

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, May 05, 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 and Public Hearing, 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 Jason Martin, Calvary Baptist Church, Rosenberg)

Presentation of Proclamation Proclaiming the Week of May 10-16, 2015, as National Police Week in the City of Rosenberg. (Vincent M. Morales, Jr., Mayor)

Presentation of Proclamation Proclaiming the Week of May 17-23, 2015, as National Public Works Week in the City of Rosenberg. (Vincent M. Morales, Jr., Mayor)

Presentation of Proclamation Proclaiming the Month of May 2015 as Motorcycle Safety and Awareness Month in the City of Rosenberg. (Vincent M. Morales, Jr., Mayor)

Presentation of Proclamation Proclaiming the Month of May 2015 as National Preservation Month in the City of Rosenberg. (Vincent M. Morales, Jr., Mayor)

Presentation of Awards to the Winners of the Rosenberg Architectural Appreciation Photography Contest. (Vincent M. Morales, Jr., Mayor)

Presentation of Rosenberg Image Committee Beautification and Renovation Awards. (William Benton, Councilor)

GENERAL COMMENTS FROM THE AUDIENCE.

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

COMMENTS FROM THE AUDIENCE FOR CONSENT AND REGULAR AGENDA ITEMS.

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

CONSENT AGENDA

1. Review of Consent Agenda.

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

- A. Consideration of and action on Special Meeting Minutes for April 15, 2015, and Regular Meeting Minutes for April 21, 2015. (Anne Stark, Assistant City Secretary)

- B. Consideration of and action on a Final Plat of Park Place Boulevard Street Dedication, being a subdivision of 2.3580 acres out of the Robert E. Handy Survey, A-187, in the City of Rosenberg, Fort Bend County, Texas (Fort Bend County Municipal Utility District No. 144). (Travis Tanner, Executive Director of Community Development)
- C. Consideration of and action on a Final Plat of Rivers Mist Section Three, being a subdivision of 31.51 acres out of the WM. Lusk Survey, A-276, in Fort Bend County, Texas. (Fort Bend County Municipal Utility District No. 158): Also being a partial replat of restricted Reserve 'C', Block 1, Rivers Mist Section Two, Plat No. 2015008851 F.B.C.P.R.; 73 lots, 3 blocks and 5 reserves (13.2161 acres). (Travis Tanner, Executive Director of Community Development)

REGULAR AGENDA

- 2. Hold public hearing regarding proposed financing to be issued by the Clifton Higher Education Finance Corporation in a maximum amount of \$27,000,000 for the purpose of financing an approximately 105,000 square foot education building and related site work (the "Project") for the TSTC Foundation (the "Foundation"), with the Project building to be leased to the Texas State Technical College System ("TSTC"). (Travis Tanner, Executive Director of Community Development)
- 3. Consideration of and action on Resolution No. R-1963, a Resolution in support of tax exempt financing to be undertaken by the Clifton Higher Education Finance Corporation for the benefit of the TSTC Foundation and the Texas State Technical College System. (Travis Tanner, Executive Director of Community Development)
- 4. Consideration of and action on Resolution No. R-1964, a Resolution in support of House Bill No. 3634 relating to the authority of a municipality to impose a local tax on the sale of certain motor fuel and to the use of the tax revenue by the municipality; authorizing penalties. (Vincent M. Morales, Jr., Mayor)
- 5. Consideration of and action on Resolution No. R-1961, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a Pipeline Crossing Agreement related to the North Side Water Line Improvement Project – Phase II, by and between the City and Union Pacific Railroad Company, in the amount of \$6,700.00 (John Maresh, Assistant City Manager of Public Services)
- 6. Hold Executive Session to consult with City Attorney on pending litigation regarding Texas Department of Transportation v. Rosenberg eminent domain proceedings pursuant to Section 551.071 of the Texas Government Code; to deliberate the potential purchase, exchange, lease, or value of real property pursuant to Section 551.072 of the Texas Government Code; and, to deliberate personnel matters regarding the employment, evaluation and duties of the City Manager pursuant to Section 551.074 of the Texas Government Code.
- 7. Adjourn Executive Session, reconvene into Regular Session, and take action as necessary as a result of Executive Session.
- 8. Announcements.
- 9. 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:
John Maresh, Acting City Manager

Approved:
Vincent M. Morales, Jr., Mayor

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

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

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

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

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

**Presentation of Proclamation Proclaiming
the Week of May 10-16, 2015, as National
Police Week in the City of Rosenberg.**

**PROCLAIMING May 10 – 16, 2015
NATIONAL POLICE WEEK 2015
IN THE CITY OF ROSENBERG**

WHEREAS, there are approximately 900,000 law enforcement officers serving in communities across the United States, including the dedicated members of the Rosenberg Police Department; and

WHEREAS, nearly 60,000 assaults against law enforcement officers are reported each year, resulting in approximately 16,000 injuries; and

WHEREAS, since the first recorded death in 1791, more than 20,000 law enforcement officers in the United States have made the ultimate sacrifice and been killed in the line of duty, including two members of the Rosenberg Police Department; and

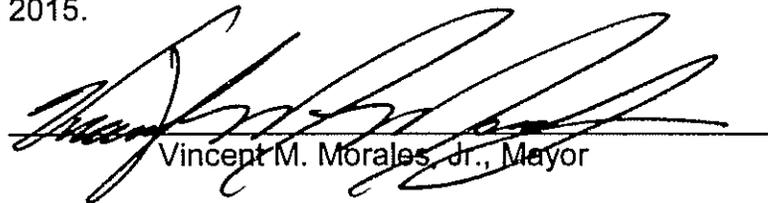
WHEREAS, the names of these dedicated public servants are engraved on the walls of the National Law Enforcement Officers Memorial in Washington, D.C.; and

WHEREAS, new names of fallen heroes are being added to the National Law Enforcement Officers Memorial this spring, including 117 officers killed in 2014 and 156 officers killed in previous years; and

WHEREAS, May 15 is designated as Peace Officers Memorial Day, in honor of all fallen officers and their families and U.S. flags should be flown at half-staff;

NOW, THEREFORE, I, Vincent M. Morales, Jr., Mayor of the City of Rosenberg, hereby proclaim May 10-16, 2015, as Police Week in City of Rosenberg, and publicly salutes the service of law enforcement officers in our community and in communities across the nation. I urge all citizens and individuals in the City of Rosenberg to recognize National Police Week 2015 and to honor the service and sacrifice of those law enforcement officers killed in the line of duty while protecting our communities and safeguarding our democracy.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official Seal of the City of Rosenberg to be affixed this the 5th day of May, 2015.


Vincent M. Morales, Jr., Mayor



**Presentation of Proclamation Proclaiming
the Week of May 17-23, 2015, as National
Public Works Week in the City of Rosenberg.**

**Proclaiming the Week of May 17-23, 2015 as
National Public Works Week
In the City of Rosenberg**

WHEREAS, public works services provided in our community are an integral part of our citizens' everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as water, sewers, streets and highways, public buildings, and solid waste collection; and

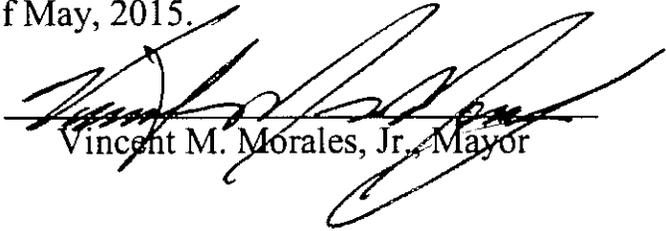
WHEREAS, the health, safety and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities, as well as their planning, design, and construction, is vitally dependent upon the efforts and skill of public works officials; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff public works departments is materially influenced by the people's attitude and understanding of the importance of the work they perform.

NOW THEREFORE, I, Vincent M. Morales, Jr., by virtue of the authority vested in me as mayor of the City of Rosenberg, do hereby proclaim May 17-23, 2015, as "National Public Works Week" in the City of Rosenberg and call upon all citizens and civic organizations to acquaint themselves with the issues involved in providing our public works and to recognize the contributions which public works officials make every day to our health, safety, comfort, and quality of life.

In Witness Whereof, I have hereunto set my hand and caused the Official Seal of the City of Rosenberg to be affixed this the 5th day of May, 2015.


