-207-9032
Vendor Phone: 832-595-3350
Vendor Number (HQ): 102935

Ship To: This is a Centralized Contract and
"Ship To" will be determined at
Purchase Order Release

Invoice To:

P. O. Box 1374
Houston, TX 77251
Telephone: 713-207-7888
Fax: 713-207-9787

Valid From: 04/25/2011
Valid End: 04/25/2016

Freight Terms: Not Applicable
Payment Terms: Payment Due Net 30 Days
Target Value: 200,000.00 USD

RQ 20004257

For and in consideration of the promises and mutual covenants contained herein, CenterPoint Energy Service Company, LLC on behalf of itself and its parent company, CenterPoint Energy, Inc., and all of its subsidiaries and affiliates, (hereinafter jointly "CenterPoint Energy") hereby enters into a Contract by and between the City of Rosenberg, (hereinafter "Project Sponsor"), for miscellaneous Load Management Services, on an as-needed basis, all in accordance with the following:

- Attachment 1: Compensation Schedule
- Attachment 2: Scope of Work
- Attachment 3: Terms and Conditions for Services
- Attachment 4: Supplier Diversity Policy Statement and Purchasing Guidelines.

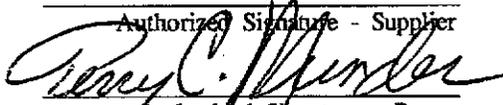
NOTICE TO PROJECT SPONSOR

This Contract is issued on a non-exclusive basis. Nothing herein shall limit or otherwise restrict CenterPoint Energy from procuring like or similar services from other Project Sponsors.

The Target Value and the Contract End Date listed above represent estimated, not-to-exceed values. The Load Management Program operates on an annual basis and Project Sponsor is obligated to submit a program application for participation in each program year. CenterPoint Energy does not represent, guarantee, or warrant that the Target Value, nor the Contract End Date, will be reached under this Contract. The Contractor shall only be paid for those goods and services actually rendered and accepted in accordance with the above noted attachments.

Other Instructions:

- The Contract number must be shown on all invoices, shipping papers, packages, and correspondence pertaining to order.
 - Invoice must separate materials from labor/services and must include make, model, and serial number of all installed equipment.
- THIS ORDER IS PLACED SUBJECT TO CONDITIONS ATTACHED.**

Authorized Signature - Supplier

Authorized Signature - Buyer

CenterPoint Energy Service Company, LLC

P. O. Box 4567
Houston, TX 77210

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Item	Target Qty	Unit	Material Number	Description	Unit Price	Per	Delivery Date
00001				Load Management Standard Offer		/0	

ATTACHMENT 1

COMPENSATION SCHEDULE

Project Sponsors will be paid based on the procedures outlined in Step Four (Monitoring and Verification) and Step Five (Incentive Payments) of the Program Manual, as set forth below.

CenterPoint Energy will perform the Verification Process after any month during which a curtailment (scheduled or unscheduled) occurs. Demand savings and incentive payment amounts will be based on actual, verified Curtailable Load curtailments.

Steps of the Verification Process

Following the billing period(s) during which a curtailment has occurred, the IDR data will be accessed by the Load Management program manager to verify actual kW demand savings. The file will be provided by the CenterPoint Energy billing department in a text format showing the month, day, time, and consumption (in kWh) for each of the 96, 15-minute demand intervals for the following days:

- The day of the curtailment, and
- The four previous business days.

Adding four consecutive 15-minute intervals provides the kW demand for that hour. Multiplying any interval by 4 provides the kW demand rate for that interval. The billing department will also provide a 12-month billing history for each ESI ID listed as project sites. This serves as a control number to assure the meter is the correct one.

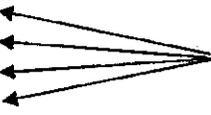
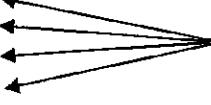
1. CenterPoint Energy will review the file for the appropriate project using the customer ESI ID.
2. CenterPoint Energy will establish the baseline for each curtailment by taking the load recorded for the one-hour period that begins two hours before the start of the curtailment, and averaging the demand from that one-hour period with the demand that occurred in the same one-hour period during the four preceding peak demand days. The demand average for that one-hour period over the five peak demand days (business days) shall set the baseline for each curtailment.

As an example, if a curtailment occurred on Friday, July 18, 20XX, from 4:00 to 5:00 p.m., the baseline would have been based on IDR data at 2:15 p.m. to 3:00 p.m. (1415 to 1500 hours) on that day, combined with the same time period from the previous four business days (Monday, July 14 through Thursday, July 17). These five days of one-hour intervals would be averaged to establish the baseline.

3. The highest four consecutive demand intervals recorded during each curtailment will be subtracted from the baseline demand to determine the verified demand savings for that curtailment.

4. If more than one unscheduled curtailment occurs during the Contract year, the demand savings used to calculate the Performance Period Payment will be the average verified demand savings of all of the curtailments during the summer peak demand period.
5. In the event no unscheduled curtailments occur, the demand savings used to calculate the Performance Period Payment will be either the verified demand savings from the last scheduled curtailment, or the demand savings estimated in the Project Sponsor's Application, whichever is lower.

The following IDR excerpt demonstrates how the data will appear in the calculation. Keep in mind that raw data is typically presented in kilowatt-hours (kWh). A kW is determined for the 15-minute interval by multiplying the kWh x 4, or by adding four consecutive intervals:

Date	Time	kWh (per interval—add 4 together for kW per hour)	
07/18/2008	14:15:00	419.09	 BASELINE AVG. = 1652 kW (SUM OF 4 KWH INTERVALS)
07/18/2008	14:30:00	417.85	
07/18/2008	14:45:00	406.34	
07/18/2008	15:00:00	408.74	
07/18/2008	15:15:00	410.90	 (NOT USED IN CALCULATION)
07/18/2008	15:30:00	401.50	
07/18/2008	15:45:00	397.43	
07/18/2008	16:00:00	343.41	
07/18/2008	16:15:00	108.03	 CURTAILMENT KW = 532
07/18/2008	16:30:00	106.71	
07/18/2008	16:45:00	197.11	
07/18/2008	17:00:00	120.45	

For the day of curtailment only, the Demand Savings would thus be 1652 kW Baseline average kW – 532 kW Curtailment period average = 1120 kW Demand Savings (rounded).

This process is applied to the same hour during the four previous peak demand days, and these days will be averaged to set the baseline, as shown below. The highest four (4) consecutive intervals during curtailment (“Curtailment kW”) are summed and subtracted from this Baseline Average to determine the Verified Demand Savings kW:

Day	Baseline Period KW	- Curtailment High Hour KW	= Verified Demand Savings
July 18 (curtailment)	1,652	532	
July 17	1,750		
July 16	1,605		
July 15	1,267		
July 14	1,590		
CALCULATION:	1,573 kW (avg) - 532 kW Curtailment	=	1,041

Once the Verified (kW) Demand Savings calculation is completed, the Project Sponsor's incentive payment will be calculated according to the following methodology:

CenterPoint Energy will pay Project Sponsors in two installments each year the Standard Offer Agreement is in effect — a Scheduled Curtailment Payment and the Performance Period Payment. In the event a Project Sponsor fails materially to produce the demand savings as proposed in its Application, CenterPoint Energy reserves the right to decline to make any further incentive payments and to terminate the Standard Agreement.

CenterPoint Energy's payment of Incentive Payment(s) to Project Sponsor is expressly and specifically conditioned upon CenterPoint Energy receiving all required notices, submittals and materials from Project Sponsor within the applicable period specified in the Agreement. Failure by Project Sponsor to deliver any required notice, submittal, or material within the applicable period specified in the Agreement shall be deemed a material breach of the Agreement.

If verified demand savings differ from the demand savings estimated in the Application, the IDR data recordings by CenterPoint Energy will take precedence over any other information. If actual, verified demand savings are lower than those estimated in the Application, the associated reserved incentives may be adjusted accordingly, and excess incentive funds returned to the SOP budget. If actual, verified demand savings are higher than those estimated in the Application, the incentive payments will be based on the demand savings estimated in the Application and Standard Offer Agreement, unless CenterPoint Energy, at its sole discretion, allows a Project Sponsor to amend its estimated demand upward.

Contract Term and Renewal

The Load Management Program is projected and intended to be a multi-year program. Contracts with successful participants will be initialized with a five (5) year term. However, participation in the program will be contingent on the submission of an annual application package. CenterPoint Energy will notify successful participants if/when their application package is accepted.

Incentive Prices

The SOP provides standard incentive prices per kW for demand savings each year of participation. The incentive rates applicable to kW savings are set forth in the following table, which also identifies the demand savings cap and the possible 40% total incentive cap applicable to each Project Sponsor and its affiliates during each Agreement year. The total incentive cap includes the Performance Period Payment and the Scheduled Curtailment Payment.

Demand Incentive Rate (\$/kW)				
Program Year	Calendar Year	Scheduled Curtailment Incentive Rate	Performance Period Incentive Rate	Demand Savings Cap Per Year
Year 1	2011	\$15	\$25	28,000
Years 2+ if continued	2012++	\$15	\$25	28,000

Incentive Payment Limitations

A Project Sponsor must provide at least 250 kW of estimated demand savings to be eligible. In addition, to ensure that incentives are available to multiple energy service providers, a Project Sponsor or its affiliates will be limited to 40% of the SOP incentive budget in a given budget year, unless there are insufficient Project Sponsor applications to fill CenterPoint Energy’s annual demand savings goal. Project Sponsors will be required to verify their affiliate status through an affidavit attached to the Standard Agreement.

Payment Schedule (Scheduled Curtailment)

All Verification Process activities for a scheduled curtailment must be completed before the Project Sponsor will receive the Scheduled Curtailment Payment. After successful participation in the scheduled curtailment, verification of the IDR data and demand savings, CenterPoint Energy shall pay the Project Sponsor the then current incentive amount per kW for the Scheduled Curtailment Payment. CenterPoint Energy will typically make the Scheduled Curtailment Payment within thirty (30) days after the demand savings are calculated. The Scheduled Curtailment Payment will be based upon the verified demand savings using the following equation:

Scheduled Curtailment Payment (\$) =	Scheduled Curtailment Payment Incentive Rate x Verified Demand kW Savings
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Payment Schedule (Unscheduled Performance Curtailments)

CenterPoint Energy will typically make the Performance Period Payment in November, at the conclusion of the Performance Period and after CenterPoint Energy’s approval of the IDR data for the Agreement year.

The amount of the Performance Period Payment shall be calculated using the following formula:

Performance Period Payment (\$) =	Performance Period Payment Incentive Rate x Verified Demand kW Savings
--	---

In the event no unscheduled curtailments are performed, the Performance Period Payment will be calculated by multiplying the verified kW savings of the first scheduled curtailment by the Performance Period Payment incentive rate for that Agreement year.

***NOTE:** CenterPoint Energy will not be obligated to pay a Project Sponsor for verified demand savings that exceed the amount of estimated demand savings proposed in the Project Sponsor’s Application. However, at CenterPoint Energy’s sole discretion and provided SOP funds are available, CenterPoint Energy may allow a Project Sponsor to revise its estimate of proposed demand savings and may pay a Project Sponsor based on a revised upward estimate of demand savings.

LIMITATIONS TO THE COMPENSATION SCHEDULE

1. Notwithstanding anything to the contrary, CenterPoint Energy may, in its sole discretion, revise the calculation of the Scheduled Curtailment Payment and/or the Performance Period Payment to allow payment to Project Sponsor for an amount of peak demand reduction that exceeds the amount of Estimated Demand Savings and is less than or equal to the amount of Demand Savings.
2. The sum of the Scheduled Curtailment Payment and Performance Period Payment in a Project year may not exceed 40% of the Incentive Budget for that Project year.
3. CenterPoint Energy's payment of Incentive Payment(s) to Project Sponsor is expressly and specifically conditioned upon CenterPoint Energy receiving all required notices, submittals and materials from Project Sponsor within the applicable period specified in this Agreement. Failure by Project Sponsor to deliver any required notice, submittal, or material within the applicable period specified in this Agreement shall be deemed a material breach of this Agreement.

In accordance with the Public Utility Commission of Texas rule, a load-control standard offer program may not receive incentives under the utility program for the same demand reduction for which it is compensated under a demand response program conducted by an independent organization, independent system operator, or regional transmission operator.

ATTACHMENT 2

SCOPE OF WORK

- 1.0 All Work shall be accomplished herein and in accordance with this Scope of Work, the Load Management Project Manual, and Project Sponsor's application, the latter two incorporated herein by reference only.
- 2.0 Project Sponsor shall furnish everything necessary to provide Load Management services to CenterPoint Energy and hereby acknowledges that the rates and fees stipulated in the Compensation Schedule represent full and complete payment for service rendered, including, but not limited to, labor, materials, consumable materials, tools, equipment, transportation, parking, supervision, permits and insurance.
- 3.0 CenterPoint Energy will not withhold from any amounts payable under this Contract federal, state, local or other taxes. It is the responsibility of the Project Sponsor to pay or withhold, as may be appropriate, all such taxes that shall be required pursuant to any law or governmental regulation or ruling.
- 4.0 Project Sponsor shall not at any time wear, use or display CenterPoint Energy's company name including, but not limited to, CenterPoint Energy's logo.

ATTACHMENT 3
TERMS AND CONDITIONS
FOR SERVICES

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1.0 DEFINITIONS

The following definitions shall apply to the Contract, all Contract Documents and Amendments thereto and to related correspondence. A word or expression defined in this Contract containing capital letter(s) shall be identified, in any section of this Contract where the whole text is printed in block capitals, or by such word or expression being underlined and/or printed in a more prominent typeface.

- 1.1 "Acceptance" shall mean the official written notification of acceptance of the Work to Project Sponsor from the authorized representative of CenterPoint Energy following satisfactory completion of the Work in accordance with the Contract.
- 1.2 "Affiliate" shall mean (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of an energy efficiency service provider; (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider; (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by: (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of an energy efficiency service provider; or (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; or (E) a person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; (F) a person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider; (G) a person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph; (H) a person who exercises common control over an energy efficiency service provider, where "exercising common control over an energy efficiency service provider" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or (I) a person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.
- 1.3 "Baseline Demand Usage" shall mean the amount of demand in a one-hour period that is used as the baseline for comparison to Curtailment Demand Usage to calculate Demand Savings. Baseline Demand Usage shall be

calculated by averaging the CenterPoint Energy-approved IDR data from the one-hour period that began two hours prior to the start-time of a Curtailment with the CenterPoint Energy-approved IDR data from the same one-hour period during the four previous weekdays (Monday through Friday), excluding federal holidays.

- 1.4 "Capacity Factor" shall mean the ratio of the annual energy savings goal, in kWh, to the peak demand goal for the year, measured in kW, multiplied by the number of hours in the year, or the ratio of the actual annual energy savings, in kWh, to the actual peak demand reduction for the year, measured in kW, multiplied by the number of hours in the year.
- 1.5 "CenterPoint Energy" or "Buyer" shall mean CenterPoint Energy Houston Electric Service Company, LLC, or its parent company CenterPoint Energy, Inc., or any of its representatives, successors, or assigns.
- 1.6 "Commercial Customer" shall mean a non-residential customer taking service at a metered point of delivery at a distribution voltage under an electric utility's tariff during the prior calendar year and a non-profit customer or government entity, including an educational institution. For purposes of this section, each metered point of delivery shall be considered a separate customer.
- 1.7 "Competitive Energy Efficiency Services" shall mean energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).
- 1.8 "Contract" or "Agreement" shall mean, collectively, the entire agreement between CenterPoint Energy and Project Sponsor, the terms and conditions incorporated therein and other documents, if any, which are by reference made a part of the Contract and providing for signature of a duly authorized representative of each party thereto.
- 1.9 "Contract Administrator" shall mean CenterPoint Energy's duly authorized agent who shall initiate and administer all contract activities related to the contractual terms and conditions.
- 1.10 "Contract Documents" or "Agreement Documents" shall mean 1) Project Sponsor's approved application ("Application") and Application Agreement, attached hereto as Attachment A and incorporated by reference herein, 2) the SOP Manual ("SOP Manual"), which is incorporated by reference herein, and 3) this Contract together with any and all other exhibits, addenda, or amendments referenced in the Agreement Documents or made a part thereof in accordance with this Agreement.