Vincent M. Morales, Jr., Mayor



**Presentation of Proclamation Proclaiming
the Month of May 2015 as Motorcycle Safety
and Awareness Month in the City of
Rosenberg.**

PROCLAIMING MAY 2015 AS MOTORCYCLE SAFETY AND AWARENESS MONTH IN THE CITY OF ROSENBERG

WHEREAS, today's society is finding more citizens involved in motorcycling on the roads of our country; and,

WHEREAS, motorcyclists are roughly unprotected and much more likely to be injured or killed in a crash than other vehicle drivers; and,

WHEREAS, campaigns have helped inform riders and motorists alike on motorcycle safety issues to reduce motorcycle related risks, injuries, and most of all fatalities, through a comprehensive approach to motorcycle safety; and,

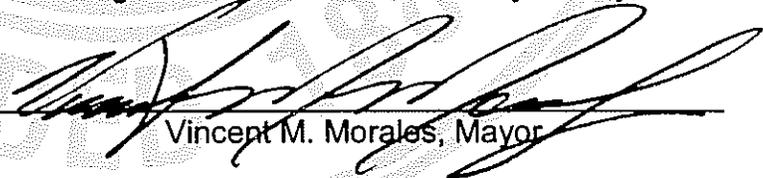
WHEREAS, it is the responsibility of all who put themselves behind the wheel, to become aware of motorcyclists, regarding them with the same respect as any other vehicle traveling the highways of this country; and it is the responsibility of riders and motorists alike to obey all traffic laws and safety rules; and,

WHEREAS, urging all citizens of our community to become aware of the inherent danger involved in operating a motorcycle, and for riders and motorists alike to give each other the mutual respect they deserve.

NOW, THEREFORE, I, Vincent M. Morales, Jr., by virtue of the authority vested in me as Mayor of the City of Rosenberg, do hereby proclaim the month of May, 2014 as:

"Motorcycle Safety and Awareness Month"

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official Seal of the City of Rosenberg to be affixed this the 5th day of May, 2015.


Vincent M. Morales, Mayor



**Presentation of Proclamation Proclaiming
the Month of May 2015 as National
Preservation Month in the City of Rosenberg.**

PROCLAIMING MAY 2015 AS NATIONAL PRESERVATION MONTH IN THE CITY OF ROSENBERG

Whereas, Historic Preservation is an effective tool for managing growth and sustainable development, revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability; and

Whereas, Historic Preservation is important and beneficial for communities across the nation, both urban and rural, and for Americans of all ages, and all walks of life; and

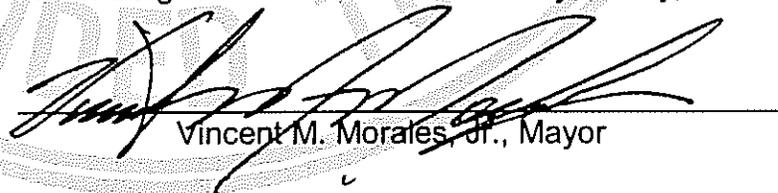
Whereas, It is important to celebrate the role of history in our lives and the contribution made by dedicated individuals who have helped preserve the heritage that has shaped us as a people; and

Whereas, This year, Rosenberg was accepted as a new Main Street City, and an important goal of the Main Street Program is to support the preservation and restoration of historic buildings in downtown Rosenberg, and

Whereas, "**See! Save! Celebrate**" is the theme for National Preservation Month 2015, which is co-sponsored by the City of Rosenberg, the Texas Historical Commission, and the National Trust for Historic Preservation.

Now therefore, I, Vincent M. Morales, Jr., Mayor of the City of Rosenberg, do hereby proclaim May 2015 as **National Preservation Month in the City of Rosenberg**, and do encourage the citizens of Rosenberg to join others across the nation in recognizing and participating in this special observance, and ensuring that our nation's architectural treasures be protected for future generations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official Seal of the City of Rosenberg to be affixed this the 5th day of May, 2015.


Vincent M. Morales, Jr., Mayor



**Presentation of
Rosenberg Image Committee
Beautification and Renovation
Awards**

City of Rosenberg

IMAGE COMMITTEE

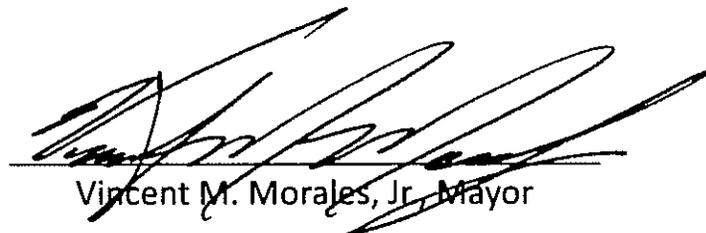
Certificate of Recognition

Be it hereby known to all, that

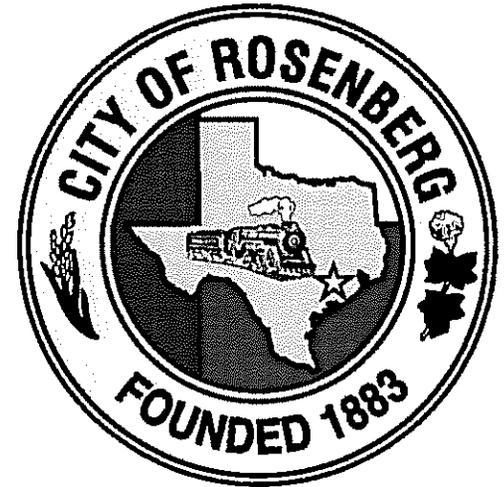
Rogelio and Lorena Bolanos

2206 Moss Bluff Lane

have, on this 5th day of May 2015, been recognized for their acts of labor and excellence in beautifying this property and for their caring efforts at making this location in our community more appealing, and deserve the recognition and appreciation of the people of our City for their undertaking.



Vincent M. Morales, Jr., Mayor



City of Rosenberg

IMAGE COMMITTEE

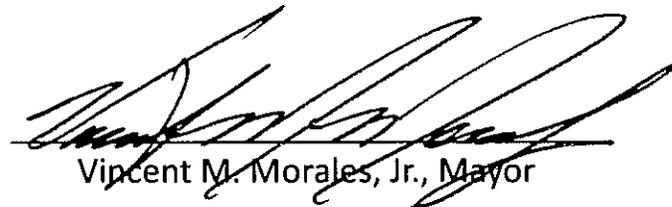
Certificate of Recognition

Be it hereby known to all, that

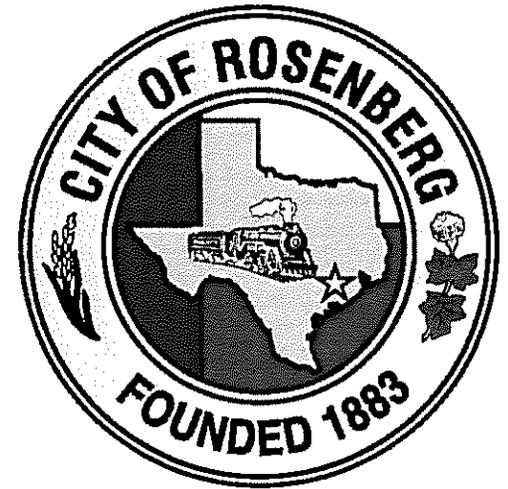
Cheryl Richardson

2026 Briar Ridge Drive

has, on this 5th day of May 2015, been recognized for her acts of labor and excellence in beautifying this property and for her caring efforts at making this location in our community more appealing, and deserve the recognition and appreciation of the people of our City for their undertaking.



Vincent M. Morales, Jr., Mayor



City of Rosenberg

IMAGE COMMITTEE

Certificate of Recognition

Be it hereby known to all, that

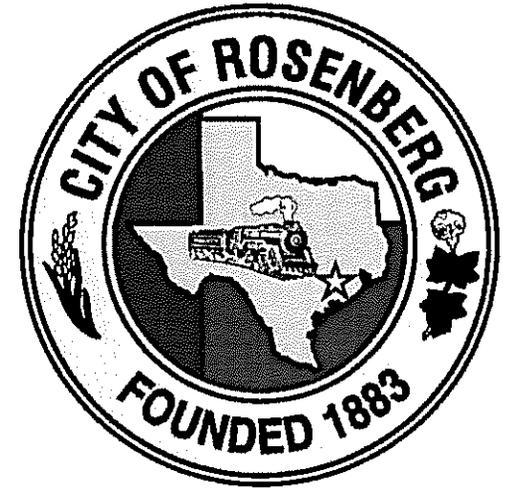
Mario and Maria Valencia

1014 Frances Drive

have, on this 5th day of May 2015, been recognized for their acts of labor and excellence in beautifying this property and for their caring efforts at making this location in our community more appealing, and deserve the recognition and appreciation of the people of our City for their undertaking.



Vincent M. Morales, Jr., Mayor



City of Rosenberg

IMAGE COMMITTEE

Certificate of Recognition

Be it hereby known to all, that

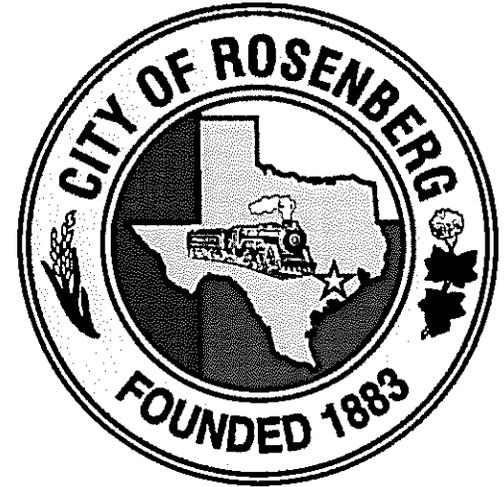
Jerry and Sandra Wheeler

1314 Elizabeth Avenue

have, on this 5th day of May 2015, been recognized for their excellence in renovating this property and for their effort at making this place in the world more appealing, and deserve the recognition and appreciation of the people of this City for their efforts.