- 1.11 "Contract Supplement" shall mean the written instrument describing additions, changes or deletions to Project Sponsor's scope of work as defined by the Contract Documents, or in the time of performance of the Contract (or any other change desired by CenterPoint Energy) authorized and executed by duly authorized representatives of the parties hereto with the same formality as this Contract.
- 1.12 "Curtable Load" shall mean the equipment, material, or systems at a Project Site that is identified in the application as load that will be interrupted at the request of CenterPoint Energy pursuant to the SOP.
- 1.13 "Curtailement" shall mean shutting down the operation of Curtable Load at the request of CenterPoint Energy pursuant to the SOP.
- 1.14 "Curtailement Demand Usage" shall mean the highest amount of demand that occurs during any one-hour (four 15-minute interval) period of a Curtailement.
- 1.15 "Customer Agreement" shall mean the agreement between Customer and the Project Sponsor that specifies the rights and obligations of each party with respect to the installation of the Measures and other related and/or unrelated matters at the Project Site.
- 1.16 "Demand" shall mean the rate at which electric energy is used at a given instant or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).
- 1.17 "Demand Savings" shall mean a quantifiable reduction in demand.
- 1.18 "Eligible Customers" shall mean residential and commercial customers. In addition, to the extent that they meet the criteria for participation in load management standard offer programs developed for industrial customers and implemented prior to May 1, 2007, industrial customers are eligible customers solely for the purpose of participating in such programs.
- 1.19 "Energy Efficiency" shall mean improvements in the use of electricity that are achieved through facility or equipment improvements, devices, or processes that produce reductions in demand or energy consumption with the same or higher level of end-use service and that do not materially degrade existing levels of comfort, convenience, and productivity.
- 1.20 "Energy Efficiency Measures" shall mean equipment, materials, and practices at a customer's site that result in a reduction in electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kW), or both. These measures may include thermal energy storage and removal of an inefficient appliance so long as the customer need satisfied by the appliance is still met.

- 1.21 "Energy Efficiency Program" shall mean the aggregate of the energy efficiency activities carried out by an electric utility under this section or a set of energy efficiency projects carried out by an electric utility under the same name and operating rules.
- 1.22 "Energy Efficiency Project" shall mean an energy efficiency measure or combination of measures undertaken in accordance with a standard offer or market transformation program.
- 1.23 "Energy Efficiency Service Provider" shall mean a person who installs energy efficiency measures or performs other energy efficiency services under this section. An energy efficiency service provider may be a retail electric provider or commercial customer.
- 1.24 "Energy Savings" shall mean a quantifiable reduction in a customer's consumption of energy.
- 1.25 "Estimated Demand Savings" shall mean: 1) the amount of demand that Project Sponsor proposes in the Application to save in a one-hour period during Summer Peak Demand Hours through Curtailments that are implemented pursuant to the SOP and that CenterPoint Energy approves after review of the Application and receipt of all Customer Agreements, or 2) the amount of approved Unscheduled Curtailment Demand Savings from the Scheduled Curtailment that occurs in the first year of the Project, whichever is less.
- 1.26 "Governmental Authority" shall mean any federal, state, local or municipal governmental body or agency or subdivision thereof, including, but not limited to, any legislative or judicial body, having appropriate jurisdiction to exercise authority or control over CenterPoint Energy, its parent corporation, or any part or all of the Work to be performed under this Contract.
- 1.27 "Growth in Demand" shall mean the annual increase in demand in the Texas portion of an electric utility's service area at time of peak demand, as measured in accordance with this section.
- 1.28 "IDR" shall mean Interval Data Recorder.
- 1.29 "Incentive Budget" shall mean the amount of money budgeted by CenterPoint Energy for the SOP in each year of the Project.
- 1.30 "Incentive Payment" shall mean payment made by a utility to an energy efficiency service provider under an energy-efficiency program.

- 1.31 "Inspection" shall mean examination of a project to verify that an energy efficiency measure has been installed, is capable of performing its intended function, and is producing an energy saving or demand reduction.
- 1.32 "Load Control" shall mean activities that place the operation of electricity-consuming equipment under the control or dispatch of an energy efficiency service provider, an independent system operator or other transmission organization or that are controlled by the customer, with the objective of producing energy or demand savings.
- 1.33 "Load Management" shall mean load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods.
- 1.34 "Measurement and Verification" shall mean activities intended to determine the actual energy and demand savings resulting from energy efficiency projects as described in this section.
- 1.35 "Off-peak Period" shall mean the period during which the demand on an electric utility system is not at or near its maximum. For the purpose of this section, the off-peak period includes all hours that are not in the peak period.
- 1.36 "Peak Demand" shall mean electrical demand at the times of highest annual demand on the utility's system.
- 1.37 "Peak Demand Reduction" shall mean reduction in demand on the utility system throughout the utility system's peak period.
- 1.38 "Peak Period," for purposes of the load management program, shall mean the hours from one p.m. to seven p.m., during the months of June, July, August, and September, excluding weekends and Federal holidays.
- 1.39 "Performance Period" shall mean the period from June 1 through September 30 of each year of the Project.
- 1.40 "Performance Period Payment" shall mean the payment made by CenterPoint Energy to Project Sponsor for Unscheduled Curtailment Demand Savings, as calculated pursuant to the Compensation Schedule.
- 1.41 "Project Sponsor" or "Supplier" shall mean the party who is the provider of the energy efficiency services being purchased under this Contract and who is entering into this Contract with CenterPoint Energy.

- 1.42 "Project Sponsor's Representative" shall mean the person designated by the Project Sponsor to represent the Project Sponsor during the term of the Contract.
- 1.43 "Program Manager" shall mean CenterPoint Energy's designee who shall manage and coordinate the work activities furnished under this Contract.
- 1.44 "Notice" shall mean any formal written correspondence providing notice of action, purpose, intent or the like given under the provisions of this Contract.
- 1.45 "Peak Demand Savings" shall mean the maximum one-hour average demand reduction (in kW) that occurs when the system undergoing retrofit is operating at peak conditions during the Summer Period.
- 1.46 "Personnel" shall mean Project Sponsor's employees or subcontractor employees performing Work under this Contract.
- 1.47 "Project Site" shall mean the location of a Customer's Curtailable Load, as identified in the Application. For the purposes of this Agreement, multiple facilities representing Curtailable Load may be combined into one Project Site as long as they are connected to a single IDR meter. The total Curtailable Load at a Project Site must have a recorded history pattern of 750 kW or more demand usage and when interrupted in operation must result in a measurable and verifiable reduction in peak demand.
- 1.48 "Project Sponsor Contact Telephone Number" shall be the telephone number identified in the Application as the telephone number that CenterPoint Energy will call to notify Project Sponsor of a required Curtailment.
- 1.49 "PUCT" shall mean the Public Utility Commission of Texas
- 1.50 "Scheduled Curtailment" shall mean a Curtailment that is pre-scheduled by CenterPoint Energy to occur at the beginning of the Performance Period in every year of the Project.
- 1.51 "Scheduled Curtailment Demand Savings" shall mean the difference between the Baseline Demand Usage for a Scheduled Curtailment and the Curtailment Demand Usage for the same Scheduled Curtailment.
- 1.52 "Scheduled Curtailment Payment" shall mean the payment made by CenterPoint Energy to Project Sponsor in years 1 through 4 of the Project for Scheduled Curtailment Demand Savings, as calculated pursuant to the Compensation Schedule .
- 1.53 "Specifications" shall mean collectively, all technical descriptions and data referenced in the Contract, and such amendments, revisions, deductions or

additions as may be made and all written agreements made or to be made, pertaining to the processes, workmanship, products and quantities and qualities of the materials to be furnished under this Contract.

- 1.54 "Standard Offer Contract" shall mean a contract between an energy efficiency service provider and a participating utility specifying standard payments based upon the amount of energy and peak demand savings achieved through energy efficiency measures, the measurement and verification protocols, and other terms and conditions, consistent with this section.
- 1.55 "Standard Offer Program" shall mean a program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.
- 1.56 "Subcontractor" shall mean any person, firm, partnership, association, joint venture, company, corporation or other entity, regardless of tier, engaged by Project Sponsor to provide any part of the Work under this Contract.
- 1.57 "Unscheduled Curtailment" shall mean a Curtailment that is requested by CenterPoint Energy in response to a notification by the Electric Reliability Council of Texas (ERCOT) that ERCOT has implemented Step 3 or a subsequent step of its ERCOT Emergency Electric Curtailment Plan or requested by CenterPoint Energy's Dispatch Center.
- 1.58 "Work" shall mean any and all labor, evaluations, reports and services, including all equipment, material, duties and obligations that are the responsibility of Project Sponsor under this Contract.

2.0 CONTRACT DOCUMENTS

- 2.1 The Contract Documents consist of the Contract Signature Page, the Compensation Schedule, the Scope of Work, these Terms and Conditions for Services, the SOP Manual, and all other exhibits, addenda, drawings, Specifications, Applications and any Contract Supplements issued subsequently.
- 2.2 The Contract Documents are intended to be complementary and what is set forth in any one document is as binding as if set forth in each document. In the event there are any conflicting provisions or requirements in the Contract Documents, the provisions and requirements thereof shall take the following order priority:
 - 1. Contract Supplements
 - 2. Compensation Schedule
 - 3. Scope of Work

4. SOP Manual
5. Terms and Conditions for Services
6. Application
7. Contract Signature Page
8. Supplier Diversity Documents

CenterPoint Energy assumes no responsibility for bidding errors or omissions caused by failure of Project Sponsor or any of its Subcontractors to inspect and familiarize themselves with the complete set of Contract Documents.

3.0 EFFECT OF HEADINGS

Article headings appearing in this Contract are for convenience and reference only and shall in no way be construed to define, limit or interpret the text hereof.

4.0 APPLICABLE STATE LAW

The rights, obligations and remedies of the parties to this Contract shall be interpreted and governed in all respects by the laws of the State of Texas. Should any provision of this Contract or part thereof, or the application of any provision or part thereof, be judicially determined to be illegal or invalid or otherwise unenforceable, the validity of the remaining provisions or parts thereof and other applications of such provisions or parts thereof shall not be impaired.

5.0 NOTICES AND CORRESPONDENCE

5.1 All Notices or correspondence arising from or pertaining to the legal requirements, terms & conditions or the performance required by this Contract shall be in writing and either delivered in person or sent by registered or certified mail to the appropriate individual at the following addresses:

(a) To CenterPoint Energy:

CenterPoint Energy
Attn: Terry C. Munder - 1850D
P. O. Box 4567
Houston, TX 77210-4567

(b) To Project Sponsor: Address stated on the Contract Signature Page.

- 5.2 All Notices or correspondence to CenterPoint Energy arising from or pertaining to project administration shall be in writing and either delivered in person or sent by registered or certified mail to the appropriate individual at the following address:

CenterPoint Energy
Attn: David Dzerski
1111 Louisiana St.
Houston, TX 77002

- 5.3 Either of the parties may, at any time, change its mail or delivery address by giving the other party ten (10) days prior written Notice.
- 5.4 The effective date of any written Notice delivered or mailed pursuant to this Contract shall be the date of receipt by the CenterPoint Energy or Project Sponsor, as applicable, if delivered, or the postmark date if mailed.

6.0 AUTHORIZATION TO COMMENCE WORK

Project Sponsor shall not commence Work until receipt of a signed Contract.

7.0 EQUAL EMPLOYMENT OPPORTUNITY

Project Sponsor represents that it is in compliance with all applicable laws, regulations and orders with respect to equal employment opportunity and either has heretofore provided or will provide to CenterPoint Energy the certifications and representations regarding equal employment opportunity that CenterPoint Energy may require under such laws, regulations and orders.

8.0 NON-WAIVER OF RIGHTS

Failure of CenterPoint Energy to insist upon strict performance of any of the provisions hereof, or its failure or delay in exercising any rights or remedies provided herein or by law, or CenterPoint Energy's Acceptance of, or use of or payment for the Work, or any part or combination thereof, or any approval of Work by CenterPoint Energy, or any purported oral modification or rescission of this Contract, or any part hereof, by any employee or other authorized representative of CenterPoint Energy shall not release Project Sponsor of any of its obligations under this Contract and shall not be deemed as

a waiver of any of CenterPoint Energy's rights to insist upon strict performance hereof or of any of CenterPoint Energy's rights or remedies under this Contract or by law, and shall not operate as a waiver of any of the provisions hereof.

9.0 REPRESENTATIONS AND WARRANTIES

- 9.1 By executing this Agreement, Project Sponsor warrants and represents that it is aware of, is in compliance with, and will continue to comply for the term of this Agreement with, all of the Agreement Documents and all applicable laws and regulations related to the SOP.
- 9.2 Project Sponsor warrants and represents that the Project meets all federal, state, and local regulatory requirements, including:
- The Project will result in consistent and predictable peak demand savings over a ten-year period;
 - The Application disclosed all potential adverse environmental or health effects associated with the Project, if any;
 - The Project will not result in negative environmental or health effects; and
 - The Project would not have been implemented in the absence of the SOP.
- 9.3 Project Sponsor acknowledges that it is familiar with the requirements of the SOP program and/or has received a copy of the SOP Manual prior to submission of its Application. Project Sponsor warrants and represents that its participation in the SOP has at all times been in compliance with, and will continue to comply for the term of this Agreement with, the procedures and conditions set forth in the SOP Manual and that any failure to comply therewith may be treated as a breach of this Agreement notwithstanding the fact that such failure occurred prior to the execution of this Agreement. Project Sponsor also acknowledges that it meets or exceeds all of the qualifications required to participate in the SOP as described in the SOP Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement. Procedures or conditions set forth in the SOP Manual may only be waived or modified by written agreement of the parties. Any such Agreement shall be attached hereto and incorporated herein for all purposes.
- 9.4 Project Sponsor warrants and represents it and its Affiliates maybe limited to 40% of the Incentive Budget for any year of the Project and may be required to complete an Affidavit of Affiliate Status to verify that the limit has not been exceeded.
- 9.5 Project Sponsor warrants and represents that any relevant Agreement(s) or agreement(s) between a Customer and the Customer's retail electric provider

concerning electric service to Curtailable Load do not prohibit or inhibit Curtailments.

- 9.6 Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Agreement Documents.
- 9.7 One Scheduled Curtailment shall be required to be implemented by Project Sponsor at each Project Site at the beginning of the Performance Period in each calendar year of the Project. A maximum of four Unscheduled Curtailments shall be required to be implemented by Project Sponsor at each Project Site during Summer Peak Demand Hours of each calendar year of the Project.
- 9.8 All Curtailments shall be implemented at the time and for the duration specified by CenterPoint Energy.
- 9.9 CenterPoint Energy must notify Project Sponsor at least **Thirty (30) minutes** prior to the required start-time of any Curtailment by calling the Project Sponsor Contact Telephone Number. A representative of Project Sponsor must be available to personally answer calls made to the Project Sponsor Contact Telephone Number during all Summer Peak Demand Hours.
- 9.10 Project Sponsor may change the Project Sponsor Contact Telephone Number by providing notice to the Program Manager of the new Project Sponsor Contact Telephone Number a minimum of two business days prior to the date that the new Project Sponsor Contact Telephone Number is to become effective. In order for notice of a new Project Sponsor Contact Telephone Number to be valid, Project Sponsor must verify that the CenterPoint Energy Program Manager has actually received such notice by the above-mentioned deadline.
- 9.11 Project Sponsor represents that the project schedule and applicable compensation is based on its own knowledge and judgment of the conditions and hazards involved, and not upon any representation of CenterPoint Energy. CenterPoint Energy assumes no responsibility for any understanding or representation made or alleged to have been made by any of its representatives, unless such understandings or representations are expressly and fully stated in this written Contract.