Vincent M. Morales, Jr., Mayor



City of Rosenberg

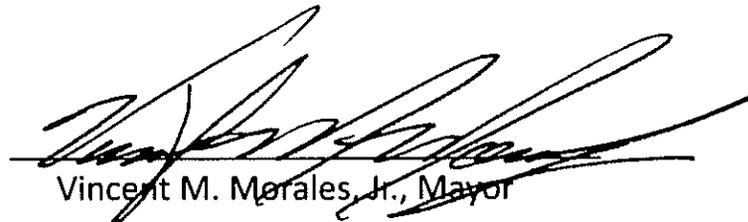
IMAGE COMMITTEE

Certificate of Recognition

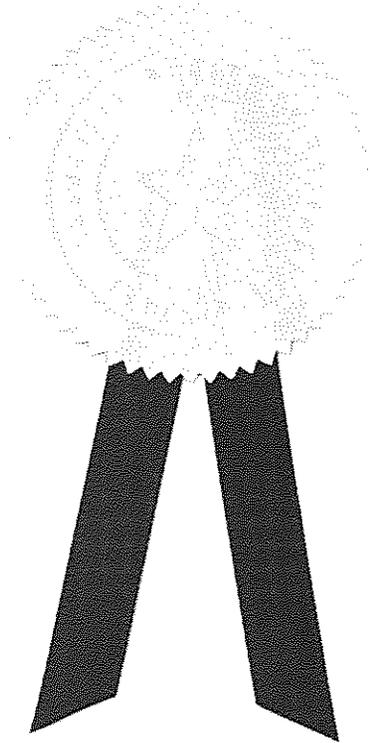
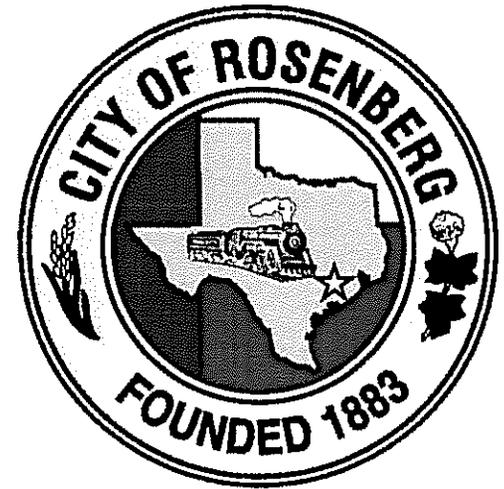
Be it hereby known to all, that

Discount Auto Care and Tire
4307 Avenue H

has, on this 5th day of May 2015, been recognized for their excellence in renovating this property and for their effort at making this place in the world more appealing, and deserve the recognition and appreciation of the people of this City for their efforts.



Vincent M. Morales, Jr., Mayor



**Presentation of Awards to the Winners of the
Rosenberg Architectural Appreciation
Photography Contest.**

General Comments from the Audience:

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

Comments from the Audience for Consent and Regular Agenda Items:

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

ITEM 1

Review of Consent Agenda.

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

ITEM A

Minutes:

- 1. Special City Council Meeting Minutes – April 15, 2015**
- 2. Regular City Council Meeting Minutes – April 21, 2015**

**CITY OF ROSENBERG
SPECIAL COUNCIL MEETING MINUTES**

*****DRAFT*****

On this the 15th day of April, 2015, the City Council of the City of Rosenberg, Fort Bend County, Texas, met in a Special Session, in the Rosenberg City Hall Council Chamber, located at 2110 4th Street, Rosenberg, Texas.

PRESENT

Vincent M. Morales, Jr.	Mayor
William Benton	Councilor at Large, Position 1
Cynthia McConathy	Councilor at Large, Position 2
Jimmie J. Pena	Councilor, District 1
Amanda Barta	Councilor, District 4

ABSENT

Susan Euton	Councilor, District 2
Dwayne Grigar	Councilor, District 3

STAFF PRESENT

Robert Gracia	City Manager
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
Jeanne M. McDonald	Attorney
Tommy Havelka	Police Officer
Matt Macias	Police Officer
Wade Goates	Fire Chief
Randall Malik	Economic Development Director
James Lewis	Information Services Manager
Kaye Supak	Executive Assistant

CALL TO ORDER.

Mayor Morales called the meeting to order at 6:01 p.m.

GENERAL COMMENTS FROM THE AUDIENCE.

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

AGENDA

1A. *This item was originally Agenda Item 2.*

CONSIDERATION OF AND ACTION ON APPROVAL OF THE ISSUANCE OF FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 155 REFUNDING TAX BONDS, SERIES 2015, IN AN AMOUNT NOT TO EXCEED \$5,565,000.00.

Executive Summary: On February 03, 2015, City Council approved the issuance of Refunding Tax Bonds, Series 2015, in an amount not to exceed \$4,655,000 for Fort Bend County Municipal District No. 155 (MUD No. 155). The anticipated net present value savings was estimated at \$522,403.60.

Due to an advantageous bond market, MUD No. 155 had an opportunity to refund an amount greater than anticipated, that being \$5,565,000. MUD No. 155 is seeking authorization by the City Council to

refund \$5,565,000, thus resulting in a twelve percent (12%) savings. The net present value savings will be \$665,502.57, an additional savings of \$121,098.97.

Staff has reviewed the request and finds that the additional amount of the refunding to be advantageous to MUD 155 and its taxpayers. Staff is recommending approval of issuance of Fort Bend County Municipal Utility District No.155 Refunding Tax Bonds, Series 2015, in an amount not to exceed \$5,565,000.

Key Discussion Points: Jeanne H. McDonald, Attorney gave an overview of the item and introduced Susan Edwards, Attorney for MUD 155, and Julie Williams, Financial Advisor for MUD 155.

Questions/Comments:

C: Saving is so much better than debt.

C: This was approved at first in February. They did not sell until March, at which time they found that the deal was so good, it quickly exceeded the approval amount, so they asked us to come back to Council in order to increase this amount and increase these savings.

C: MUD numbers are not as helpful as neighborhood names. This is for Bonbrook, specifically.

Q: How long has this MUD been in existence?

A: This MUD was started around 2004-2005. We have had three issues of new bonds, and this is our first refunding bond, where we are able to retire some of the previous debt.

Q: What is the total existing debt?

A: \$17,080,000

Q: When do you think the MUD taxes will go away in this district?

A: 2038 is the final maturity of the existing debt

Q: When people move into this neighborhood, are they provided notice that this will go on until 2038?

A: They are provided a Notice to Purchasers, which is required by law, recorded in Deed Records, and updated as any information changes. It is provided in their closing documents.

Q: Is it likely that they will want to go out for further debt?

A: Yes. There will be a bond issued in 2016 or late 2015.

Q: Will this savings help on the citizens' MUD tax bill?

A: Yes, they will see the savings. The taxes are lowered as soon as possible and the annual tax bills reflect the rates.

C: On the TCEQ Water Utilities Division website, any citizen can go there at any time to look up the current tax information. Everything is electronically available at all times as required by law.

Action: Councilor McConathy made a motion, seconded by Councilor Pena to approve the issuance of Fort Bend County Municipal Utility District No. 155 Refunding Tax Bonds, Series 2015, in an amount not to exceed \$5,565,000.00. The motion carried by a unanimous vote of those present.

1. **REVIEW AND DISCUSS THE PROPOSED ROSE MEADOWS DEVELOPMENT, AND TAKE ACTION AS NECESSARY.**

Executive Summary: The developer of Rose Ranch (Fort Bend County MUD No. 66) and their land planner have approached City staff regarding continued development of the property. The last residential plat that was filed in this development was in 2005 (Section One, 165 lots). The subdivision is built out and development has essentially been dormant since that time.

The existing Land Plan was approved under previous City ordinances relating to lot size, etc., but the developer is proposing to change the layout, bringing into question whether they would have to comply with current City ordinances. A Revised Land Plan has been submitted to staff for review, but was submitted on April 9, 2015 (submittal deadline for April 15 Planning Commission meeting was March 20), so staff has not had the opportunity to conduct a full review. Normally, for a full review to be completed, a traffic impact analysis (TIA) must be submitted and, because this development has an existing Utility Agreement with the City, that would have to be reviewed as well to determine if revisions are necessary based on the new layout. The proposed plan appears to contain a number 50'x120' single-family lots as well as senior living and commercial development.

The developer has requested the opportunity to discuss this item with the Planning Commission and City Council. At this time they are referring to the development as "Rose Meadows," hence the title of the Agenda item.

Key Discussion Points:

- Travis Tanner, Executive Director of Community Development read the Executive Summary, gave an overview presentation, and introduced Kerry Gilbert with BGE Land Planner.
- Mr. Gilbert presented the General Plan Presentation with the following key points:
 - 165 lots currently exist and are built out, but the street and recreation center included in the original plan were never finished when development went dormant in 2007.
 - The developer is proposing senior-themed development community with features and amenities which will attract the elderly.
 - The new proposal includes building out the remainder of the development, with age-restricted and age-targeted areas, a commercial development area including businesses geared towards senior living, drainage detention ponds and walking trails, recreation facilities for seniors and their families, and an assisted senior living facility.
 - The intention of the community is to provide residences for each stage of the life cycle; from families to empty-nesters, to independent living, to assisted living.
 - The building standards in the development would be on par with, if not greater than, those of The Oaks of Rosenberg, and would be significantly higher than those of the existing Rose Ranch.
 - This area would be a Planned Unit Development (PUD) area rather than a MUD.
- After some discussion, the general consensus of Council was in support of another elderly community, and positive towards this particular development concept.

Action: Councilor McConathy made a motion, seconded by Councilor Pena to approve the concept of this project so that the developer can move forward. The motion carried by a unanimous vote of those present.

2. ***This Item was moved to the beginning of the meeting as Agenda Item 1A.***

CONSIDERATION OF AND ACTION ON APPROVAL OF THE ISSUANCE OF FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 155 REFUNDING TAX BONDS, SERIES 2015, IN AN AMOUNT NOT TO EXCEED \$5,565,000.00.

3. **ADJOURNMENT.**

There being no further business, the meeting adjourned at 6:59 p.m.

Anne Stark, Assistant City Secretary

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

On this the 21st 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

Cynthia McConathy	Mayor Pro Tem
William Benton	Councilor at Large, Position 1
Jimmie J. Pena	Councilor, District 1
Susan Euton	Councilor, District 2
Dwayne Grigar	Councilor, District 3
Amanda Barta	Councilor, District 4

ABSENT

Vincent M. Morales, Jr.	Mayor
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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
Tonya Palmer	Building Official
Dallis Warren	Police Chief
Tommy Havelka	Police Officer
Wade Wehring	Police Officer
Angela Fritz	Executive Director of Information Services
Darren McCarthy	Parks and Recreation Director
Lydia Acosta	Recreation Program Coordinator
Randall Malik	Economic Development Director
Fernando DeLaGarza	Information Technology Specialist
Kaye Supak	Executive Assistant

CALL TO ORDER.

Mayor Pro Tem McConathy called the meeting to order at 7:01 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE.

Pastor Frankie Rodriguez, Living Stones Church, Sugar Land, gave the invocation.
Lamar High School Air Force Junior ROTC Unit TX-792nd led the pledge of allegiance to the flag.

PRESENTATION OF CERTIFICATES OF APPRECIATION TO 2015 FISH-TASTIC SPONSORS AND VOLUNTEERS.

Lydia Acosta, Recreation Programs Coordinator, presented Certificates of Appreciation to the 2015 FISH-tastic Sponsors and Volunteers.

PRESENT:

- Annalee Machemehl
- B. F. Terry High School National Honor Society
- Coastal Prairie Chapter of Texas Master Naturalists

NOT PRESENT:

- David's Tackle Box
- Kempner High School Interact Club
- Lamar High School Leo's
- Lamar High School National Honor Society

PRESENTATION OF CERTIFICATES OF APPRECIATION TO 2015 EASTER EGG HUNT SPONSORS AND VOLUNTEERS.

Lydia Acosta presented Certificates of Appreciation to the 2015 Easter Egg Hunt Sponsors and Volunteers.

PRESENT:

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

NOT PRESENT:

- Another Time Soda Fountain
- George Ranch High School Student Council
- Girl Scout Troop 3503
- Lamar High School Leos
- Whataburger

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.

B. *Item B was pulled from the Consent Agenda and moved to Item 2A on the Regular Agenda.* 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.

Action: Councilor Benton made a motion, seconded by Councilor Euton, to approve Consent Agenda Item A. The motion carried by a unanimous vote of those present.

REGULAR AGENDA

2A. *This item was originally Item B on the Consent Agenda.*

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.

Executive Summary: Included in the agenda packet 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.

Questions/Comments:

Q: Has the MUD listed what items they wish to spend \$3.575 million on?

A: Yes, on page 6 of the handout (included in the agenda packet) is a table of the items that have been paid for by the developer, who will be reimbursed by the MUD.

Q: How long will this debt last?

A: 25 years. This debt is scheduled to expire in 2039.

Q: Will there be more debt issued?

A: Yes. \$48 million have been authorized. They do have more bonds to sell in the future.

Action: Councilor Barta made a motion, seconded by Councilor Euton, to approve Ordinance No. 2015-11, an Ordinance 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. The motion carried by a unanimous vote of those present.

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.**

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.

Key Discussion Points: John Maresh, Assistant City Manager of Public Services read the Executive Summary. This being the third reading of the Ordinance, there was minimal discussion.

Action: Councilor Grigar made a motion, seconded by Councilor Euton, to approve 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.

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.**

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.

Key Discussion Points: John Maresh read the Executive Summary. He explained that there was a rate filing as recently as 2-3 years that was settled, and we anticipate that this case would be the same. If the Resolution is not passed, the City of Rosenberg would, by default, automatically accept the higher rate. By passing the Resolution, we are able to start an appeal with the Railroad Commission and possible have the rate increase amount lowered.

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

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.**

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.

Key Discussion Points: John Maresh read the Executive Summary and explained that this item is generally the same as the previous item.

Action: Councilor Euton made a motion, seconded by Councilor Grigar, to approve 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. The motion carried by a unanimous vote of those present.

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.**

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.

Key Discussion Points: John Maresh read the Executive Summary. He added that this program is an incentive during the summer months to reduce our load in order to help prevent the necessity of rolling black outs. There is a generator at the water treatment plant, and it is actually beneficial to exercise it during these periods in order to ensure that it is in good working condition. If, for any reason, the generator was unable to kick on, then we would just go back onto the power load and not receive the credit.

Action: Councilor Euton made a motion, seconded by Councilor Barta, to approve 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.. The motion carried by a unanimous vote of those present.

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.**

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.

Key Discussion Points: John Maresh read the Executive Summary. After brief discussion, the general consensus was to pass the Resolution.

Action: Councilor Euton made a motion, seconded by Councilor Grigar, to approve 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. The motion carried by a unanimous vote of those present.

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.**

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 included in the agenda packet 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.

Key Discussion Points: Scott Tschirhart, City Attorney, read the Executive Summary and opened the floor for discussion.

Questions/Comments:

C: This topic is one that we receive the most citizen complaints about. We want to make sure that we are accomplishing our goal with this Ordinance without over-doing anything.

Q: What are the positive changes that this Ordinance would bring to Code Enforcement?

A: There would be two major improvements: the length of time that that we are required to witness a vehicle sit unmoved before we can investigate would be reduced from 30 to 15 days, and the term "inoperable" is more clearly defined for enforcement purposes.

Q: Would the vehicle have to be seen from public view?

A: If a vehicle can be seen from public view, Code Enforcement can walk onto the property (driveway, sidewalk, front yard) to view identifying numbers on the vehicles. If the vehicle is in a back yard and not visible from a public street, then Code Enforcement cannot enter the property without the consent of the owner or a search warrant. These laws are set clearly by the State of Texas and adhered to regularly by Code Enforcement Officers.

C: I feel this is an invasion of personal liberties. I don't see why a car cover would not appease a neighbor as a screening device, but I know I'm in the minority.

C: The majority of the information included on the draft provided by Scott was already included in the Ordinance, but has been moved for better understanding. Most of the recommendations offered have been provided and tested by the Texas Municipal League.

C: There is a scrap yard mentioned in this Ordinance, although Rosenberg does not have one at this time. That was included for future growth purposes.

Action: Councilor Benton made a motion to approve Ordinance No. 2015-12, striking Item 2 of Section 14-115, " (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." The motion died for lack of a second.

Further Action: After additional discussion, Councilor Pena made a motion, seconded by Councilor Barta, to approve 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.

The motion carried by a vote of 5 to 1 as follows: Yeses: Mayor Pro Tem McConathy, Councilors Benton, Barta, Pena, and Grigar. No: Councilor Euton.

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.**

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.

Key Discussion Points: Travis Tanner, Executive Director of Community Services, read the Executive Summary. After some discussion, the general consensus of Council was overall favorable, with the following revisions:

- Strike 6-390. b. 3. "*The owner of any fence, existing or new, shall be responsible for the removal of any and all graffiti.*" This topic is covered elsewhere in the Code.
- Strike 6-390. b. 4. "*Any and all vegetation shall be kept clear of fences and shall not be allowed to grow into a fence.*" Many people grow vines or berries on their fences.
- In 6-390. c. 2. Change "*Should the violations not be corrected by the owner within a ten (10) day time period*" to a thirty (30) day time period.

Action: Councilor Benton made a motion, seconded by Councilor Barta, to make the recommended changes and approve as revised 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.

The motion carried by a vote of 5 to 1 as follows: Yeses: Mayor Pro Tem McConathy, Councilors Benton, Barta, Pena, and Grigar. No: Councilor Euton.

Further discussion: Scott Tschirhart asked to be allowed to make the recommended changes and resubmit a clean copy for signature. He clarified that the Ordinance was passed on April 21st and could be enforced immediately.