10.0 SAFETY AND HEALTH

- 10.1 Project Sponsor shall be solely responsible for the safety and health of Project Sponsor's Personnel, its Subcontractors' Personnel, and other persons required in the execution of the Work.

- 10.2 Project Sponsor shall take all precautions for the safety and health of, and shall provide all protection necessary to prevent damage, injury or loss to all Personnel engaged in the Work and any other persons who may be affected thereby;

11.0 STANDARDS, CODES, LAWS AND REGULATIONS

- 11.1 Project Sponsor shall comply with all applicable laws, rules, regulations, codes and standards of all federal, state, local and municipal Governmental Authority having jurisdiction over the Work covered by this Contract.
- 11.2 **TO THE EXTENT PERMITTED BY STATE LAW, PROJECT SPONSOR SHALL, AT ITS OWN EXPENSE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CENTERPOINT ENERGY, ITS PARENT CORPORATION, SUBSIDIARIES AND AFFILIATES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL LIABILITY, LOSS OR DAMAGES ASSESSED AGAINST OR INCURRED BY CENTERPOINT ENERGY, ITS PARENT CORPORATION, SUBSIDIARIES AND AFFILIATES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES OR ANY OF THEM (INCLUDING ATTORNEY'S FEES AND OTHER COURT COSTS INCURRED BY ANY PARTY INDEMNIFIED HEREUNDER) OR OTHERWISE SUFFERED BY ANY PARTY INDEMNIFIED HEREUNDER AS A RESULT OF NONCOMPLIANCE BY PROJECT SPONSOR WITH THIS ARTICLE 11.0.**
- 11.3 Project Sponsor shall secure and pay for all permits, governmental fees and licenses necessary for proper execution and completion of the Work, unless otherwise specified in the Contract Documents.

12.0 INDEPENDENT CONTRACTOR AND SUBCONTRACTOR

- 12.1 Project Sponsor agrees to perform the Work as an independent contractor and not as a subcontractor, agent or employee of CenterPoint Energy.
- 12.2 Project Sponsor shall be responsible for all acts and omissions of its Personnel and its Subcontractors and Subcontractor's suppliers and their employees and shall be specifically responsible for sufficient and competent supervision and inspection to assure compliance in every respect with Contract requirements.
- 12.3 There shall be no contractual relationship between CenterPoint Energy and any of Project Sponsor's subcontractors or suppliers, arising out of or by

virtue of this Contract. CenterPoint Energy shall not be responsible for the payment of any sums to any subcontractor or supplier.

- 12.4 **TO THE EXTENT PERMITTED BY STATE LAW**, Project Sponsor shall include in all agreements with Vendors and Subcontractors liability limitation, suspension, termination and attorneys' fees terms at least as favorable to CenterPoint Energy as those set forth herein. **SHOULD PROJECT SPONSOR FAIL TO OBTAIN SUCH LIABILITY LIMITATION, TERMINATION, SUSPENSION AND ATTORNEYS' FEES RIGHTS IN VENDOR AND SUBCONTRACTOR AGREEMENTS, PROJECT SPONSOR SHALL INDEMNIFY AND HOLD CENTERPOINT ENERGY HARMLESS TO THE EXTENT THAT ANY SUBCONTRACTORS OR VENDORS ASSERT CLAIMS OR CAUSES OF ACTION FOR DAMAGES IN EXCESS OF AMOUNTS PERMITTED PURSUANT TO TERMINATION (WITH OR WITHOUT CAUSE) AND/OR SUSPENSION INCLUDING ATTORNEY'S FEES.**

13.0 ASSIGNMENT AND SUBCONTRACTING

- 13.1 Neither this Contract nor the duties to be performed hereunder nor monies to become due hereunder shall be subcontracted, assigned, delegated or otherwise disposed of by Project Sponsor without prior written consent of CenterPoint Energy.
- 13.2 Neither permitted assignment of this Contract, nor shall delegation of any duties hereunder, relieve Project Sponsor of any of its obligations hereunder.
- 13.3 If this Contract should be permitted by CenterPoint Energy to be assigned by Project Sponsor, it shall be binding upon and shall inure to the benefit of the permitted assignee.

14.0 FORCE MAJEURE

- 14.1 Performance of this Contract by each party shall be pursued with due diligence in all requirements hereof; however, neither party shall be liable for any loss or damage for delay or for nonperformance due to causes not reasonably within its control, including but not limited to, acts of civil or military authority, acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, fires, or floods. In the event of any delay resulting from such causes, the time for performance of each of the parties hereto (including the payment of monies) shall be extended for a period of time reasonably necessary to overcome the

effect of such delays. No further modification to other terms and conditions of this Contract shall occur.

- 14.2 In the event of any delay or nonperformance caused by the above causes, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement and the anticipated extent of such delay, and shall indicate whether it is anticipated that any completion dates will be affected thereby.

15.0 INSPECTION, TESTING AND ACCEPTANCE

- 15.1 All Work commenced pursuant to this Contract shall be subject to inspection and verification by the CenterPoint Energy. CenterPoint Energy shall be responsible for all costs associated with such inspection and verification.
- 15.2 Inspection by the CenterPoint Energy of any Work does not relieve Project Sponsor from any responsibility regarding defects or other failures to meet the Contract requirements.

16.0 INDEMNITY

TO THE EXTENT PERMITTED BY STATE LAW, PROJECT SPONSOR AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD CENTERPOINT ENERGY, ITS CORPORATE AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS OR OTHER LITIGATION (INCLUDING ALL COSTS THEREOF AND ATTORNEY'S FEES) OF EVERY KIND AND CHARACTER ARISING IN FAVOR OF PROJECT SPONSOR OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY PROJECT SPONSOR OR ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER) ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE WORK PERFORMED OR TO BE PERFORMED BY PROJECT SPONSOR HEREUNDER OR OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE PRESENCE OF PROJECT SPONSOR, ITS PERSONNEL, AGENTS, SUPPLIERS AND SUBCONTRACTORS (AND THEIR RESPECTIVE PERSONNEL) ON THE PREMISES, WHERE AND TO THE EXTENT SUCH INJURY, DEATH OR DAMAGE IS CAUSED BY THE SOLE, JOINT, CONCURRENT, CONTRIBUTING OR COMPARATIVE NEGLIGENCE OR FAULT OF PROJECT SPONSOR, ITS CORPORATE AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS.

17.0 TERMINATION FOR CAUSE OR CONVENIENCE

- 17.1 Either party shall have the right to terminate this Contract in whole or in part at any time by written Notice to the other party. Any such written Notice shall specify the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.
- 17.2 In the event of termination by CenterPoint Energy as provided herein, CenterPoint Energy shall compensate Project Sponsor for any and all Work approved in writing. CenterPoint Energy shall not be required to compensate Project Sponsor for expenses connected with preparation of an Initial or Final Application, or any other cost not directly approved by in writing.
- 17.3 In the event of termination, those provisions of this Contract that by their nature continue beyond the Termination of this Contract shall remain in full force and effect after such termination.
- 17.4 The rights and remedies of CenterPoint Energy provided in this Article 17.0 are not exclusive and are in addition to any other rights and remedies provided under this Contract, or at law, or in equity.

18.0 COMPLETE AGREEMENT

This Contract is intended as the exclusive statement of the agreement between the parties. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Contract, and recourse shall not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to vary or contradict the express terms of this Contract. This Contract shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument authorized and executed by duly authorized representatives.

ATTACHMENT 4

SUPPLIER DIVERSITY POLICY STATEMENT

CenterPoint Energy recognizes the importance of Minority-owned and Women-owned Business Enterprises (MWBE) to the economies of the nation, the state, and the communities it serves, as well as the corporation itself. Therefore, we are committed to pursuing business relationships with such enterprises and using innovative approaches designed to continually improve business opportunities. Our commitment is not philanthropic - the relationships we are seeking must meet the test of providing value both to CenterPoint Energy and to the minority-owned and women-owned business enterprises.

CenterPoint Energy's Supplier Diversity Objectives are to:

- Actively and routinely seek out qualified minority-owned and women-owned business enterprises that can provide competitive and high-quality commodities and services in a competitive market.
- Encourage participation and support of supplier diversity by major suppliers to CenterPoint Energy who are not minority-owned or women-owned businesses.
- Seek out opportunities to assist in the development and competitiveness of MWBEs through instruction, mentoring, and other outreach activities.

CenterPoint Energy's Suppliers Diversity Initiatives will be overseen by a Senior Management Diversity Steering Committee and directed by the Supplier Diversity Organization. All CenterPoint Energy management and employees will share in this corporate-wide commitment and responsibility by focusing on the implementation of procurement processes and procedures that will enhance opportunities.

SUPPLIER DIVERSITY PURCHASING GUIDELINES

- A. CenterPoint Energy, Incorporated (CNP) recognizes the importance of minority and women-owned business enterprises (MWBEs) to the nation's economy. CNP also recognizes that there are many advantages to maintaining competition in supplier industries, in the establishment of alternate sources, and in dealing with MWBEs. Accordingly, it is CNP's policy to encourage the development of mutually beneficial business relationships with qualified MWBEs. (See Corporate Policy Statement)
- B. CNP is committed to increasing the opportunities of MWBEs. Employees involved in the selection, evaluation or approval of vendors and contractors share the responsibility for the corporate practice stated in the policy.
- C. It is the practice of CNP to:
 - 1. Ensure that MWBEs are aware of requirements to participate in CNP business opportunities.
 - 2. Identify opportunities for MWBE involvement and encourage MWBEs to qualify for and bid on CNP requirements for products and services.
 - 3. Provide increased opportunities for MWBEs to participate in CNP's procurement of products and services.
- D. CNP's development of the initiative for purchasing from Minority and Women-Owned Businesses is not a philanthropic activity, nor does it require the relaxation of current purchasing policies and procedures. Competitive opportunities for MWBEs must be commensurate with the merits of their offerings and their proven affiliations and/or demonstrated performance.
- E. Employees involved in the selection, evaluation or approval of bidders should solicit a copy of the bidder's MWBE policy statement and their clearly indicated approaches to MWBE compliance. Bidders MUST indicate MWBE subcontractors/suppliers that may be used in this effort.
- F. Non-MWBE suppliers must submit annually to CNP their record of MWBE purchases as related to their sales to CNP. (CNP Second-Tier Annual Reporting Form)
 - 1. A Second-Tier MWBE Supplier is a supplier that invoices the non-MWBE supplier for goods and services rendered.
 - 2. CNP prefers to receive a report of Direct Second-Tier Purchases, i.e., products and services that can be identified in direct fulfillment of CNP requirements.
 - 3. When applicable, reporting of Indirect Second-Tier Purchases will be accepted, i.e., products and services that cannot be identified in support of specific CNP requirements.

G. Definitions:

1. **MINORITY-OWNED BUSINESS CONCERN:** A minority-owned business enterprise is one that is at least 51% owned and controlled by individuals of African American, Hispanic, Native American, or Asian descent. The business owner must be an U.S. citizen. The business has received minority certification from a third party certifier such as the city, state, or a regional minority business council. Local Website Reference: www.hmbc.org
2. **SMALL DISADVANTAGED BUSINESS CONCERN:** A Small Disadvantaged Business Concern that has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B and is listed on the register of small disadvantaged business concerns maintained by the SBA. The official listing of eligible companies can be accessed on website: <http://pro-net.sba.gov>
3. **WOMEN OWNED SMALL BUSINESS CONCERN:** Small business concerns that are at least 51% owned by women who are U.S. citizens, who also control and operate the business. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management. . The business has received minority certification from a third party certifier such as the city, state, or a regional women's business council. Local Website Reference: www.hwbc-texas.org
4. **HUBZONE SMALL BUSINESS CONCERN:** HUB Zone Small Business Concerns located in distressed communities in an effort to promote private sector investment and employment opportunities in these areas. A list of qualified HUB Zone Small Business Concerns maintained by the SBA can be viewed by visiting the following website: www.sba.gov/hubzone. From the search database option, select the HUB Zone criteria and then click on the search key.
5. **SMALL BUSINESS CONCERN:** A small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The company's SIC code determines whether annual revenues or number of employees is used to determine SBA "small business" status. Any supplier who is not sure if they are classified, as a "small business" should be referred to the following websites: www.sba.gov/regulations/siccodes and www.sba.gov/regulations/121. They may also contact the SBA Office of Size Standards at (202) 205-6618.

F. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1323, A RESOLUTION PROVIDING AUTHORIZATION FOR THE CITY MANAGER TO EXECUTE AN ADDENDUM TO THE WATER SUPPLY AND WASTEWATER SERVICES AGREEMENT, BY AND BETWEEN THE CITY AND FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 158.**

Executive Summary: The Board of Directors for Fort Bend County Municipal Utility District No. 158 (MUD No. 158) has approved the proposal on a wholesale water rate by the City of Rosenberg. City Attorney Lora Lenzsch has worked with the MUD attorney on certain revisions to the Addendum presented to City Council on April 26th. The changes have been redlined and are attached for review. I recommend approval of the Resolution No. R-1323 and the associated addendum with the changes made by Ms. Lenzsch.

G. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1317, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, A CONTRACT, BY AND BETWEEN THE CITY AND CENTERPOINT ENERGY SERVICE COMPANY, LLC, FOR THE LOAD MANAGEMENT STANDARD OFFER PROGRAM.**

Executive Summary: As part of the Siemens Energy Efficiency Project, CenterPoint Energy (CenterPoint) installed load management metering equipment at Wastewater Treatment Plant No. 2, located at 3650 N. Fairgrounds Road so the City could participate in the Load Management Standard Offer Program. For calendar year 2010, Siemens prepared and submitted the application and Contract on the City's behalf. Siemens received and forwarded incentive payments totaling \$9,591.20 to the City.

The City has applied for the 2011 Load Management Standard Offer Program. A copy of the Contract is attached to Resolution No. R-1317 as Exhibit "A". As in 2010, the program only applies to the hours of 1:00 p.m. to 7:00 p.m., excluding weekends and Federal Holidays, during the months of June, July, August, and September. CenterPoint is limited to a maximum of four (4) unscheduled curtailments during the summer peak demand hours mentioned above and must provide a minimum of thirty (30) minutes notice before the curtailment start time. During the curtailment period, the City can fully operate Wastewater Treatment Plant No. 2 using standby generator power.

The base Contract is for a five (5) year term beginning April 25, 2011 and ending April 25, 2016. However, the City will have to submit the load curtailment information to CenterPoint on an annual basis. The City can expect to receive cash incentives similar to the amount received in 2010.

Staff recommends approval of Resolution No. R-1317, authorizing the City Manager to execute, for and on behalf of the City, a Contract, by and between the City and CenterPoint Energy Service Company, LLC, for the Load Management Standard Offer Program.

H. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1314, 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 LANDSCAPE PROFESSIONALS OF TEXAS, FOR GROUNDS MAINTENANCE SERVICES FOR WATER PLANTS AND LIFT STATIONS, FOR A PERIOD OF ONE (1) YEAR, EFFECTIVE JULY 03, 2011, IN THE AMOUNT OF \$14,389.00.**

Executive Summary: On June 01, 2010, City Council approved Resolution No. R-1154, which awarded a General Services Contract for grounds maintenance services at the Water Plants and Lift Stations owned and operated by the City of Rosenberg. The Contract was awarded to Landscape Professionals of Texas in the amount of \$14,389.00. The initial term of the Contract was for a one (1) year period, with an option for City Council to extend the Contract upon the same terms and conditions, including prices established thereunder, for two (2) additional one (1) year periods. To date, the contractor has performed as specified and staff is satisfied with the overall performance.

Staff has prepared Resolution No. R-1314, which will provide for approval of the first one (1) year Contract Extension. Said Contract Extension is attached to Resolution No. R-1314 as Exhibit "A" and the original General Services Contract as Exhibit "B". A copy of Resolution No. R-1154 and the original Contract approved on June 01, 2010, is also available for review in the City Secretary's office. Staff recommends approval of Resolution No. R-1314 as presented.