9. **REVIEW AND DISCUSS A PROPOSED SURVEY REGARDING THE ONE-WAY PAIRS PROJECT, AND TAKE ACTION AS NECESSARY.**

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.

Key Discussion Points:

- William Benton, Councilor, At-Large Position 1, explained his desire for the ability to conduct quick satisfaction surveys of the citizens of Rosenberg.
- Angela Fritz, Executive Director of Information Services, explained the upcoming Community Survey that will be conducted by a third party and will be statistically representative of the citizens. There is some customization available, but the surveying process is 17 weeks.
- After discussion, it was determined that staff would investigate and present options during the upcoming budget cycle for conducting surveys in the future.

- No action was taken on the 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.**

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

An Executive Session was held 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.**

Mayor Pro Tem McConathy adjourned the Executive Session and reconvened into Regular Session at 8:52 p.m.

12. **ANNOUNCEMENTS.**

There is a Candidates' Forum hosted by the Central Fort Bend Chamber Alliance on Wednesday, April 22, 2015, at 6:00 p.m.

Strike Out Autism, hosted by Hope For Three, will be held on Sunday, April 26th at Constellation Field in Sugar Land. Councilor Barta will be on hand to present a Proclamation.

13. **ADJOURNMENT.**

There being no further business Mayor Pro Tem McConathy adjourned the meeting at 8:53 p.m.

Anne Stark, Assistant City Secretary



CITY COUNCIL COMMUNICATION

May 05, 2015

ITEM #	ITEM TITLE
B	Final Plat of Park Place Boulevard Street Dedication
ITEM/MOTION	
Consideration of and action on a Final Plat of Park Place Boulevard Street Dedication, being a subdivision of 2.3580 acres out of the Robert E. Handy Survey, A-187, in the City of Rosenberg, Fort Bend County, Texas (Fort Bend County Municipal Utility District No. 144).	
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 #: 144 (Summer Lakes/Waterford Park)

1. Final Plat of Park Place Boulevard Street Dedication
2. Revised Land Use and Parcel Plan for MUD No. 144 Planned Unit Development – 11-01-11
3. Planning Commission Meeting Minute Excerpt – 08-20-14
4. Planning Commission Draft Meeting Minute Excerpt – 04-15-15

APPROVALS

Submitted by:

Travis Tanner
 Travis Tanner, AICP
 Executive Director of
 Community Development

Reviewed by:

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

Approved for Submittal to City Council:

John Maresh
 John Maresh
 Acting City Manager

EXECUTIVE SUMMARY

The Final Plat of Park Place Boulevard Street Dedication consists of 2.358 acres of proposed public right-of-way. The Plat is located off of Reading Road and August Green Drive, in the City Limits and in Fort Bend County MUD No. 144. It extends from the existing portion of Park Place Boulevard abutting the Waterford Park Apartments to the roundabout where August Green Drive currently terminates.

This is a proposed eighty-foot (80') collector street right-of-way that will provide a needed secondary access to and from the subdivision. The Plat is in accordance with the Revised Land Use and Parcel Plan for MUD No. 144 and is not in conflict with any applicable regulations. The Preliminary Plat of this subdivision was approved by the Planning Commission on August 20, 2014, and the Commission subsequently recommended approval to City Council of the Final Plat on April 15, 2015.

Staff recommends approval of the Final Plat of Park Place Boulevard Street Dedication.

STATE OF TEXAS
COUNTY OF FORT BEND

We, CL Waterford, L.L.C., a Texas Limited Liability Company, acting by and through Thomas H. Burleson, Executive Vice President, of Forstar (USA) Real Estate Group, Inc., a Delaware corporation, its sole member, owner of the 16.479 acre tract described in the above and foregoing map of PARK PLACE BOULEVARD STREET DEDICATION, do hereby make and establish said subdivision and development plat of said property according to all laws, dedications, restrictions and notations on said maps or plat and hereby dedicate to the use of the public forever, all streets (except those streets designated as private streets), alleyways, parks, water courses, drains, easements and public places shown thereon for the purposes and considerations therein expressed; and do hereby bind ourselves, our heirs, successors and assigns to warrant and forever defend the title to the land so dedicated.

FURTHER, Owners have dedicated and by these presents do dedicate to the use of the public for public utility purposes forever unobstructed aerial easements. The aerial easements shall extend horizontally an additional five feet (5' 0") for ten feet (20' 0") ground easements or seven feet, (7' 0") for sixteen feet (16' 0") ground easements from a plane sixteen feet (16' 0") above the ground level upward, located adjacent to and adjoining said public utility easements that are designated with aerial easements (U.E. & A.E.) as indicated and depicted, hereon, whereby the aerial easement totals thirty feet (30' 0") in width.

FURTHER, Owners have dedicated and by these presents do dedicate to the use of the public for public utility purpose forever unobstructed aerial easements. The aerial easements shall extend horizontally an additional eleven feet, six inches (11' 6") for ten feet (10' 0") perimeter ground easements or seven feet, six inches (7' 6") for fourteen feet (14' 0") perimeter ground easements or five feet, six inches (5' 6") for sixteen feet (16' 0") perimeter ground easements, from a plane sixteen feet (16' 0") above ground level upward, located adjacent to and adjoining said public utility easements that are designated with aerial easements (U.E. and A.E.) as indicated and depicted hereon, whereby the aerial easement totals twenty one feet, six inches (21' 6") in width.

FURTHER, Owners have dedicated and by these presents do dedicate to the use of the public for public utility purpose forever unobstructed aerial easements. The aerial easements shall extend horizontally an additional ten feet (10' 0") for ten feet (10' 0") back-to-back ground easements, or eight feet (8' 0") for fourteen feet (14' 0") back-to-back ground easements or seven feet (7' 0") for sixteen feet (16' 0") back-to-back ground easements, from a plane sixteen feet (16' 0") above the ground level upward, located adjacent to both sides and adjoining said public utility easements that are designated with aerial easements (U.E. and A.E.) as indicated and depicted hereon, whereby the aerial easement totals thirty feet (30' 0") in width.

FURTHER, We do hereby dedicate to the public a strip of land twenty (20) feet wide on each side of the center line of any and all bays, creeks, gullies, ravines, draws and drainage ditches located in said subdivision, as easements for drainage purposes. Fort Bend County or any other governmental agency shall have the right to enter upon said easement at any and all times for the purposes of construction and maintenance of drainage facilities and structures.

FURTHER, We do hereby covenant and agree that all of the property within the boundaries of this subdivision and adjacent to any drainage easement, ditch, gully, creek or natural drainage way shall hereby be restricted to keep such drainage ways and easements clear of fences, buildings, excessive vegetation and other obstructions to the operations and maintenance of the drainage facility and that such abutting property shall not be permitted to drain directly into this easement except by means of an approved drainage structure.

FURTHER, We do hereby certify that we are the owners of all property immediately adjacent to the boundaries of the above and foregoing subdivision of PARK PLACE BOULEVARD STREET DEDICATION where building setback lines or public utility easements are to be established within the boundaries of the above and foregoing subdivision and do hereby make and establish all building setback lines and dedicate to the use of the public, all public utility easements shown in said adjacent acreage.

We further acknowledge that the dedications and/or exactions made herein are proportional to the impact of the subdivision upon the public services required in order that the development will conform with the present and future growth needs of the City and the County; we, our successors and assigns hereby waive any claim, damage, or cause of action that we may have as a result of the dedication or exactions made herein.

FURTHER, We do hereby acknowledge the receipt of the "Orders for Regulation of Outdoor Lighting in the Unincorporated Areas of Fort Bend County, Texas," and do hereby covenant and agree and shall comply with this order as adopted by Fort Bend County Commissioners Court on March 23, 2004.

IN TESTIMONY WHEREOF, CL Waterford, L.L.C., a Texas Limited Liability Company has caused these presents to be signed by Thomas Burleson, Executive Vice President, of Forstar (USA) Real Estate Group, Inc., a Delaware corporation, its sole member, hereto authorized this _____ day of _____

OWNER
CL Waterford, L.L.C.
A Texas Limited Liability Company

By: Forstar (USA) Real Estate Group Inc.
a Delaware corporation,
its sole member

By: Thomas H. Burleson, Executive Vice President

STATE OF TEXAS
COUNTY OF

BEFORE ME, the undersigned authority, on this day personally appeared Thomas H. Burleson, Executive Vice President, Forstar (USA) Real Estate Group Inc, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____

Notary Public in and for the
State of T E X A S

All elevations and contours shown hereon are referenced to NGVD 29, 1992 Adjustment Datum, to convert to NAVD83, GEOID 99, Subtract 1.51 feet.

Primary Benchmark:
NCS W 865, Disk 0.6 miles east of Crabb, 0.6 miles east along the Gulf, Colorado and Santa Fe Railway from the station at Crabb, Fort Bend County, near Mile Pole 58, opposite railroad bridge 58 A, at a concrete bridge on paved road paralleling the track, in top of the south wall, 2.2 feet west of the east end, 22 feet south of the centerline of the road, 1.5 feet higher than the road.