I. **CONSIDERATION OF AND ACTION ON THE FINAL PLAT OF WALNUT CREEK SECTION NINE, A SUBDIVISION OF 8.721 ACRES CONTAINING 38 LOTS, 2 BLOCKS, 1 RESTRICTED RESERVE OUT OF THE EUGENE WHEAT SURVEY, A-396, FORT BEND COUNTY, TEXAS.**

Executive Summary: The Final Plat of Walnut Creek Section Nine is a subdivision of 8.721 acres containing thirty-eight (38) lots and one (1) restricted reserve in two (2) blocks. It is located in the Extraterritorial Jurisdiction of the City of Rosenberg and within the boundaries of Municipal Utility District No. 152 (MUD No. 152).

The Planning Commission recommended Final Plat approval for Walnut Creek Section Nine on March 23, 2011. Staff has reviewed the Final Plat of Walnut Creek Section Nine and found it to be in compliance with the Development Agreement, the Subdivision Regulations, and all other applicable City Ordinances. Staff recommends approval of the Final Plat of Walnut Creek Section Nine.

Action: Councilor Suter made a motion, seconded by Councilor Segura to approve the Consent Agenda. The motion carried by a unanimous vote.

REGULAR AGENDA

2. **REVIEW AND DISCUSS REPORT REGARDING THE DRY CREEK REGIONAL FLOOD CONTROL PLAN FROM LJA ENGINEERING & SURVEYING, INC., AND TAKE ACTION AS NECESSARY.**

Executive Summary: LJA Engineering & Surveying, Inc. has completed the report for the Dry Creek Regional Flood Control Plan. This Plan outlines proposed construction improvements and related costs to improve the Dry Creek channel and provide regional detention within the Dry Creek Watershed.

This item has been included on the agenda for LJA Engineering & Surveying, Inc., to provide City Council an overview of the proposed Dry Creek Regional Flood Control Plan.

Key discussion points:

- Charles Kalkomey, City Engineer, read the executive summary and gave an overview of the item.
- Angela Batiste, LJA Engineering & Surveying, Inc. gave an overview of the proposed Dry Creek Regional Flood Control Plan. She has done the majority of the analysis of Dry Creek since 2007.
- History of Dry Creek (existing conditions)
 - Upstream of First Street
 - Approximately a 5-year rainfall capacity
 - Between First Street and Airport
 - Approximately a 2 to 50year rainfall capacity
 - Between Airport and Bryan Road
 - Approximately a 100-year rainfall capacity
 - Downstream of Bryan Road
 - Approximately a 500-year rainfall capacity
 - At Smithers Lake
 - Approximately a 2-year rainfall capacity
- Map of the Existing Floodplain – Upper Dry Creek
- History of Dry Creek Study – 2002 Analysis
 - Proposed improvements to reduce 100 year floodplain within city limits of Rosenberg
 - Diversion of upper “one-third” to Brazos River
 - Widening and Deepening Dry Creek
 - Concrete lining
 - Additional culvert cells at road crossings
 - Regional detention at Louise Street
 - Regional detention at Sunset Park
 - Regional detention at FM 2977
- Map with Proposed Improvements – 2002 Analysis
- Map with 2007 Analysis – Research alternative regional detention locations in upper Dry Creek
- Method of Analysis
 - Left proposed conditions hydrology model with future development included
 - Removed Louise Street detention from models
 - Replaced Sunset Park detention with alternate location across from City Hall
 - Modified detention pond at FM 2977 to include future Spacek Road crossing



CITY COUNCIL COMMUNICATION

April 21, 2015

ITEM #	ITEM TITLE
6	Resolution No. R-1960 – BNSF Railway Company Pipeline License
ITEM/MOTION	

Consideration of and action on Resolution No. R-1960, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a Pipeline License related to the North Side Water Line Improvement Project – Phase II, by and between the City and BNSF Railway Company, in the amount of \$6,225.00

FINANCIAL SUMMARY	ELECTION DISTRICT
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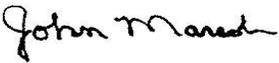
Annualized Dollars:	Budgeted:	<input checked="" type="checkbox"/> District 1
<input checked="" type="checkbox"/> One-time	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<input type="checkbox"/> District 2
<input type="checkbox"/> Recurring		<input type="checkbox"/> District 3
<input type="checkbox"/> N/A	Source of Funds:	<input type="checkbox"/> District 4
	216-1900-540-7031 (CP1505)	<input type="checkbox"/> City-wide
		<input checked="" type="checkbox"/> N/A

SUPPORTING DOCUMENTS:

1. Resolution No. R-1960
2. Jenkins Correspondence – 03-31-15
3. Project Location Map
4. Resolution No. R-1878 – 12-02-14
5. City Council Meeting Minute Excerpt – 12-02-14

MUD #: N/A

APPROVALS

Submitted by:	Reviewed by:	Approved for Submittal to City Council:
	<input checked="" type="checkbox"/> Exec. Dir. of Administrative Services 	
John Maresh Assistant City Manager of Public Services	<input type="checkbox"/> Asst. City Manager of Public Services <input checked="" type="checkbox"/> City Attorney DNRBHZ/rl <input type="checkbox"/> City Engineer <input type="checkbox"/> (Other)	Robert Gracia City Manager

EXECUTIVE SUMMARY

On December 02, 2014, City Council approved Resolution No. R-1878 authorizing the City Manager to execute an Agreement for Community Development Block Grant funding for the North Side Water Line Improvement Project - Phase II (Project). The Project includes the replacement of an existing six (6) inch water line located in the 6th Street right-of-way and 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 the replacement water 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 PVC potable water line within a 20-inch steel casing. The Pipeline License fee is \$5,075.00 plus an additional \$1,150.00 for BNSF's Railroad Protective Liability Insurance for a total amount of \$6,225.00. (The total remittance amount will also include an additional \$150.00 payment for the separate administrative processing fee balance.

Staff and the City Attorney have reviewed the Pipeline License and recommend approval of Resolution No. R-1960 as presented.

RESOLUTION NO. R-1960

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A PIPELINE LICENSE RELATED TO THE NORTH SIDE WATER LINE IMPROVEMENTS PROJECT – PHASE II, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND BNSF RAILWAY COMPANY, IN THE AMOUNT OF \$6,225.00.

* * * * *

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 North Side Water Line Improvements Project – Phase II, by and between the City and BNSF Railway Company in the amount of \$6,225.00.

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:

Anne Stark, **Assistant City Secretary**

Cynthia McConathy, **Mayor Pro Tem**

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, twelve (12) inches in diameter inside a twenty (20) 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 65.63 as shown on the attached Drawing No. 63228, dated March 9, 2015, 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 potable 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 Five Thousand Seventy-Five and No/100 Dollars (\$5,075.00) 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 North 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 occurrence, 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
2301 Lou Menk Drive - GOB-3W
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: _____

EXHIBIT "A"
 ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
 AND



CITY OF ROSENBERG

SCALE: 1 IN. = 100 FT.
GULF DIV.
GALVESTON SUBDIV.
 L.S. 7500 MP 65.63
 DATE 03/09/2015

SURVEY: SCOTT, H



Sources: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogin, IGN, IGH, swisstopo, and the GIS User Community

DESCRIPTION OF PIPELINE
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	<u>12"</u>	<u>20"</u>	LENGTH ON R/W:	<u>260'</u>	<u>260'</u>
CONTENTS:	<u>POTABLE WATER</u>		WORKING PRESSURE:	<u>-</u>	
PIPE MATERIAL:	<u>PVC</u>	<u>STEEL</u>	BURY: BASE/RAIL TO TOP OF CASING		<u>8'</u>
SPECIFICATIONS / GRADE:	<u>C-900 DR-14</u>	<u>AWWA C151 CLASS 52</u>	BURY: NATURAL GROUND		<u>4'</u>
WALL THICKNESS:	<u>0.943"</u>	<u>0.375"</u>	BURY: ROADWAY DITCHES		<u>4'</u>
COATING:	<u>N/A</u>	<u>N/A</u>	CATHODIC PROTECTION		<u>N/A</u>

VENTS: NUMBER N/A SIZE N/A HEIGHT OF VENT ABOVE GROUND N/A
 NOTE: CASING TO BE JACKED OR DRY BORED ONLY

AT ROSENBERG
COUNTY OF FORT BEND

STATE OF TX

JRB



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

March 31, 2015

City of Rosenberg
Attention: Mr. John Maresh
P.O. Box 32
Rosenberg, Texas 77471

15-52096

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 \$5,225.00 (\$5,075-contract fee + \$150 balance of process fee)
payable to BNSF Railway Company which covers the contract and balance of the processing 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. 000164769 in the amount of \$600 for partial 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 \$750.00.

Sincerely,

Annette Jenkins
Senior Manager Permits
Attachment

CITY OF ROSENBERG

BRAZOS RIVER

WOW Cem

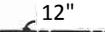
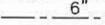
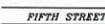
Brazos Park

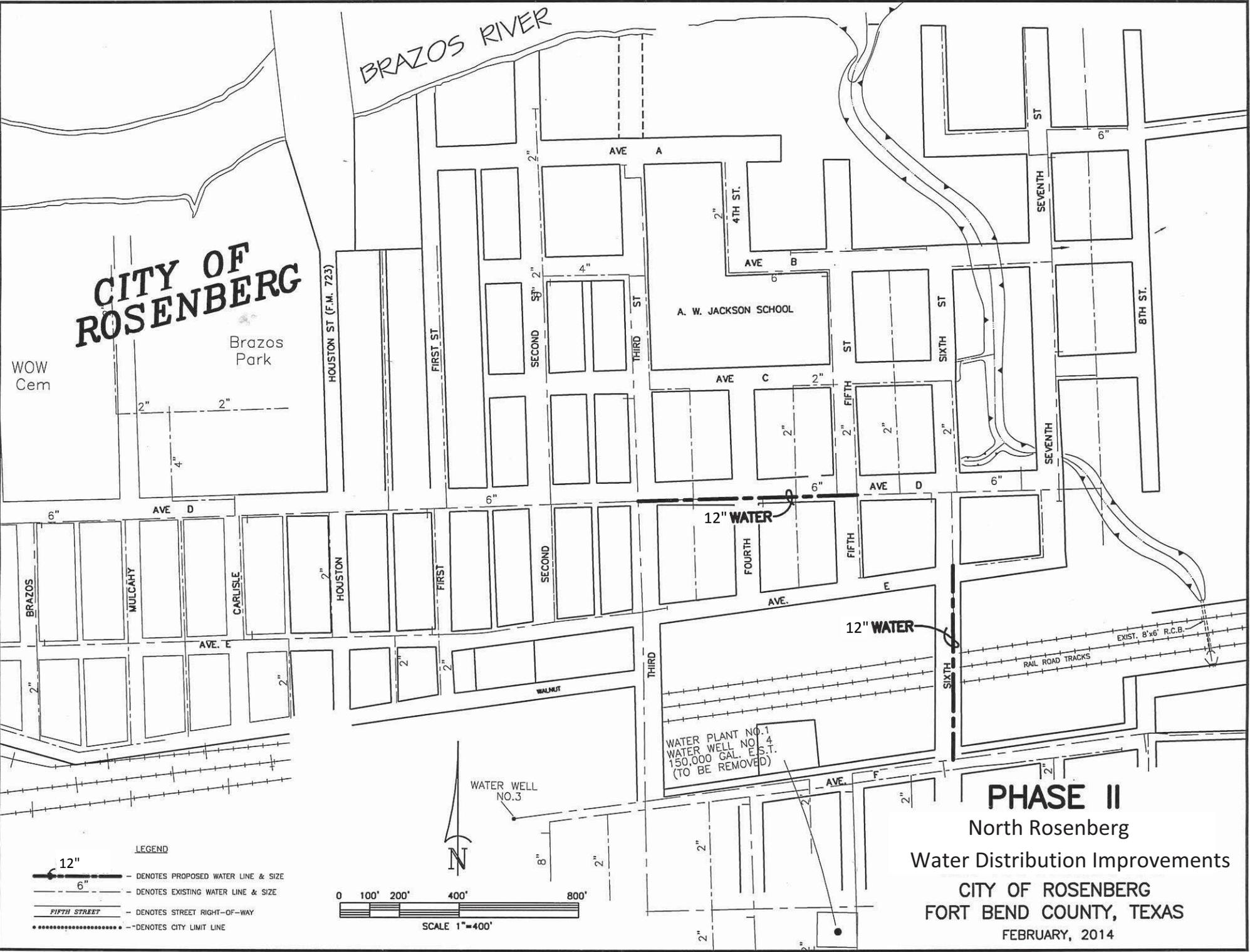
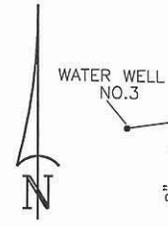
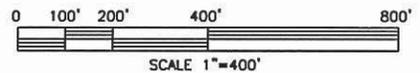
HOUSTON ST (F.M. 723)

A. W. JACKSON SCHOOL

WATER PLANT NO. 1
 WATER WELL NO. 4
 150,000 GAL. E.S.T.
 (TO BE REMOVED)

PHASE II
 North Rosenberg
 Water Distribution Improvements
 CITY OF ROSENBERG
 FORT BEND COUNTY, TEXAS
 FEBRUARY, 2014

- LEGEND**
-  12" - DENOTES PROPOSED WATER LINE & SIZE
 -  6" - DENOTES EXISTING WATER LINE & SIZE
 -  FIFTH STREET - DENOTES STREET RIGHT-OF-WAY
 -  - DENOTES CITY LIMIT LINE



RESOLUTION NO. R-1878

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, AN AGREEMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR WATER LINE IMPROVEMENTS – PHASE II, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND FORT BEND COUNTY, IN THE AMOUNT OF \$210,000.00.

* * * * *

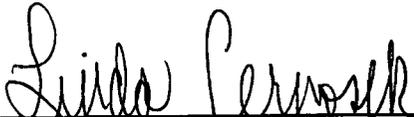
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. The City Manager is hereby authorized to execute an Agreement for funding of Water Line improvements, by and between the City of Rosenberg, Texas, and Fort Bend County, in the amount of \$210,000.00.

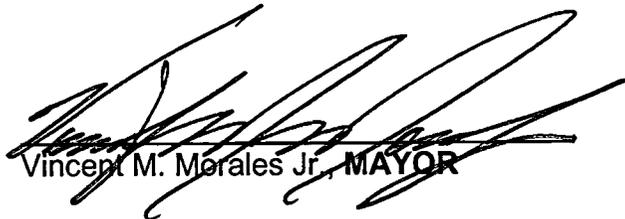
Section 2. A copy of such Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

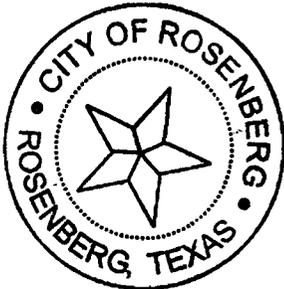
PASSED, APPROVED, AND RESOLVED this 1st day of December 2014.

ATTEST:


Linda Cernosek, CITY SECRETARY

APPROVED:


Vincent M. Morales Jr., MAYOR



AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

This Agreement is by and between the City of Rosenberg, a body corporate and politic under the laws of the State of Texas (hereinafter referred to as City) and Fort Bend County, a body corporate and politic under the laws of the State of Texas (hereinafter referred to as County).

WITNESSETH:

WHEREAS; the County has submitted a Community Development Block Grant to the U. S. Government, application number B-14-UC-48-0004, which has been approved by the U. S. Government through the U. S. Department of Housing and Urban Development:

WHEREAS, the City has agreed to cooperate to be included in the grant application; and,

WHEREAS, included in the approved grant application for the construction of 12" water line at Walnut Street at State Hwy 36N to a new 12" water line crossing 3rd Street at Avenue F and installing a 12" water line that would replace an existing 6" water line at the 6th Street crossing for a total cost of \$210,000.00, hereinafter referred to as the "Project"; and,

WHEREAS, the County is the grantee named in the grant charged with compliance of the federal laws, rules, and regulations relating to the expenditure of funds received from the U. S. Government pursuant to the approved Community Development Block Grant application; and,

WHEREAS, the City is not familiar with such federal laws, rules, and regulations relating to the expenditure of U. S. Government funds under the Community Development Block Grant application; and,

WHEREAS, the County desires to assure compliance with such laws, rules, and regulations relating to the expenditure of funds under the Community Development Block Grant application; and,

WHEREAS, the County and City mutually agree as to the need to expedite this Project as quickly as possible;

NOW, THEREFORE, the County and City do mutually agree as follows:

I.

SCOPE OF AGREEMENT

The County and City agree to construct the Project in accordance with the guidelines, rules, and regulations required by the U. S. Department of Housing and Urban Development (hereinafter referred to as HUD).

II.

DUTIES OF THE COUNTY AND CITY

2.01 The City shall be responsible, at its own expense, for paying for the design of the Project.

2.02 Within ninety (90) days after the date this Agreement is executed by both parties, the City will submit 50% design submittal to the County for the County's review and comments. The County shall review the preliminary plans and specifications and return comments to the City within seven (7) days. Comments will be forwarded to the City for incorporation into the final plans and specifications. Final plans and specifications shall be submitted to the County to ensure compliance with HUD/County technical requirements. The final plans and specifications shall be returned to the County within forty-five (45) days.

2.03 Within forty-five (45) days after approval by the County of final plans and specifications, the City will advertise for and receive bids for the construction of the Project in accordance with the approved plans and specifications in the manner similar to that of other City projects.

2.04 Upon receipt and tabulation of the bids for the Project, City will determine the lowest and best bid for the construction of the Project. In the event the lowest and best bid for the construction of the Project is an amount that would result in the cost of the Project being equal to or less than the sum of the \$221,550.00 (\$210,000.00 CDBG funds plus \$11,550.00 City funds), City will notify County of the amount of the lowest and best bid for the Project. Upon such notification to the County, the County will transmit to the City written notice to proceed.

2.05 In the event the lowest and best bid for the construction of the Project is an amount in excess of the sum of \$221,550.00, the the City will pay the difference between \$221,550.00 and the lowest and best bid up to a maximum of ten percent (10%) of such lowest and best bid. If the amount of then available funds, the \$221,550.00 plus the City's contingency portion, is not sufficient to construct the Project then the parties agrees to reduce the Project scope as necessary to allow the construction of the Project with the available funds. Upon receipt of written notification of the lowest and best bid, the County will notify the City to proceed to let the contract and continue with the construction of the Project.

2.06 The City shall be responsible for the administration of the construction contracts, with the County approving the award of the bid. The City shall, at its own expense, furnish the necessary inspection personnel to assure itself of compliance with the Agreement. The County shall

periodically inspect the Project during construction. The County shall fund the Project as set forth in this Agreement.

2.07 The City and the County, through its Community Development Department Director, may by prior written agreement mutually agree to re-allocate the funds among the various line items of the budget or to new line items created in the budget.

III.

PROJECT COSTS

3.01 For and in consideration of the Project as herein set forth, the County agrees to fund project costs not to exceed the total sum of Two Hundred Ten Thousand and No/100 Dollars (\$210,000.00) as set forth in the Budget for CDBG Funds, which shall be in full and total compensation for payment of all expenses allowed under this Agreement and the Grant Agreement with HUD.

CDBG Budget

Construction	\$210,000.00
Total CDBG Funds	<u>\$210,000.00</u>

City Funds

Construction	\$11,550.00
Engineering	\$39,900.00
Contingency	\$22,155.00
Total City Funds	<u>\$73,605.00</u>

3.02 The County shall not be liable for the payment of expenses or costs, which are not allowable under the terms of this Agreement and the Grant Agreement with HUD.

IV.

PAYMENT

It is expressly agreed and understood that the total amount to be paid by the County under this Agreement shall not exceed Two Hundred Ten Thousand and No/100 Dollars (\$210,000.00). City shall submit an invoice upon delivery of the Project. Such invoice shall include any other documentation requested by the County. All invoices shall be approved by the Fort Bend County Community Development Department prior to payment.

V.

SOURCE OF FUNDING

5.01 The County has no County funds for the costs of goods and services to be rendered under this Agreement. It is expressly agreed and understood that this Agreement is predicated upon and conditioned on the County receiving funds for the purpose of paying the entire obligation of the County under this Agreement from funds to be received from the U. S. Department of Housing and Urban Development, by virtue of Grant No. B-14-UC-48-0004, entitled Community Development Block Grant. Accordingly, notwithstanding anything herein to the contrary, the maximum liability of the County under the terms and provisions of this Agreement shall not exceed \$210,000.00 amount actually received by the County from HUD pursuant to the Block Grant.

5.02 The City admits knowledge of the fact that the County's obligation hereunder for payment of compensation and costs, if any, is limited to Federal funds received pursuant to the Grant Agreement in connection with the Community Development Block Grant Program of the U. S. Department of Housing and Urban Development, and that unless and until adequate funds have been received by the County under the Grant Agreement to pay the City's compensation and expense reimbursement, the County shall have no obligation to the City.

VI.

AGREEMENT DOCUMENTS

6.01 This Agreement includes the following exhibits and such exhibits are attached hereto and made a part hereof for all purposes:

Exhibit A - CDBG Program Requirements

Exhibit B - Certification for Contracts, Grants,
Loans and Cooperative Agreements

Exhibit C - Guidelines for Entity Design, Bidding and Administration of Construction
Projects.

Exhibit D - Project Schedule

6.02 This Agreement and the attached exhibits represent the entire Agreement between the County and the City, and there are no other effective agreements, representations or warranties between the County and the City that are not contained in the Agreement Documents.

VII.

NOTICE

7.01 Unless otherwise provided in this Agreement, any notice provided for or permitted to be given must be in writing and delivered in person or by depositing same in the United States mail, postpaid and registered or certified, addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party. Notice deposited in the mail as described above shall be conclusively deemed to be effective, unless otherwise stated in this Agreement from and after the expiration of three (3) days after it is so deposited.

7.02 For the purpose of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the County, then to:

Honorable County Judge and Commissioners Court
Fort Bend County
c/o Community Development Department
301 Jackson Street
Richmond, Texas 77469

If to the City, then to:

Honorable Mayor and City Council
City of Rosenberg
P.O. Box 32
Rosenberg, Texas 77471

7.03 Each party shall have the right, from time to time at any time, to change its respective address and each shall have the right to specify as its new address, provided that at least fifteen (15) days written notice is given of such new address to the other party.

VIII.

RIGHTS OF TERMINATION

The City or the County, by and through its Director of the Fort Bend County Community Development Department, or the City, may terminate this agreement without cause prior to the City's award of the construction contract by providing thirty (30) days notice. The County may terminate this agreement after the City's award of the construction contract only for cause, by providing thirty (30) days written notice to the City.

IX.

EXECUTION

This Agreement shall become effective upon execution by County. The agreement terminates upon completion of the project, but no later than December 31, 2015.

FORT BEND COUNTY:

Robert E. Hebert, County Judge

Date

ATTEST:

Dianne Wilson, County Clerk

APPROVED AS TO FORM:

Assistant County Attorney

Date

APPROVED: COUNTY PROJECT MANAGER

Marilynn Kindell

Marilynn Kindell, Director
Fort Bend County Community Development Department

CITY OF ROSENBERG:

By _____
City Manager

Date

ATTEST:

City Secretary

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$210,000.00 to accomplish and pay the obligation of the Fort Bend County under this contract.

Robert E. Sturdivant, County Auditor

EXHIBIT A

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM REQUIREMENTS

I.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The City shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Title 24 Code of Federal Regulations Part 1. In accordance with the Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the City receives Federal financial assistance. The City will immediately take any measures necessary to comply with Title VI. If any real property or structure is thereon provided or improved with the aid of Federal financial assistance, this clause shall obligate the city, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. The City will further comply with federal regulations, 24 CFR Part 1, which implement the act.

II.

FAIR HOUSING REQUIREMENTS

The City shall comply with the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100, Part 109, and Part 110. No person in the United States shall, on the basis of race, color, religion, sex, national origin, handicap or familial status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds.

III.

EXECUTIVE ORDER 11063

The City shall comply with Executive Order 11063 as amended by Executive Order 12259 and as contained in 24 CFR Part 107. City will take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities area, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government.

IV.

SECTION 109 OF THE COMMUNITY DEVELOPMENT ACT OF 1974

The City shall comply with Section 109 of the Community Development Act of 1974, in that no person in the United States shall on the ground of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds.

V.

EXECUTIVE ORDER 11246

The City shall comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (451 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally-assisted construction contracts.

City agrees that Contractors and subcontractors on Federal or federally-assisted construction contracts shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

VI.

RELOCATION, ACQUISITION & DISPLACEMENT

The City agrees to comply with 24 CFR 570.606 relating to the acquisition and disposition of all real property utilizing grant funds, and to the displacement of persons, businesses, nonprofit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds. The City agrees to comply with applicable Grantee Ordinances, Resolutions, and Policies concerning displacement of individuals from their residences.

VII.

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

The City shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

- A. The City shall, to the greatest extent feasible, give opportunities for training and employment to lower-income residents of the County and shall award contracts for work in connection with the Project to business concerns which are located in or owned in substantial part by persons residing in the County.
- B. The City shall include the phrase in paragraph A in all contracts for work in connection with this project.

VIII.

LEAD-BASED PAINT

The City agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, and in particular Sub-Part B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning.

IX.

USE OF DEBARRED, SUSPENDED OR INELIGIBLE CITIES

The City shall not use assistance to directly or indirectly employ, award contracts to, or otherwise engage the services of, or fund any City or subCity during any period of debarment, suspension or placement in ineligibility status under provisions of 24 CFR Part 24.

X.

UNIFORM ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPALS

The City and its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 and OMB Circulars A-87, A-110 (implemented at 24 CFR Part 84), A-122, A-133 (implemented at 24 CFR Part 45), and A-128² (implemented at 24 CFR Part 44) as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR Parts 84 and 85 are set forth at 570.502.

XI.

CONFLICT OF INTEREST

- A. No member of or delegate to the Congress of the United States, and no resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit direct or indirect which arises from the Agreement.
- B. In accordance with 24 CFR Part 570.611, no persons described in paragraph C who exercise or have exercised any functions with respect to CDBG activities or who are in a position to participate in a decision making process or gain inside information with regard to CDBG activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- C. The requirements of paragraph B apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the County, City, and of any designated public agency, or subrecipient under 24 CFR Section 570.20 which receives funds under the CDBG grant agreement with HUD.

XII.

ELIGIBILITY RESTRICTIONS FOR CERTAIN RESIDENT ALIENS

The City agrees to abide by the provisions of 24 CFR 570.613 with respect to the eligibility restrictions for certain resident aliens. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in this part of the regulation. The Grantee shall provide the City with any guidelines necessary for compliance with that portion of the regulation.

XIII.

ARCHITECTURAL BARRIERS ACT AND AMERICANS WITH DISABILITIES ACT

The City agrees to comply with any federal regulations issued pursuant to compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) which requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with the standards that insure accessibility to, and use by, physically handicapped people. The City also agrees to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities Act (42 U.S.C. 12131 U.S.C. 155, 201, 218 and 225) which provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. The Grantee shall provide the City with any guidelines necessary for compliance with that portion of the regulation in force during the term of this Agreement.

XIV.

MINORITY AND WOMEN'S BUSINESS ENTERPRISES

The City shall comply with Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the City must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

XV.

DISCRIMINATION ON THE BASIS OF AGE OR HANDICAP

The City shall not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 61-1-07) and implementing regulations at 24 CFR part 146. The City shall not discriminate against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

XVI.

RECORDS FOR AUDIT PURPOSES

Without limitation to any other provision of this Agreement, the City shall maintain all records concerning the Project that will facilitate an effective audit to determine compliance with program requirements. Records shall be kept for three (3) years from the expiration date of the Agreement. The City will give the County, HUD, and the Comptroller General of the United States, the General Accounting Office or any of their authorized representatives access to and the right to examine, copy or reproduce all records pertaining to the acquisition and construction of the Project and the operation of the Project. The right to access shall continue as long as the records are required to be maintained.

XVII.

DRUG FREE WORKPLACE ACT OF 1988

The City shall comply with the Drug Free Workplace Act of 1988 and certify that it will maintain a drug-free workplace in accordance with the requirements of 24 CFR part 24, subpart F.

EXHIBIT B

**Certification for Contracts, Grants, Loans
and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making for entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ date of _____, 20____.

By _____
(signature)

(typed or printed name)

(title, if any)

Covered Action: COMMUNITY DEVELOPMENT BLOCK GRANT
(type and identity of program, project or activity)

EXHIBIT C

GUIDELINES FOR ENTITY DESIGN, BIDDING AND ADMINISTRATION OF CONSTRUCTION PROJECTS

These guidelines are intended to assist those public entities receiving Fort Bend County Community Development Block Grant Funds. The guidelines will facilitate the entity's understanding and compliance with applicable federal and county regulations, policies and processes where the entity is responsible for design, bidding, and construction administration phases of a project. Included as a part of this exhibit are Appendices 1, 2 and 3. If clarification is needed, call Karen Bringol, Assistant Project Coordinator, Fort Bend County Community Development Department (CDD), (281) 341-4410.

1. The entity must submit the proposed consultant's SF 254 and 255 or SF 330 qualification statements and professional liability insurance certification for approval prior to commissioning the consultant.
2. Upon approval by CDD the entity may retain consultant services.
3. The schematic design must be within the previously approved project scope.
4. Preliminary plans and outline specifications shall be submitted to CDD to review for compliance with project scope, estimated cost and constructability. Comments will be returned to the consultant for incorporation into the final plans. Final plans will be submitted to the County and will be reviewed to ensure compliance with HUD/County technical requirements and to insert County-related documents. Corrections and comments will be returned to the consultant for revisions. Final documents must be approved by CDD.
5. Prior to award of contract, CDD and the County Engineer's Office will review the bid documents, the bidder's qualification statements, minority business plan and financial statements to ensure that the City has a good contracting record, adequate capitalization and/or equipment, etc., to successfully complete the project, meets minority participation goals and that the bidder has not been debarred by HUD from working on federal contracts.
6. The Entity shall conduct a prebid meeting (if necessary) and a preconstruction conference with the City(s), consultant, and CDD representatives in attendance.
7. Inspection will be the responsibility of the Entity. The County Engineer will periodically inspect construction.

8. The Entity will be responsible for preparing monthly pay estimates. Preparation will consist of a site meeting with the Entity and/or consultant and the City's representative to accurately determine the percentage completion of various components of the work and time used. The monthly estimate is based on a previously submitted and approved schedule of values. Upon completion of the final draft of each monthly estimate, the consultant will be required to sign same. The estimates will then be reviewed by the County Engineer and processed through CDD, County Auditor and the County Treasurer.
9. All requests for changes in contract will be processed by the Entity. All change requests must be within the original scope of work and be approved by CDD prior to processing. No person will have authority to verbally alter, modify, expand or reduce the requirements of the drawings or specifications. All modifications affecting cost, scope, quality or time shall be made part of the contract by a "Change-In-Contract" approved by the Entity. All change orders required due to errors and/or omissions by the consultant will be paid for by the Entity. Total aggregate Changes In Contract will not exceed twenty-five percent (25%) of the original contract amount.
10. CDD will review all payrolls and conduct working interviews and will hold the general City responsible for compliance with labor, EEO and minority business requirements.

APPENDIX 1

I. PROCEDURES FOR SUBMITTING ENGINEERING PROPOSALS

Fort Bend County's Community Development Department requires that engineering firms submitting qualification statements do so in the manner prescribed below. This information should substantiate the capacity and ability of the firm and its staff to perform this type of engineering work. It is also important to list projects completed of a similar nature that demonstrate this capability. Any proposal submitted without all of the information requested below will be considered as non-responsive.