Elev=81.66', NGVD 29, 1992 Adjusted
Conversion Benchmark:

ROS 09, 3-inch Aluminum Disk with punch mark stamped "ROS 09" at the northeast intersection of FM 2218 and Airport Avenue, 103 feet from the southeast corner of B.F. Terry High School, 8.5 feet from a fire hydrant, 11 feet from a power pole and 18 feet from a concrete slab.

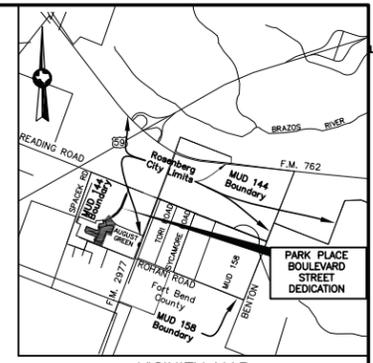
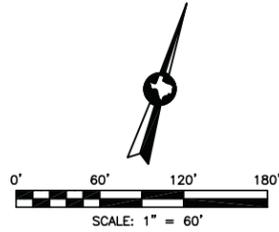
Elev=94.817', NAVD 88, GEOID 99 Adjusted

Temporary Benchmarks:
TBM 57- Railroad spike set in power pole on the westerly right-of-way line of F.M. 2977, approximately 1889 feet south of the southerly right-of-way line of Reading Road.

Elev=92.26' (NGVD29) 1992 Adjusted

TBM 58- 5/8-inch iron rod with blue cap stamped "E.H.R.&A. T.P." set approximately 11.8 feet from the easterly right-of-way line of F.M. 2977 and being South 69°42'22" East, 110.57 feet from TBM 57.

Elev=94.52' (NGVD29) 1992 Adjusted



VICINITY MAP
N.T.S.: KEYMAP#606W

Table with 2 columns: District Names, and rows for WCID, MUD, LID, DID, SCHOOL, FIRE, IMPACT FEE AREA, CITY.

STATE OF TEXAS
COUNTY OF FORT BEND
I, Laura Richard, County Clerk in and for Fort Bend County, hereby certify that the foregoing instrument with its certificate of authentication was filed for recordation in my office on _____ 2015, at _____ o'clock _____ M. in Plot Number(s) _____ of the Plat Records of Fort Bend County, Texas. Witness my hand and seal of office, at Richmond, Texas, the day and date last above written.

Laura Richard, County Clerk
Fort Bend County, Texas

By: Deputy

GENERAL NOTES

- 1. One-foot reserve dedicated to the public in fee as a buffer separation between the side or end of streets in subdivisions where such streets abut adjacent acreage. The condition of such dedication being that when the adjacent property is subdivided or resubdivided in a recorded plat, the one-foot reserve shall thereupon become vested in the public for street right-of-way purposes and the fee title thereto shall revert to and revest in the dedicator, his heirs, assigns, or successors.
2. B.L. indicates Building Line
F.B.C.C.F. indicates Fort Bend County Clerk's File.
F.B.C.M.U.D. indicates Fort Bend County Municipal Utility District.
VOL. indicates Volume.
PG. indicates Page.
P.U.D. indicates Planned Unit Development.
R.O.W. indicates Right-Of-Way
S.S.E. indicates Sanitary Sewer Easement
U.E. indicates Utility Easement
W.L.E. indicates Water Line Easement
(F) indicates Found 5/8" Iron Rod with cap stamped "E.H.R.A.713-764-450"

LINE TABLE with columns: LINE, BEARING, DISTANCE. Rows: L1, L2.

CURVE TABLE with columns: CURVE, RADIUS, DELTA ANGLE, ARC LENGTH, CHORD BEARING, CHORD LENGTH. Rows: C1 through C8.

I, Charles Kennedy, Jr., am authorized under the laws of the State of Texas to practice the profession of surveying and hereby certify that the above subdivision is true and correct; was prepared from an actual survey of the property made under my supervision and that all boundary corners, angle points of curvature and other points of reference have been marked with iron (or other suitable permanent ferrous metal) pipes minimum 5/8" required and a length of not less than three (3) feet.

Charles Kennedy, Jr., Registered Professional Land Surveyor
Texas Registration No. 5708

I, Justin R. Ring, a Professional Engineer registered in the State of Texas, do hereby certify that this plot meets all requirements of Fort Bend County to the best of my knowledge.

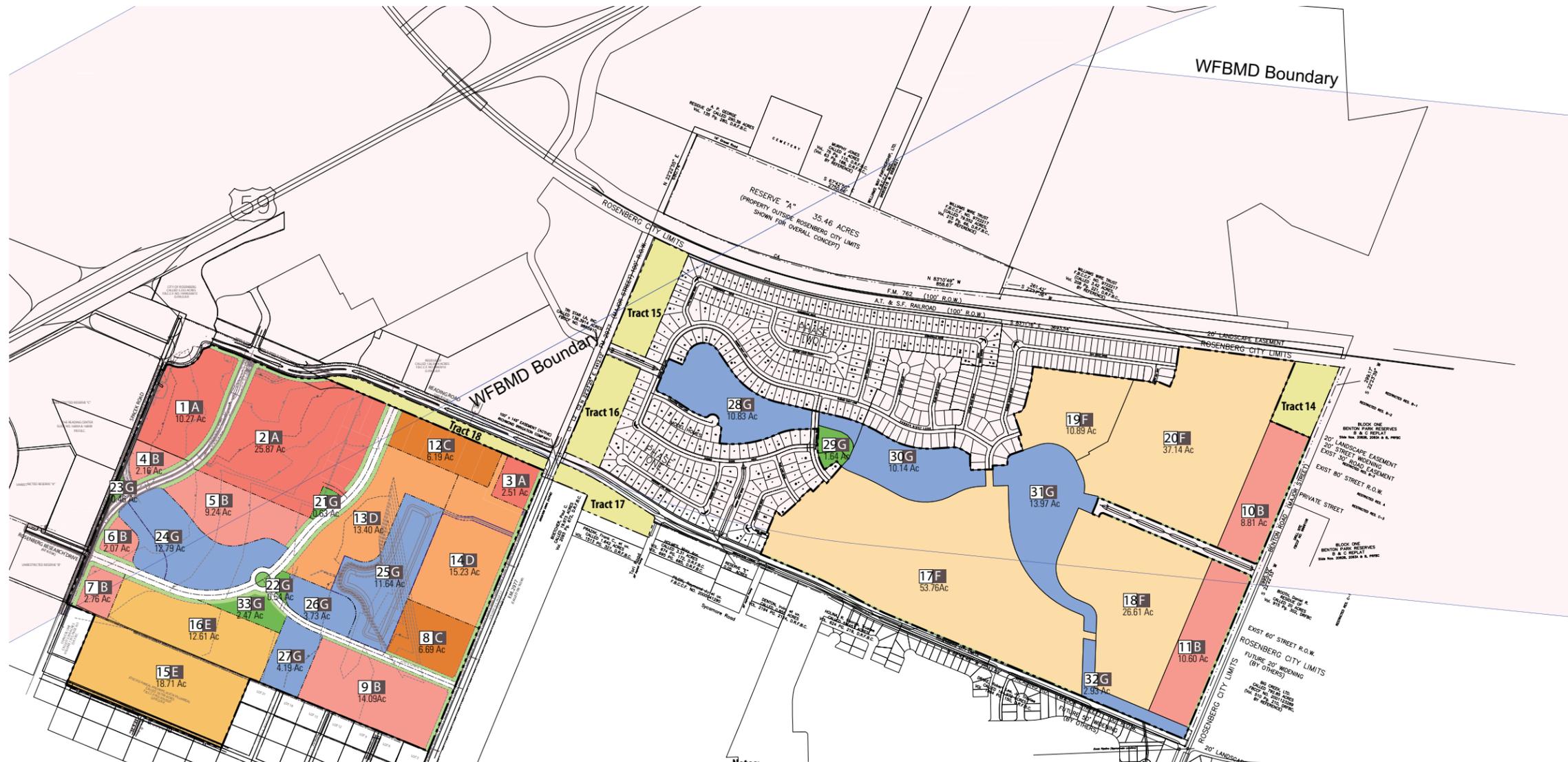
Justin R. Ring, Registered Professional Engineer
Texas Registration No. 95863

This is to certify that the City Planning Commission of the City of Rosenberg, Texas has approved this plat and subdivision of PARK PLACE BOULEVARD STREET DEDICATION in conformance with the laws of the State of Texas, and the ordinances of the City of Rosenberg as shown hereon and authorized the recording of this plat this _____ day of _____

By: Pete Pavlovsky, Chairman
Wayne Poldrack, Secretary

This is to certify that the City Council of the City of Rosenberg, has approved this plat and subdivision of PARK PLACE BOULEVARD STREET DEDICATION in conformance with the laws of the State of Texas, and the ordinances of the City of Rosenberg as shown hereon and authorized the recording of this plat this _____ day of _____

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



Parcel Key



Notes:

*Note 1: Tracts 14, 15, 16, 17 & 18 depicted on Exhibit "A" on the MUD 144 PUD (hereinafter referred to as "Limited Control Tracts") are included within the PUD boundary for the sole purpose of applying Exhibit "H", Exhibit "I" and Table "5" PUD standards to the Limited Control Tracts.