- A. Submit one (1) copy of information on the firm in the form of a corporate resume, including SF 254 and SF 255 or SF 330 Forms.
- *B. Submit one (1) copy of current project activities of a similar nature being undertaken by your firm (including dollar amount and contact persons).
- *C. Submit any other pertinent information on the firm's ability to carry out the contractual responsibilities; including such things as equipment, use of sub-contracts, and special knowledge of the project area or activity being considered.
- *D. Provide a list of persons, and their classification, who will be assigned to this job.
- *E. Provide a resume of all employees who will be assigned to this project, including a listing of projects having similar work.
- F. Provide a detailed scope of work on how you propose to handle this type of construction. The scope of work should contain categories for initial site investigation, submission of preliminary plan (construction drawings) for review, correction of revisions which result from said review, technical specifications, easement drawings/legal descriptions, and meetings as may be required.
- G. Provide a list of subcontractors to be employed (if known) and whether these firms are minority or female owned.
- H. Submit one (1) copy of the Proposal Summary (Appendix 2).
- I. Submit one (1) copy of the Certification for Contracts, Grants, Loans and Cooperative Agreements (Appendix 3).

*NOTE: It is not necessary to re-list data already included on the SF 254 and SF 255 or SF 330 forms.

II. SELECTION CRITERIA

The award of the contract for engineering services required by this Request for Proposal shall be determined by analysis of, but not necessarily limited to, the following factors:

- A. Documented evidence of qualifications, resources and experience of the proposing firm to perform the required services;
- B. Commitment by the proposing firm to complete the construction plans, documents, design surveys and easement descriptions within the required time.
- C. Other factors as deemed appropriate, including a review of the items submitted under Section I. PROCEDURES FOR SUBMITTING ENGINEERING PROPOSALS.

III. MBE/WBE PARTICIPATION

Where possible, engineering firms are encouraged to utilize the skills and services of minority businesses in the fulfillment of the contractual responsibilities pertaining to this project.

IV. ENGINEERING SERVICES

The City shall enter into a contract for engineering services as listed below:

1. The Engineer will be responsible for ascertaining the scope of improvements outlined in this report (scope of work) and developing a Layout and Cost Estimate. The Engineer should recommend alternative layouts if field investigations identify additional problems not covered in the original scope of work.
2. Upon direction of the City, the Engineer will prepare construction plans and documents as required so as to install the scope of work identified in this report.
3. The Engineer will identify and prepare easement/right-of-way descriptions if necessary.

APPENDIX 2

PROPOSAL SUMMARY

(Include with proposal after selection of engineer)

- 1. Engineer (Firm Name) _____
- *2. P.E. Hours _____
- *3. Minority/Female Hours _____
- *4. Total Hours _____

*These are total estimated hours for the entire project. The data requested here is in addition to the breakdowns called for in Section 1 (D & F), PROCEDURES FOR SUBMITTING PROPOSALS.

APPENDIX 3

Certification for Contracts, Grants, Loans
and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making for entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____, date of _____, 20____.

By _____
(signature)

(typed or printed name)

(title, if any)

Covered Action: COMMUNITY DEVELOPMENT BLOCK GRANT
(type and identity of program, project or activity)

Mk-dw Rosenberg 2013 contract

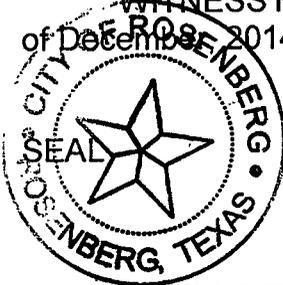


CERTIFICATION

I, Linda Cernosek, City Secretary of the City of Rosenberg, Texas, do hereby certify that I am the custodian of the records of the City of Rosenberg, Texas, and that the attached is a true and correct copy of Resolution No. R-1878, "A Resolution of the City Council of the City of Rosenberg, Texas Authorizing the City Manager to execute, for and on behalf of the City of Rosenberg, Texas, An Agreement for Community Development Block Grant Funding for Water Line Improvements – Phase II, by and between the City of Rosenberg, Texas, and Fort Bend County, in the amount of \$210,000.00."

Resolution No. R-1878 was approved by the City of Rosenberg City Council on the 2nd day of December, 2014.

WITNESS MY HAND and official Seal of the City of Rosenberg, Texas this 3rd day of December, 2014.

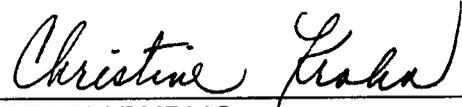


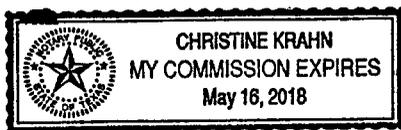

Linda Cernosek, TRMC, City Secretary
City of Rosenberg, Texas

**THE STATE OF TEXAS
COUNTY OF FORT BEND**

Before me, the undersigned authority, on this day personally appeared Linda Cernosek, City Secretary of the City of Rosenberg, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 3rd day of December, 2014, A.D.


NOTARY PUBLIC
IN AND FOR THE STATE OF TEXAS



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 OCTOBER 21, 2014, AND REGULAR MEETING MINUTES FOR NOVEMBER 04, 2014.

B. CONSIDERATION OF AND ACTION ON A FINAL PLAT OF WALNUT CREEK SECTION SEVEN, A SUBDIVISION OF 9.621 ACRES CONTAINING 3 BLOCKS, 31 LOTS, AND 1 RESTRICTED RESERVE OUT OF THE EUGENE WHEAT SURVEY, A-396, FORT BEND COUNTY, TEXAS.

Executive Summary: The Final Plat of Walnut Creek Section Seven is a proposed subdivision consisting of 9.621 acres and thirty-one (31) residential lots located off of Irby Cobb Boulevard in the north central part of the Walnut Creek Development. The proposed Plat is located in the Extraterritorial Jurisdiction (ETJ) and in Fort Bend County MUD No. 152. It adjoins Walnut Creek Section Four to the immediate west.

The subdivision generally consists of sixty-foot (60') lots in accordance with the approved Land Plan for Walnut Creek. Four (4) of the lots are identified as being less than 60' lots due to being less than fifty feet (50') as measured at the right-of-way. All lots are a minimum of 60' as measured at the front building line. Additionally, the subdivision contains a 1.366-acre landscape reserve abutting the future Irby Cobb right-of-way.

The proposed Final Plat is not in conflict with the "Subdivision" Ordinance, the approved Land Plan, or with the Development Agreement for MUD No. 152. Additionally, the Planning Commission approved the Preliminary Plat on February 26, 2014, and an extension of that approval was granted by the Planning Commission on September 17, 2014. The Planning Commission recommended approval to City Council of the Final Plat of this subdivision on October 15, 2014. Staff recommends approval of the Final Plat of Walnut Creek Section Seven.

Action: Councilor McConathy made a motion, seconded by Councilor Barta to approve the Consent Agenda with a correction to Item A - October 21, 2014, Council Meeting Minutes. The motion carried by a unanimous vote of those present.

REGULAR AGENDA

2. CONSIDERATION OF AN ACTION ON RESOLUTION NO. R-1878, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, AN AGREEMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR WATER LINE IMPROVEMENTS – PHASE II, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND FORT BEND COUNTY, IN THE AMOUNT OF \$210,000.00.

Executive Summary: On March 18, 2014, City Council approved the Community Development Block Grant (CDBG) Fund application for the design and construction of a water line improvement project named North Side Water Line Improvements – Phase II (Project). CDBG is providing \$210,000.00 for the construction of the Project and the City will provide local matching funds in the amount of \$73,605.00 for construction, engineering services and contingencies. The Project will address an aging and undersized infrastructure deficiency in water pressure and water volume and will improve potable water service and fire protection service 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.

The Agreement, attached as Exhibit "A" to Resolution No. R-1878, is the standard Agreement issued by CDBG. Staff recommends approval of Resolution No. R-1878 providing authorization for the City Manager to execute the Agreement.

Key discussion points:

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

Action: Councilor McConathy made a motion, seconded by Councilor Euton to approve Resolution No. R-1878, a Resolution authorizing the City Manager to execute, for and on behalf of the City, an Agreement for Community Development Block Grant Funding for Water Line Improvements – Phase II, by and between the City of Rosenberg, Texas, and Fort Bend County, in the amount of \$210,000.00. The motion carried by a unanimous vote of those present.

3. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1880, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, A CONTRACT FOR ENGINEERING SERVICES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDED NORTH SIDE WATER LINE IMPROVEMENTS – PHASE II, BY AND BETWEEN THE CITY AND KELLY R. KALUZA AND ASSOCIATES, INC., IN THE AMOUNT OF \$39,900.00.**

Executive Summary: The CDBG program is administered through the Fort Bend County Community Development Department on an annual basis to qualified organizations and municipalities. The City received CDBG funding from Fort Bend County for Phase II of this water line project to serve the north side of Rosenberg. The City match is to provide for engineering services and a portion of the construction costs. CDBG engineering procurement guidelines are followed in the selection process. The scope of engineering services is better described in a memorandum attached in the agenda packet.

The City issued a Request for Qualifications (RFQ) for engineering services on this project. Advertisements were placed in the local newspaper and posted on the City website. Statements of Qualifications (SOQs) were received from three (3) engineering firms by the Wednesday, November 05, 2014 deadline. The proposal was received by staff and a checklist was used to ensure all CDBG criteria were met. Using the checklist, the review is based on (1) the firm's familiarity with the project scope, (2) qualifications and experience of the team representatives to be assigned to this project; and (3) previous experience on projects with similar scope. Based on this review, staff recommends Kelly R. Kaluza & Associates, Inc., based on their first hand experience and knowledge of the proposed project. Kelly R. Kaluza & Associates, Inc., has previously been selected for engineering services on prior CDBG projects for the City.

Staff recommends approval of Resolution No. R-1880, a Resolution authorizing the City Manager to execute a Contract for Engineering Services for the CDBG Phase II Water Line Improvements Project, by and between the City and Kelly R. Kaluza and Associates, Inc., in the amount of \$39,900.00. A copy of the Agreement is attached to Resolution No. R-1880 as Exhibit "A".

Key discussion points:

- John Maresh read the Executive Summary.

Action: Councilor Benton made a motion, seconded by Councilor Barta to approve Resolution No. R-1880, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a Contract for Engineering Services for the Community Development Block Grant funded North Side Water Line Improvements – Phase II, by and between the City and Kelly R. Kaluza and Associates, Inc., in the amount of \$39,900.00. The motion carried by a unanimous vote of those present.

4. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1883, A RESOLUTION AWARDED BID NO. 2014-21 FOR CONSTRUCTION OF THE 2014 SANITARY SEWER PIPEBURSTING PROJECT; AND, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY, APPROPRIATE DOCUMENTS AND/OR AGREEMENTS REGARDING SAME.**

Executive Summary: Bids were received on Wednesday, November 19, 2014, for the 2014 Sanitary Sewer Pipebursting Project (Project). A total of three (3) bids were opened and tabulated as indicated on the bid summary form.

Staff recommends Bid No. 2014-21 be awarded to PM Construction and Rehab, LLC, for the Base Bid and Alternate Bids No. 1 and No. 2 in the total amount of \$2,570,570.00. The attached correspondence from Kelly R. Kaluza, Project Engineer, recommends same. Should the bid be awarded as recommended, the proposal from PM Construction and Rehab, LLC, will be attached and serve as Exhibit "A" to Resolution



CITY COUNCIL COMMUNICATION

April 21, 2015

ITEM #	ITEM TITLE
7	Ordinance No. 2015-12 – “Junked Vehicle” Ordinance

ITEM/MOTION

Consideration of and action on Ordinance No. 2015-12, an Ordinance amending the Code of Ordinances by amending Chapter 14 – Health, Sanitation and Nuisances, Article VI – Junked Vehicles; providing for penalties; providing for a cumulative and conflicts clause; providing a severability clause; and providing an effective date.

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

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

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

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

1. Ordinance No. 2015-12 – Redlined Exhibit “A” only
2. Ordinance No. 2015-12
3. City Council Meeting Minute Excerpt – 01-27-15

APPROVALS

Submitted by:**Scott Tschirhart/rl**Scott Tschirhart
City Attorney**Reviewed by:**

- Exec. Dir. of Administrative Services
- Asst. City Manager of Public Services
- City Attorney
- City Engineer
- Exec. Dir. of Community Development TLT
- Building Official JRP

Approved for Submittal to City Council:

 Robert Gracia
 City Manager

EXECUTIVE SUMMARY

At the January 27, 2015 Workshop Meeting, City Council requested specific revisions to the “Junked Vehicle” Ordinance. These revisions are included in Ordinance No. 2015-12. A redlined version is also attached to allow City Council to review the previous Code with the changes as presented in Ordinance No. 2015-12.

Staff recommends approval of Ordinance No. 2015-12 as presented.

ROSENBERG CODE OF ORDINANCES
CHAPTER 14 – HEALTH, SANITATION AND NUISANCES
ARTICLE VI. - JUNKED VEHICLES

Sec. 14-111. - Definitions.

For the purpose of this article, the following words shall have the meanings ascribed to them by this section:

Antique motor vehicle shall mean a passenger car or truck that is at least thirty-five (35) years old.

Code Officer means the Code Enforcement Officer of the City or other regularly salaried, full-time employee of the City working under the supervision of the Building Official to enforce this article.

Inoperable means a vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured, regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled or partially dismantled it is presumed to be inoperable.

Junked vehicle shall mean a vehicle that is self-propelled as defined in Section 683.071, Transportation Code, Vernon's Texas Civil Statutes, as amended, and meets two of the following three requirements:

- (1) Does not have lawfully attached to it:
 - a. An unexpired license plate; or
 - b. A valid motor vehicle inspection certificate;
- (2) Is wrecked, dismantled or partially dismantled, or discarded; or
- (3) Is inoperable and has remained inoperable for more than:
 - a. ~~Seventy-two (72)~~Twenty four (24) consecutive hours, if the vehicle is on public property; or
 - b. ~~Thirty (30)~~Fifteen (15) consecutive days, if the vehicle is on private property.

Motor vehicle collector shall mean a person who:

- (1) Owns one (1) or more antique or special interest vehicles; and
- (2) Acquires, collects, or disposes of antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

Special interest vehicle shall mean a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

Sec. 14-112. ~~— Exceptions~~Deemed public nuisance; declared unlawful.

~~A junked vehicle that is located in a place where it is visible from a public place or public right-of-way is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, and is detrimental to the economic welfare of the city by producing urban blight which is adverse to the maintenance and continuing development of the city, and is declared a public nuisance.~~

~~The provisions of this article applicable to junked motor vehicles shall not apply to:~~

- ~~(1) Any motor vehicle in operable condition specifically adapted or constructed for racing or operation on privately owned drag strips or raceways;~~
- ~~(2) Any motor vehicle stored as the property of a member of the armed forces of the United States who is on active duty assignment.~~

Sec. 14-113. - ~~Deemed public nuisance; declared unlawful~~Exceptions.

~~A junked vehicle that is located in a place where it is visible from a public place or public right-of-way is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, and is detrimental to the economic welfare of the city by producing urban blight adverse to the maintenance and continuing development of the city, and is a public nuisance. This section shall not apply with regard to~~The following vehicles or parts thereof are excepted from the provisions of this ordinance:

- (1) A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;
- (2) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with a business of a licensed vehicle dealer or licensed junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:
 - a. Maintained in an orderly manner; and
 - b. Do Not constitute a health hazard; and
 - c. Are Sscreened from ordinary public view by appropriate means, including a fence, ~~rapidly growing~~ trees, or shrubbery.

- (3) Any motor vehicle stored as the property of a member of the armed forces of the United States who is on active duty assignment.

Sec. 14-114. - ~~Notice to owner to abate nuisance—When on occupied premises~~Offense.

- (1) A person commits an offense if the person maintains a public nuisance as described by this article.
- (2) An offense under this article is a misdemeanor punishable by a fine not to exceed two hundred dollars (\$200.00). Each day a violation is permitted to exist shall constitute a separate offense.
- (3) The municipal court shall order abatement and removal of the nuisance on conviction.
- ~~(a) Whenever a public nuisance exists on public property, on occupied premises, or on the public right-of-way adjacent to occupied premises within the city in violation of section 14-113, the city manager or his designee shall send notice to the owner of the junked vehicle and the owner or occupant of the premises where the nuisance exists if on private property, or the owner or occupant of the premises adjacent to the public right-of-way on which the nuisance exists. If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, hand delivered. The notice shall state the following:~~
- ~~(1) The nature of the public nuisance and location;~~
- ~~(2) That it must be abated and removed within ten (10) days;~~
- ~~(3) That if a hearing is desired before the removal of that vehicle or vehicle part, a request for such hearing shall be made before the expiration of the ten-day period; and~~
- ~~(4) That the owner shall request, either in person or in writing, the clerk of the municipal court to set a date and time of hearing.~~
- ~~(b) The notice must be mailed, by certified mail with a five-day return requested, to the last known registered owner of the junked motor vehicle, any lienholder of record, and the owner or occupant of the private property, public property, or public right-of-way on which the public nuisance exists. If any notice is returned undelivered by the United States Post Office, official action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of return.~~

Sec. 14-115. ~~— Same—When on unoccupied premises~~Procedures for abating a nuisance.

The city's procedures for the abatement and removal of a junked vehicle or a part of a junked vehicle as a public nuisance from private property, public property or public rights-of-way are set out in this section.

- (1) Procedures for abatement and removal of a public nuisance may be administered by the Code Enforcement Officer, or another regularly salaried, full-time employee of the City of Rosenberg designated by the City Manager to enforce this Article, except that any authorized person may remove the nuisance.
 - (2) Pursuant to the procedures established by this section, the person authorized to administer these procedures may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.
 - (3) The municipal court may issue necessary orders to enforce an action taken by the Code Officer, under this section, pursuant to Tex. Transp. Code Ann. § 683.074.
 - (4) Once a proceeding for the abatement and removal of the public nuisance has commenced under this section, the relocation of a junked vehicle that is a public nuisance to another location within the City has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.
 - (5) In the event that the City removes a junked vehicle from private or public property pursuant to this section, the Code Officer shall provide notice to the Texas Department of Transportation, identifying the vehicle or part of the vehicle being removed, not later than the fifth day after the date of removal.
 - (6) A junked vehicle removed pursuant to the provisions of this section may not be reconstructed or made operable after removal.
- ~~(a) Whenever a public nuisance exists on unoccupied premises or on the public right-of-way adjacent to the unoccupied premises within the city in violation of section 14-113, and the owner can be found, the city manager or his designee shall send notice to the owner of the junked vehicle and the owner of the unoccupied premises where the nuisance exists if on private property, or the owner of the unoccupied premises adjacent to the public right-of-way on which the nuisance exists. If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, hand delivered. The notice shall state the following:~~
- ~~(1) The nature of the public nuisance and location;~~
 - ~~(2) That it must be abated and removed within ten (10) days;~~
 - ~~(3) That if a hearing is desired before the removal of that vehicle or vehicle part, a request for such hearing shall be made before expiration of the ten-day period;~~
~~and~~

~~(4) That the owner shall request, either in person or writing, the clerk of the municipal court to set a date and time of hearing.~~

~~(b) The notice must be mailed, by certified mail with a five-day return requested, to the last known registered owner of the junked motor vehicle, any lienholder of record, and the owner of the unoccupied private property, or public property, or public right-of-way on which the public nuisance exists. If any notice is returned undelivered by the United States Post Office, official action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of return.~~

Sec. 14-116. ~~— Motor vehicle description~~Notice of nuisance.

The Code Officer shall give not less than 10 days, before an abatement action, written notice stating the nature of the public nuisance. The notice must be personally delivered, sent by certified mail with a five-day return requested, or delivered by the United States Postal Service with signature confirmation service to:

(1) the last known registered owner of the nuisance;

(2) each lienholder of record of the nuisance; and

(3) the owner or occupant of:

a. the property on which the nuisance is located; or

b. if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

(4) Any notice requiring the removal of a vehicle or part thereof shall include a description of the vehicle and the correct identification number of the vehicle, if available at the site.

a. The notice must state:

i. that the nuisance must be abated and removed not later than the 10th day after the date on which the notice was personally delivered or mailed; and

ii. any request for a hearing before the Municipal Court must be made before the 10th day after the date on which the notice was personally delivered, or mailed.

iii. If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located,

personally delivered.

- iv. If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

~~Any notice requiring the removal of a vehicle or part thereof shall include a description of the vehicle and the correct identification number of the vehicle, if available at the site.~~

Sec. 14-117. - Hearing in municipal court—Preliminaries.

- (1) A citation may be issued and a complaint may be filed in the Municipal Court of the City of Rosenberg for the violation of maintaining a public nuisance, if the nuisance is not removed and abated and a hearing is not requested within the ten (10) day period provided in Subsection 14-116.
- (2) The Municipal Court Judge shall conduct a hearing pursuant to Texas Transportation Code Section 683.075(a)(3), not earlier than the 11th day after the date of the service of notice.
- (3) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
- (4) If the information is available at the location of the nuisance, an order requiring removal of the nuisance must include the vehicle's:
- a. description;
 - b. vehicle identification number; and
 - c. license plate number.

~~If a hearing is requested within ten (10) days after service of the notice, a public hearing shall be held not earlier than the 11th day after the date of the service of notice before the vehicle or vehicle part is removed. The hearing shall be held before the municipal judge.~~

Sec. 14-118. — ~~Same—Findings of judge; penalty~~Disposal of junked vehicles.

- (1) A junked vehicle or part thereof may be disposed of by removal to a scrapyard, a motor vehicle demolisher, or any suitable site operated by the City, for processing as scrap or salvage pursuant to authority provided in the Texas Transportation Code, § 683.078 or any successor statute for junked vehicle disposal.
- (2) Any proceeds from the transfer of the junked vehicle or part thereof to the site authorized by this section shall be used to reimburse the city for all costs incurred in the notification, investigation, hearing, and disposal procedures (including any and all variable towing and disposal fees from

contracted sources) within this article. Any remaining proceeds shall be transferred to the lienholder of record or, if none, the owner of record.

- ~~(a) The municipal judge shall conduct the trial brought before the municipal court and shall determine whether the defendant is in violation of section 14-113. Upon finding that the defendant is in violation of such section, the defendant shall be deemed guilty of a misdemeanor and subject to a fine in accordance with section 683.073 of the Texas Transportation Code. The municipal judge shall further order such defendant to remove and abate such nuisance within ten (10) days. If the defendant shall fail and refuse to abate or remove the nuisance, the municipal judge may issue an order directing the city manager or his designee to have the same removed, and the city manager or his designee shall take possession of the junked vehicle and remove it from the premises. The city manager or his designee shall thereafter dispose of the junked vehicle in such manner as the city council may provide.~~
- ~~(b) If a trial is not requested within the ten-day period and the nuisance is not removed and abated by the persons notified, the municipal judge shall issue an order directing the city manager or his designee to have the same removed, and the city manager or his designee shall take possession of the junked motor vehicle and remove it from the premises. The city manager or his designee shall, thereafter, dispose of the junked motor vehicle in such manner as the city council may provide.~~

Sec. 14-119. -- Removal—With the permission of the ownerEffect of act on other laws.

Nothing in this Article shall affect laws that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic, or laws that establish procedures for taking possession of abandoned motor vehicles.~~If, within ten (10) days after receipt of notice from the city manager or his designee to abate the nuisance as herein provided, the owner of the junked motor vehicle or owner or occupant of the premises shall give his written permission to the city manager or his designee for removal of the junked motor vehicle from the premises, the giving of such permission shall be considered compliance with the provisions of this article.~~

Sec. 14-120. – Removal – With the permission of owner.

If, within ten (10) days after receipt of notice from the Code Enforcement Officer to abate the nuisance as herein provided, the owner of the junked motor vehicle or owner or occupant of the premises shall give his written permission to the City for removal of the junked motor vehicle from the premises, the giving of such permission shall be considered compliance with the provisions of this article.

Sec. 14-120. - Same—From public property, occupied or unoccupied premises by court order.

~~If there is a junked motor vehicle on public property, or private premises that are occupied or unoccupied, or on the public right-of-way adjacent to the occupied or unoccupied premises, and the owner or occupant of the premises cannot be found and notified to remove the vehicle, then, upon a showing of facts to the municipal judge, the court may issue an order to the city manager or his designee to take possession of the junked motor vehicle and remove it. If the notice required in sections 14-114 and 14-115 is returned undelivered by the United States Post Office, then after ten (10) days from the date of return, the court may issue an order to the city manager or his designee to have the junked motor vehicle removed, and the city manager or his designee shall take possession of the vehicle and remove it. The city manager or his designee shall thereafter dispose of the junked motor vehicle in the manner provided by the city council, consistent with state law, and the vehicle shall not be reconstructed or made operable.~~

~~Sec. 14-121. - Disposal of junked vehicle.~~

~~(a) — If a public nuisance is not abated by the owner or occupant after notice is given in accordance with this article, official action shall be taken by the city to abate such nuisance. Junked vehicles or parts thereof may be disposed of by removal to a scrapyard, demolishers, or any suitable site operated by the city, which removal process shall be consistent with this article. A junked vehicle disposed of to a demolisher in accordance with this article must be transferred to such demolisher by a form acceptable to the state highway department. The transfer receipt must be listed on the demolisher's inventory list and surrendered to the state highway department in lieu of the certificate of title under the provision of the Texas Transportation Code, chapter 501.~~

~~(b) — After a vehicle has been removed pursuant to this article, it shall not be reconstructed or made operable by any person.~~

~~(c) — Notice shall be given to the state highway department within five (5) days after the date of removal identifying the vehicle or part thereof.~~

~~Sec. 14-122. - Authority to enforce.~~

~~The chief of police or his designee may enter upon private property for the purposes specified in this article to examine vehicles or parts thereof and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this article. The municipal court shall have authority to issue all orders necessary to enforce such article.~~

~~Secs. 14-123—14-135. - Reserved. Secs. 14-121 – 14-135. – Reserved.~~

ORDINANCE NO. 2015-12

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, BY AMENDING CHAPTER 14 – HEALTH, SANITATION AND NUISANCES, ARTICLE VI – JUNKED VEHICLES; PROVIDING FOR PENALTIES; PROVIDING FOR A CUMULATIVE AND CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Rosenberg in accordance with its inherent authority as a home rule city, and the authorization of Texas statutes, including but not limited to Texas Transportation Code Chapter 683, Subchapter E, is authorized to regulate junked vehicles; and,

WHEREAS, City Council finds that the presence of junked vehicles in the City of Rosenberg is detrimental to the health, safety and welfare and reasonable comfort of its citizens; and,

WHEREAS, City Council finds that in the absence of corrective measures, junked vehicles may a cause a deterioration of property values; a curtailment in investment and tax revenue; and an impairment of economic values in the City; and,

WHEREAS, City Council finds that it is necessary to amend the City’s regulations relating to the storing of junked vehicles within the City’s corporate limits to better protect the health, safety, and general welfare of the residents of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Code Amended. Chapter 14, Article VI of the City of Rosenberg Code of Ordinances is hereby amended by replacing the existing language in Sections 14-111 to 14-135 in its entirety with the language set out in Exhibit “A” attached hereto and incorporated for all purposes herein.

Section 3. Cumulative and Conflicts. This Ordinance shall be cumulative of all provisions of ordinances of the City of Rosenberg, Texas, except where the provisions of the Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Any and all previous versions of this Ordinance to the extent that they are in conflict herewith are repealed.

Section 4. Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 5. Effective Date. This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

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:

CITY OF ROSENBERG, TEXAS

Anne Stark, **Assistant City Secretary**

Cynthia McConathy, **Mayor Pro Tem**

APPROVED AS TO FORM:

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

ROSENBERG CODE OF ORDINANCES
CHAPTER 14 – HEALTH, SANITATION AND NUISANCES
ARTICLE VI. - JUNKED VEHICLES

Sec. 14-111. - Definitions.

For the purpose of this article, the following words shall have the meanings ascribed to them by this section:

Antique motor vehicle shall mean a passenger car or truck that is at least thirty-five (35) years old.

Code Officer means the Code Enforcement Officer of the City or other regularly salaried, full-time employee of the City working under the supervision of the Building Official to enforce this article.

Inoperable means a vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured, regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled or partially dismantled it is presumed to be inoperable.

Junked vehicle shall mean a vehicle that is self-propelled as defined in Section 683.071, Transportation Code, Vernon's Texas Civil Statutes, as amended, and meets two of the following three requirements:

- (1) Does not have lawfully attached to it:
 - a. An unexpired license plate; or
 - b. A valid motor vehicle inspection certificate; or
- (2) Is wrecked, dismantled or partially dismantled, or discarded; or
- (3) Is inoperable and has remained inoperable for more than:
 - a. Twenty four (24) consecutive hours, if the vehicle is on public property; or
 - b. Fifteen (15) consecutive days, if the vehicle is on private property.

Motor vehicle collector shall mean a person who:

- (1) Owns one (1) or more antique or special interest vehicles; and
- (2) Acquires, collects, or disposes of antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

Special interest vehicle shall mean a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

Sec. 14-112. - Deemed public nuisance; declared unlawful.

A junked vehicle that is located in a place where it is visible from a public place or public right-of-way is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, and is detrimental to the economic welfare of the city by producing urban blight which is adverse to the maintenance and continuing development of the city, and is declared a public nuisance.

Sec. 14-113. – Exceptions.

The following vehicles or parts thereof are excepted from the provisions of this ordinance:

- (1) A vehicle or vehicle part which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;
- (2) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with a business of a licensed vehicle dealer or licensed junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:
 - a. Maintained in an orderly manner; and
 - b. Do not constitute a health hazard; and
 - c. Are screened from ordinary public view by appropriate means, including a fence, trees, or shrubbery.
- (3) Any motor vehicle stored as the property of a member of the armed forces of the United States who is on active duty assignment.

Sec. 14-114. – Offense.

- (1) A person commits an offense if the person maintains a public nuisance as described by this Article.
- (2) An offense under this article is a misdemeanor punishable by a fine not to exceed two hundred dollars (\$200.00). Each day a violation is permitted to exist shall constitute a separate offense.
- (3) The municipal court shall order abatement and removal of the nuisance on conviction.

Sec. 14-115. – Procedures for abating nuisance.

The city's procedures for the abatement and removal of a junked vehicle or a part of a junked vehicle as a public nuisance from private property, public property or public rights-of-way are set out in this section.

- (1) Procedures for abatement and removal of a public nuisance may be

administered by the Code Enforcement Officer, or another regularly salaried, full-time employee of the City of Rosenberg designated by the City Manager to enforce this Article, except that any authorized person may remove the nuisance.

- (2) Pursuant to the procedures established by this section, the person authorized to administer these procedures may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.
- (3) The municipal court may issue necessary orders to enforce an action taken by the Code Officer, under this section, pursuant to Tex. Transp. Code Ann. § 683.074.
- (4) Once a proceeding for the abatement and removal of the public nuisance has commenced under this section, the relocation of a junked vehicle that is a public nuisance to another location within the City has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.
- (5) In the event that the City removes a junked vehicle from private or public property pursuant to this section, the Code Officer shall provide notice to the Texas Department of Transportation, identifying the vehicle or part of the vehicle being removed, not later than the fifth day after the date of removal.
- (6) A junked vehicle removed pursuant to the provisions of this section may not be reconstructed or made operable after removal.

Sec. 14-116. - Notice of nuisance.

The Code Officer shall give not less than 10 days, before an abatement action, written notice stating the nature of the public nuisance. The notice must be personally delivered, sent by certified mail with a five-day return requested, or delivered by the United States Postal Service with signature confirmation service to:

- (1) the last known registered owner of the nuisance;
- (2) each lienholder of record of the nuisance; and
- (3) the owner or occupant of:
 - a. the property on which the nuisance is located; or
 - b. if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.
- (4) Any notice requiring the removal of a vehicle or part thereof shall include a description of the vehicle and the correct identification number of the vehicle, if available at the site.