** Note 2: Tract 18 (depicted on Exhibit "A" of the MUD 144 PUD) is encumbered by easements (including but not limited to landscaping, signage, access and other easements) for the benefit of the "Adjacent Parcel" referred to as the "Summer Creek Subdivision Tract" (identified as Tract 1, 2, 3, 4 and 5 as depicted on Exhibit "A" to the MUD 144 PUD herof) filed under Fort Bend County Clerk's File No's 2006155450 and 2010079053 ("Easements"). A Benefitted Party of the Summer Creek Subdivision Tract shall be entitled to meet the requirements Exhibit "H", Exhibit "I" and Table "5" of the MUD 144 PUD in connection with and subject to said Easement rights on Tract 18.

*** Note 3: The ±2 acre difference between the PUD Tract total acreage and the Parcel sums listed on Exhibit B is attributable to a portion of Lake Commons Drive in Summer Lakes that is included in the Tract summary but excluded from the Land Use inventory.

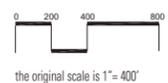
Tract #	Tract Area Acres
14	4.56
15	6.2395
16	5.8758
17	3.78
18**	4.1667
	24.622 Acres

Legend

Land Use Key	Land Uses Permitted								Parcel Areas		
	SF	DUP	PH	TH	MF	COM	RET	CH		SCH	OPF*
A Commercial						✓	✓	✓	✓	✓	38.65
B Commercial/Residential	✓			✓		✓	✓	✓	✓	✓	49.74
C Multi-family/Commercial	✓				✓			✓	✓	✓	12.90
D Multi-family/Residential	✓				✓	✓			✓	✓	28.63
E Residential	✓	✓	✓	✓					✓	✓	31.32
F Residential	✓		✓						✓	✓	128.40
G Park Space/Detention								✓	✓	✓	75.96
* OPF- Other public city, county, state & federal facilities										365.60 Acres	
CH-Church											
SCH-School											

Land Use & Parcel Plan: Exhibit B

S L A Studio • Land
Land Planning • Landscape Architecture



Fort Bend County Municipal Utility District No. 144 PUD
SY1902
April 8, 2010
Revised June 18, 2010
Revised July 22, 2010
Revised October 26, 2011

PLANNING COMMISSION MEETING MINUTES

On this the 20th day of August 2014, the Planning Commission (Commission) of the City of Rosenberg, Fort Bend County, Texas, met in regular meeting at the Rosenberg City Hall Council Chamber, 2110 4th Street, Rosenberg, Texas 77471.

COMMISSIONERS PRESENT

Pete Pavlovsky	Planning Commission Chairperson
Lester Phipps, Jr.	Planning Commission Vice Chairperson
Wayne Poldrack	Planning Commission Secretary
Alicia Casias	Planning Commissioner
Mike Parsons	Planning Commissioner
James Urbish	Planning Commissioner

STAFF PRESENT

Cynthia McConathy	Councilor, At Large Position Two
Travis Tanner	Executive Director of Community Development
Scott Tschirhart	City Attorney
Renée LeLaurin	Secretary II

GUESTS PRESENT

Vahid Tabrizi	ERSA Grae Corporation – Stonecreek Estates
Kerry Gilbert	Kerry R. Gilbert & Associates – Stonecreek Estates
Geoff Freeman	Kerry R. Gilbert & Associates – Stonecreek Estates
Tom Sabin	GSSW Real Estate Investments – The Fountains II
Tony Topping	Texas Masonry Council
Carol Redd	EHRA – Park Place Boulevard/Rivers Mist

CALL TO ORDER:

Chairperson Pavlovsky called the meeting to order at 4:00 p.m.

AGENDA

1. CONSIDERATION OF AND ACTION ON MINUTES OF THE JUNE 18, 2014, AND JULY 16, 2014 REGULAR PLANNING COMMISSION MEETING.

Action Taken: Vice Chairperson Phipps moved, seconded by Commissioner Urbish, to approve the minutes of the June 18, 2014 Regular Planning Commission Meeting as written. The motion carried by a vote of four “ayes” and two abstentions. **Ayes:** *Chairperson Pavlovsky, Vice Chairperson Phipps, Commissioner Poldrack and Urbish.* **Abstentions:** *Commissioners Casias and Parsons.*

Action Taken: Commissioner Parsons moved, seconded by Commissioner Casias, to approve the minutes of the July 16, 2014 Regular Planning Commission Meeting as written. The motion carried by a vote of four “ayes” and two abstentions. **Ayes:** *Chairperson Pavlovsky, Commissioner Casias, Poldrack and Urbish.* **Abstentions:** *Vice Chairperson Phipps and Commissioner Parsons.*

2. CONSIDERATION OF AND ACTION ON A PRELIMINARY PLAT OF PARK PLACE BOULEVARD STREET DEDICATION, BEING A SUBDIVISION OF 2.3580 ACRES OUT OF THE ROBERT E. HANDY SURVEY, A-187, IN THE CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 144); 0 LOTS, 0 BLOCKS, 0 RESERVES.

Executive Summary: The Preliminary Plat of Park Place Boulevard Street Dedication consists of 2.358 acres of proposed public right-of-way. The Plat is located off of Reading Road and August Green Drive, in the City Limits and in Fort Bend County MUD No. 144. It extends from the existing portion of Park Place Boulevard abutting the Waterford Park Apartments to the roundabout where August Green Drive currently terminates. It is a proposed eighty-foot (80') collector street right-of-way that will provide a needed secondary access to and from the subdivision. The Plat is in accordance with the Revised Land Use and Parcel Plan for MUD No. 144 and is not in conflict with any applicable regulations. Staff recommends approval of the Preliminary Plat of Park Place Boulevard Street Dedication.

Key Discussion:

- Mr. Tanner presented the item and reviewed the Executive Summary.

Action Taken: Commissioner Casias moved, seconded by Commissioner Parsons, to approve the Preliminary Plat of Park Place Boulevard Street Dedication, being a subdivision of 2.3580 acres out of the Robert E. Handy Survey, A-187, in the City of Rosenberg, Fort Bend County, Texas (Fort Bend County Municipal Utility District No. 144); 0 lots, 0 blocks, 0 reserves.

Additional Discussion:

- Commissioner Parsons inquired if the streets are marked on the drawing.
- Mr. Tanner replied that it is marked but not named as such.
- Commissioner Parsons would like to see where streets are on the drawing.

Action Taken: Upon voting, the motion carried unanimously.

3. CONSIDERATION OF AND ACTION ON A PRELIMINARY PLAT OF RIVERS MIST SECTION TWO, BEING A SUBDIVISION OF 15.59 ACRES OUT OF THE W.M. LUSK SURVEY, A-276, IN FORT BEND COUNTY, TEXAS (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 158); 46 LOTS, 2 BLOCKS, 4 RESERVES (4.2975 ACRES).

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

The Plat consists of 46 lots, two (2) blocks, and three (3) reserves totaling 4.2658 acres. All proposed lots are a minimum of sixty feet (60') in width. This is in accordance with the approved Land Plan for Rivers Mist dated May 2006.

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

Key Discussion:

- Mr. Tanner presented the item and reviewed the Executive Summary.
- Commissioner Parsons inquired what the square footage of the lots is.
- Mr. Tanner replied that that information is in the plat. They are fairly large starting at a minimum of 7,200 square feet.

Action Taken: Commissioner Parsons moved, seconded by Commissioner Urbish to approve the Preliminary Plat of Rivers Mist Section Two, being a subdivision of 15.59 acres out of the W.M. Lusk survey, A-276, in Fort Bend County, Texas (Fort Bend County Municipal Utility District No. 158); 46 lots, 2 blocks, 4 reserves (4.2975 acres). The motion carried unanimously.

4. CONSIDERATION OF AND ACTION ON A PRELIMINARY PLAT OF COTTONWOOD SECTION THREE-B, A SUBDIVISION OF 8.333 ACRES OF LAND LOCATED IN THE S.A. STONE SURVEY NO. 10, A-392, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS; LOTS: 44; RESERVES: 1; BLOCKS: 4.

Executive Summary: The Preliminary Plat of Cottonwood Section Three-B consists of 8.33 acres and 44 residential lots. It is located off of Barton Creek and Pease River Lanes, immediately southwest of Cottonwood Section Three-A. The Plat is within the City Limits and in Fort Bend County MUD No. 148.

All proposed lots are fifty feet (50') in width and a minimum of 6,000 square feet in size. The Land Plan was approved before the current standards relating to lot size. The Plat conforms to the approved Land Plan dated April 2003.

There being no conflicts with applicable regulations, staff recommends approval of the Preliminary Plat of Cottonwood Section Three-B.

Key Discussion:

- Mr. Tanner presented the item and reviewed the Executive Summary.
- Commissioner Parsons inquired how many 50-foot, 6,000 square foot lots are left that have already been pre-approved.
- Mr. Tanner replied that Mr. Kalkomey is out of town and with the size of this Agenda, there was no way that staff was able to figure that out in preparation for this meeting.