- a. The notice must state:
 - i. that the nuisance must be abated and removed not later than the 10th day after the date on which the notice was personally delivered or mailed; and
 - ii. any request for a hearing before the Municipal Court must be made before the 10th day after the date on which the notice was personally delivered, or mailed.
 - iii. If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, personally delivered.
 - iv. If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

Sec. 14-117. - Hearing in municipal court.

- (1) A citation may be issued and a complaint may be filed in the Municipal Court of the City of Rosenberg for the violation of maintaining a public nuisance, if the nuisance is not removed and abated and a hearing is not requested within the ten (10) day period provided in Subsection 14-116.
- (2) The Municipal Court Judge shall conduct a hearing pursuant to Texas Transportation Code Section 683.075(a)(3), not earlier than the 11th day after the date of the service of notice.
- (3) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
- (4) If the information is available at the location of the nuisance, an order requiring removal of the nuisance must include the vehicle's:
 - a. description;
 - b. vehicle identification number; and
 - c. license plate number.

Sec. 14-118. – Disposal of junked vehicles.

- (1) A junked vehicle or part thereof may be disposed of by removal to a scrapyards, a motor vehicle demolisher, or any suitable site operated by the City, for processing as scrap or salvage pursuant to authority provided in the Texas Transportation Code, § 683.078 or any successor statute for junked vehicle disposal.

- (2) Any proceeds from the transfer of the junked vehicle or part thereof to the site authorized by this section shall be used to reimburse the city for all costs incurred in the notification, investigation, hearing, and disposal procedures (including any and all variable towing and disposal fees from contracted sources) within this article. Any remaining proceeds shall be transferred to the lienholder of record or, if none, the owner of record.

Sec. 14-119. – Effect of act on other laws.

Nothing in this Article shall affect laws that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic, or laws that establish procedures for taking possession of abandoned motor vehicles.

Sec. 14-120. - Removal—With the permission of the owner.

If, within ten (10) days after receipt of notice from the Code Enforcement Officer to abate the nuisance as herein provided, the owner of the junked motor vehicle or owner or occupant of the premises shall give his written permission to the City for removal of the junked motor vehicle from the premises, the giving of such permission shall be considered compliance with the provisions of this article.

Secs. 14-121 – 14-135. – Reserved.

CITY OF ROSENBERG

CITY COUNCIL WORKSHOP MEETING MINUTES

On this the 27th day of January, 2015, the City Council of the City of Rosenberg, Fort Bend County, Texas, met in a Special Workshop 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
Scott M. Tschirhart	City Attorney
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
Travis Tanner	Executive Director of Community Development
Charles Kalkomey	City Engineer
Tonya Palmer	Building Official
Rose Pickens	Inspector
Dallis Warren	Police Chief
Wade Goates	Fire Chief
Angela Fritz	Executive Director of Information Services
Darren McCarthy	Parks and Recreation Director
Randall Malik	Economic Development Director
Kaye Supak	Executive Assistant

During a City Council Workshop, the City Council does not take final action on the agenda items and any consideration of final action will be scheduled at a Regular or Special City Council Meeting. Public comments are welcomed at Regular or Special City Council Meetings. No public comments will be received at a Workshop Meeting.

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

CALL TO ORDER.

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

AGENDA

- REVIEW AND DISCUSS THE CITY'S JUNKED VEHICLE REGULATIONS, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

Executive Summary: This item has been included to allow for discussion regarding the City's junked vehicle regulations. An excerpt from the City's Code, Chapter 14, Article VI – Junked Vehicles, has been included for your reference.

Key discussion points:

- Councilor Benton gave a brief overview of the item.
- Scott Tschirhart, City Attorney, advised of several options to consider in order to make non-compliance more enforceable.
- After discussion by Council, the following recommendations were made:
 - Modify definition of junk vehicle to make it more strict and consistent with State Transportation Code.
 - Reduce 30 days inoperable requirement (on private property) to 15 days.
 - Declare a violation of the ordinance as a Class C Misdemeanor.
 - Clean up “public view” in Section 14-113 to “visible from a public street” or the like.
 - Remove Occupied Premise vs. Unoccupied Premise language.
 - Include a provision regarding appellate process in Section 14-117 to offset finality of disposal of junk vehicle.
 - Modify language in Section 14-118 to define that disposal of junk vehicle would occur at owner’s expense.

Questions/Comments:

Tonya Palmer, Building Official, addressed the following questions:

Q: What issues are you having to enforce this?

A: There are two components required for definition of junk vehicle: (1) expired inspection sticker or registration, and (2) it must be wrecked, dismantled, or inoperable. In many cases, someone complains, but upon contact with the property owner, it is proven to be operable and so the case is then closed.

Q: Who is the burden of proof on to determine if the vehicle has remained inoperable for more than 72 hours?

A: Burden of proof would fall on Code Enforcement, starting with the date of the first contact as a result of a complaint being filed.

Q: When the state changes the registration and inspection to one tag, how will this ordinance be affected?

A: That is why we need to make it comply with the current Texas Transportation Code and/or change the restrictions on the definition of a junk vehicle to make it more enforceable.

Q: Would reducing 30 days inoperable to 15 days make a difference as well?

A: It would help as far as the time period to enforce it, and get a faster resolution.

- The general consensus of Council was for the City Attorney to a draft ordinance in redline fashion, including the suggestions for Council to review at the Regular Council Meeting on February 17, 2015.
- No action was taken on the item.

2. **REVIEW AND DISCUSS THE FY2015 STREET RIGHT-OF-WAY TREE TRIMMING CONTRACT, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

Executive Summary: This item has been included on the Workshop Agenda to offer City Council the opportunity to discuss the FY2015 Street Right-of-Way Tree Trimming Contract. Prior to FY2010, the Public Works Department budget included sufficient funding to enter into an annual tree trimming contract that would generally cover a complete Council District. This allowed the City to trim trees throughout the entire City over a four year period. Prior to the FY2010 budget reductions, Council District 4 was the next in line for tree trimming.

Staff anticipates relatively few changes to the program that was provided until FY2010. The street and tree list will be updated to reflect the current City Council District boundaries, which have changed since 2010.

Staff recommends obtaining bids for the FY2015 Street Right-of-Way Tree Trimming Contract as described above. The bid proposal would be placed on a future City Council meeting Agenda for consideration and award.



CITY COUNCIL COMMUNICATION

April 21, 2015

ITEM #	ITEM TITLE
8	Ordinance No. 2015-13 – “Fence” Ordinance

ITEM/MOTION

Consideration of and action on Ordinance No. 2015-13, an Ordinance amending the Code of Ordinances, Chapter 6 Buildings and Building Regulations, Article XIV. Reserved, establishing restrictions on fences on public property; establishing location restrictions; establishing approved fencing materials; establishing requirements for fence maintenance; establishing fence restrictions; establishing requirements for dilapidated fence remediation; repealing all conflicting ordinances; providing a severability clause; and providing for an effective date.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

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

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

1. Ordinance No. 2015-13
2. City Council Meeting Minute Excerpt – 02-24-15

APPROVALS

Submitted by:

Travis Tanner, AICP
Executive Director of
Community Development

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager of Public Services
- City Attorney *DNRBHZ/1*
- City Engineer
- Building Official *JRP*

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

This item was last discussed at the February 24, 2015 City Council Workshop Meeting. At the time, the City Attorney had prepared a draft Ordinance containing a number of requirements for fences (permits, etc.) per direction from City Council. However, following discussion held at that meeting, the Ordinance has been scaled back significantly to address maintenance issues only based on the consensus of City Council. In summary, the revised Ordinance provides for the following:

- Fences must be maintained so as not to overhang or interfere with public property;
- Fences shall not be more than twenty (20%) percent out of vertical alignment;
- Damaged, removed, or missing portions of a fence shall be replaced or repaired with comparable materials to the remaining portion;
- The owner of any fence, existing or new, shall be responsible for the removal of any and all graffiti;
- Any and all vegetation shall be kept clear of fences and shall not be allowed to grow into a fence; and,
- Dilapidated fences are prohibited; should violations not be corrected by the owner within a ten (10) day time period, the City may remove the fence at its own expense and the cost shall be charged against the land and become a personal obligation of the owner.

Staff recommends approval of Ordinance No. 2015-13.

ORDINANCE NO. 2015-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AMENDING THE CODE OF ORDINANCES, CHAPTER 6 BUILDINGS AND BUILDING REGULATIONS, ARTICLE XIV. RESERVED, ESTABLISHING RESTRICTIONS ON FENCES ON PUBLIC PROPERTY; ESTABLISHING LOCATION; ESTABLISHING APPROVED FENCING MATERIALS; ESTABLISHING REQUIREMENTS FOR FENCE MAINTENANCE; ESTABLISHING FENCE RESTRICTIONS; ESTABLISHING REQUIREMENTS FOR DILAPIDATED FENCE REMEDIATION; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Rosenberg is a home rule City acting under its home rule Charter and the law of the State of Texas; and,

WHEREAS, Tex. Loc. Gov't Code Chapter 211 authorizes the City of Rosenberg to adopt rules and regulations regarding land use within the City limits of the City of Rosenberg for the purpose of promoting the safe, orderly, and healthful development of the City; and,

WHEREAS, the City Council finds it necessary to establish the provisions of this ordinance regarding the regulation of fences; and,

WHEREAS, the City Council finds that it would be advantageous and beneficial to the citizens of the City of Rosenberg, Texas, to adopt this ordinance regulating the requirements for fences within the City of Rosenberg; and,

WHEREAS, the City Council of the City of Rosenberg, Texas, has determined that it is in the best interest of the public and in support of the health, safety, morals, and general welfare of the citizens of the City that the Building Code regulations relative to fencing requirements be established as hereinafter stated;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, THAT:

Section 1. Findings. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of the Building Code as if copied in their entirety.

Section 2. Amending Building Code. That Code of Ordinances, Chapter 6 Building and Building Regulations is hereby amended by creating Article XIV. Fences to hereinafter read as follows:

“Sec. 6-390. - Fence Requirements and Prohibitions.

- a. Public Property: A fence or any part of a fence shall not be constructed upon or allowed to protrude over a property line or lot line. All fences must be maintained so as not to overhang or interfere with public property.

- b. Fence Maintenance: All fences shall comply and be maintained in accordance with all the requirements of this ordinance at all times.
 - 1. Fences shall not be more than twenty (20%) percent out of vertical alignment.
 - 2. Damaged, removed, or missing portions of a fence shall be replaced or repaired with comparable materials to the remaining portion.
 - 3. The owner of any fence, existing or new, shall be responsible for the removal of any and all graffiti.
 - 4. Any and all vegetation shall be kept clear of fences and shall not be allowed to grow into a fence.

- c. Dilapidated Fences: A dilapidated fence means a fence that is decayed, deteriorated, or fallen into partial or total ruin. Should a fence be deemed dilapidated or substandard by the Code Enforcement Officer, then the following shall occur:
 - 1. A notice shall be served to the property owner informing of the fence violation.
 - 2. Should the violations not be corrected by the owner within a ten (10) day time period, the City may remove the fence at its own expense and the cost shall be charged against the land and become a personal obligation of the owner. The provisions for notice, hearing and appeal shall be conducted in compliance with provisions of Chapter 6 of the Code of Ordinances.”

Section 3. Penalty. Any person, firm or corporation violating any of the provisions of this Ordinance, as amended, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed five hundred dollars (\$500.00). Each and every day such violation continues shall constitute a separate offense and shall be punishable as such.

Section 4. Cumulative and Conflicts. This Ordinance shall be cumulative of all provisions of ordinances of the City of Rosenberg, Texas, except where the provisions of the

Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Any and all previous versions of this Ordinance to the extent that they are in conflict herewith are repealed.

Section 5. Severability. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 6. Effective Date. This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED by a vote of _____ “ayes” in favor and _____ “nays” 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:

CITY OF ROSENBERG, TEXAS:

Linda Cernosek, **City Secretary**

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

APPROVED AS TO FORM:

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

- Two proposed publication types/frequencies:
 - Quarterly distribution of an 8 page piece reporting on key strategic initiative, projects, and other pertinent information 3 times per year
 - Annual distribution of a combined wall calendar/annual report piece 1 time per year
- Two print options and ballpark figures, with postage being the majority of the cost:
 - Tabloid Newsprint with Glossy Calendar – Ballpark cost \$54,000/year
 - Letter Glossy Print – Ballpark cost \$62,500/year
- After discussion, the general consensus was to try a quarterly, direct-mail newsletter on glossy paper, and to reevaluate upon feedback from the community.

4. REVIEW AND DISCUSS PROPOSED ORDINANCE AMENDMENT REGARDING FENCING, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: This Agenda item has been included to allow for City Council discussion regarding fencing regulations and requirements. A draft Ordinance Amendment has been prepared for review and discussion.

Staff is seeking direction from City Council regarding the proposed Amendment.

Key discussion points:

- Scott Tschirhart, City Attorney presented an example of an Ordinance Amendment regarding fencing to generate discussion among and guidance from the Council.
- In the past, the Building Standards Board recommended that the Council not adopt a Property Maintenance Code, which is what used to dictate fence maintenance requirements. As a result, the City ended up without any kind of fencing standards.
- Councilors have received complaints from citizens, both from an aesthetic standpoint and a safety standpoint, with exposed nails and wires along walking paths.
- After discussion, the general consensus of Council was for Mr. Tschirhart to write an Ordinance Amendment with fewer restraints than the example presented. The main areas of concern are addressing dilapidated fences and giving residents a reasonable amount of time to repair or remove fences in disrepair, addressing vertical alignment (falling fences) separately if need be, and the Council prefers that no permits be required.

5. This item was pulled from the Agenda.

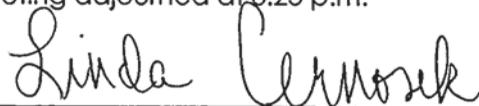
REVIEW AND DISCUSS PROPOSED ORDINANCE AMENDMENT REGARDING JUNKED VEHICLES, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: A "Junked Vehicles" Ordinance has been prepared as requested by City Council at the January 27, 2015 Workshop Meeting.

Should City Council approve the Amendment, an Ordinance adopting revised regulations for junked vehicles will be presented for consideration on a future Agenda.

6. ADJOURNMENT.

There being no further business, the meeting adjourned at 8:23 p.m.



Linda Cernosek, TRMC, City Secretary



CITY COUNCIL COMMUNICATION

April 21, 2015

ITEM #	ITEM TITLE
9	Survey Related to One-Way Pairs Project

ITEM/MOTION

Review and discuss a proposed survey regarding the One-Way Pairs Project, and take action as necessary.

FINANCIAL SUMMARY	ELECTION DISTRICT
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Annualized Dollars:	Budgeted:	<input type="checkbox"/> District 1
<input type="checkbox"/> One-time	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<input type="checkbox"/> District 2
<input type="checkbox"/> Recurring	Source of Funds: N/A	<input type="checkbox"/> District 3
<input checked="" type="checkbox"/> N/A		<input type="checkbox"/> District 4
		<input checked="" type="checkbox"/> City-wide
		<input type="checkbox"/> N/A

SUPPORTING DOCUMENTS: MUD #: N/A

- None

APPROVALS

Submitted by:	Reviewed by:	Approved for Submittal to City Council:
William Benton ^{/rl}	<input type="checkbox"/> Exec. Dir. of Administrative Services	 Robert Gracia City Manager
William Benton	<input type="checkbox"/> Asst. City Manager of Public Services	
Councilor, At Large Position One	<input type="checkbox"/> City Attorney	
	<input type="checkbox"/> City Engineer	
	<input type="checkbox"/> (Other)	
Amanda Barta ^{/rl}		
Amanda Barta		
Councilor, District 4		

EXECUTIVE SUMMARY

This item was requested to allow City Council an opportunity to discuss surveying the public related to the Texas Department of Transportation's One-Way Pairs Project.

ITEM 10

Hold Executive Session to deliberate the potential purchase, exchange, lease or value of real property pursuant to Section 551.072 of the Texas Government Code.

ITEM 11

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

ITEM 12

Announcements.

ITEM 13

Adjournment.