Key Discussion:

- Mr. Tanner presented the item and reviewed the Executive Summary.

Action Taken: Commissioner Casias moved, seconded by Commissioner Urbish, to extend the Preliminary Plat of Park Place Boulevard Street Dedication approval, being a subdivision of 2.3580 acres out of the Robert E. Handy Survey, A-187, in the City of Rosenberg, Fort Bend County, Texas (Fort Bend County Municipal Utility District No. 144). *the Preliminary Plat of Park Place Boulevard Street Dedication*, being a subdivision of 2.3580 acres out of the Robert E. Handy survey, a-187, in the City of Rosenberg, Fort Bend County, Texas (Fort Bend County Municipal Utility District No. 144). The motion carried unanimously by those present.

4. CONSIDERATION OF AND ACTION ON A REQUEST BY JONES AND CARTER, INC., TO EXTEND APPROVAL FOR THE PRELIMINARY PLAT OF STONECREEK ESTATES SECTION ONE, A SUBDIVISION OF 78.96 ACRES OF LAND OUT OF THE WILEY MARTIN SURVEY, A-56 FORT BEND COUNTY, TEXAS; 185 LOTS, 8 RESERVES, 9 BLOCKS.

Executive Summary: The Planning Commission approved the Preliminary Plat of Stonecreek Estates Section One on September 17, 2014. Pursuant to the "Subdivision" Ordinance, the applicant has requested an extension of that approval by 180 days from the date of its expiration.

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

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

The Plat is in conformance with the approved Land Plan and with applicable City ordinances. Staff recommends extending the approval of the Preliminary Plat of Stonecreek Estates Section One by 180 days from the date of expiration.

Key Discussion:

- Mr. Tanner presented the item and reviewed the Executive Summary.

Action Taken: Commissioner Parsons moved, seconded by Commissioner Casias, to extend approval for the Preliminary Plat of Stonecreek Estates Section One, a subdivision of 78.96 acres of land out of the Wiley Martin Survey, A-56 Fort Bend County, Texas; 185 lots, 8 reserves, 9 blocks. The motion carried unanimously by those present.

5. CONSIDERATION OF AND ACTION ON A FINAL PLAT OF PARK PLACE BOULEVARD STREET DEDICATION, BEING A SUBDIVISION OF 2.3580 ACRES OUT OF THE ROBERT E. HANDY SURVEY, A-187, IN THE CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 144).

Executive Summary: The Final Plat of Park Place Boulevard Street Dedication consists of 2.358 acres of proposed public right-of-way. The Plat is located off of Reading Road and August Green Drive, in the City Limits and in Fort Bend County MUD No. 144. It extends from the existing portion of Park Place Boulevard abutting the Waterford Park Apartments to the roundabout where August Green Drive currently terminates.

This is a proposed eighty-foot (80') collector street right-of-way that will provide a needed secondary access to and from the subdivision. The Plat is in accordance with the Revised Land Use and Parcel Plan for MUD No. 144 and is not in conflict with any applicable regulations. The Preliminary Plat of this subdivision was approved by the Planning Commission on August 20, 2014 and expired, hence the previous agenda item to extend the Preliminary Plat approval.

There being no issues with the Plat, staff recommends that the Planning Commission recommend approval to City Council of the Final Plat of Park Place Boulevard Street Dedication.

Key Discussion:

- Mr. Tanner presented the item and reviewed the Executive Summary.

Action taken: Commissioner Poldrack moved, seconded by Commissioner Parsons, to make a recommendation to City Council to recommend approval to City Council of the Final Plat of Park Place Boulevard Street Dedication, being a subdivision of 2.3580 acres out of the Robert E. Handy Survey, A-187, in the City of Rosenberg, Fort Bend County, Texas (Fort Bend County Municipal Utility District No. 144). The motion carried unanimously by those present.

6. CONSIDERATION OF AND ACTION ON A FINAL PLAT OF RIVERS MIST SECTION THREE, BEING A SUBDIVISION OF 31.51 ACRES OUT OF THE WM. LUSK SURVEY, A-276, IN FORT BEND COUNTY, TEXAS. (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 158): ALSO BEING A PARTIAL REPLAT OF RESTRICTED RESERVE 'C', BLOCK 1, RIVERS MIST SECTION TWO, PLAT NO. 2015008851 F.B.C.P.R.; 73 LOTS, 4 BLOCKS AND 5 RESERVES (13.2161 ACRES)

Executive Summary: The Final Plat of Rivers Mist Section Three is located off of River Delta Lane and Rohan Road, south of Rivers Mist Sections One and Two. The Final Plat is in the Extraterritorial Jurisdiction (ETJ) and in Fort Bend County MUD No. 158.

The Plat consists of 73 lots, four (4) blocks, and five (5) reserves with a total of 13.2161 acres. All proposed lots are a minimum of sixty feet (60') in width. This is in accordance with the approved Land Plan for Rivers Mist dated May 2006.

The Preliminary Plat of this subdivision was approved by the Planning Commission on March 18, 2015. The Final Plat is consistent with the approved Preliminary Plat and meets all applicable regulations of the City of Rosenberg. Therefore staff recommends that the Planning Commission recommend approval to City Council of the Final Plat of Rivers Mist Section Three.

Key Discussion:

- Mr. Tanner presented the item and reviewed the Executive Summary.
- Commissioner Poldrack inquired about the price range of the homes.
- Mr. Tanner replied that he was not aware of the price range.
- Mr. Parsons inquired about the estimated value of the homes.
- Mr. Tanner replied that this question could be posed to the developer at most, but that action could not be taken by the City based on the price of the homes.

Action Taken: Commissioner Casias moved, seconded by Commissioner Parsons, to recommend approval to City Council of the Final Plat of Rivers Mist Section Three, being a subdivision of 31.51 acres out of the WM. Lusk Survey, A-276, in Fort Bend County, Texas. (Fort Bend County Municipal Utility District No. 158): Also being a partial replat of restricted Reserve 'C', Block 1, Rivers Mist Section Two, Plat No. 2015008851 F.B.C.P.R.; 73 lots, 4 blocks and 5 reserves (13.2161 acres). The motion carried unanimously by those present.

7. CONSIDERATION OF AND ACTION ON A FINAL PLAT OF THE TRAILS AT SEABOURNE PARKE SECTION TWO, A SUBDIVISION OF 22.691 ACRES LOCATED IN THE G.M. STONE 1/3 LEAGUE SURVEY, ABSTRACT 312, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 147); 108 LOTS, 6 BLOCKS.

Executive Summary: The Final Plat of The Trails at Seabourne Parke Section Two consists of approximately 22.691 acres and 108 residential lots. It is located south of J. Meyer Road and off of Heath Ridge, Oak Briar, and Cottage Creek Lanes, immediately southwest of The Trails at Seabourne Parke Section One. The Plat is within the City Limits and located in Fort Bend County MUD No. 147.

All proposed lots are fifty feet (50') in width and a minimum of 6,000 square feet in size. The Land Plan was approved before the current standards relating to lot size. The Plat conforms to the approved Land Plan dated June 2003 (see attached). Recordation of plats in this development last occurred in 2005. The development was recently assigned to a new developer, LGI Homes, that wishes to develop in accordance with the previously approved Land Plan. A Plat of this subdivision was approved by the Planning Commission and City Council in 2006 and 2007, but was never subsequently recorded and therefore expired, hence the new Plat submittal.

There are no apparent conflicts with applicable regulations or with the original Land Plan. In addition to the Utility Agreement and Land Plan, this Plat/development is subject to a Road Improvement Agreement related to improvements to J. Meyer Road that, due to conditions that have changed over the last several years since platting last occurred, must be modified to address needed road improvements before any infrastructure permits



CITY COUNCIL COMMUNICATION

May 05, 2015

ITEM #	ITEM TITLE
C	Final Plat of Rivers Mist Section Three
ITEM/MOTION	
Consideration of and action on a Final Plat of Rivers Mist Section Three, being a subdivision of 31.51 acres out of the WM. Lusk Survey, A-276, in Fort Bend County, Texas. (Fort Bend County Municipal Utility District No. 158): Also being a partial replat of restricted Reserve 'C', Block 1, Rivers Mist Section Two, Plat No. 2015008851 F.B.C.P.R.; 73 lots, 3 blocks and 5 reserves (13.2161 acres).	
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 #: 158 (River Run at the Brazos/Rivers Mist)

1. Final Plat of Rivers Mist Section Three
2. Land Plan for Rivers Mist - 05-03-06
3. Planning Commission Meeting Minute Excerpt – 03-18-15
4. Planning Commission Draft Meeting Minute Excerpt – 04-15-15

APPROVALS

Submitted by:

Travis Tanner
 Travis Tanner, AICP
 Executive Director of
 Community Development

Reviewed by:

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

Approved for Submittal to City Council:

John Maresh
 John Maresh
 Acting City Manager

EXECUTIVE SUMMARY

The Final Plat of Rivers Mist Section Three is located off of River Delta Lane and Rohan Road, south of Rivers Mist Sections One and Two. The Plat is in the Extraterritorial Jurisdiction (ETJ) and in Fort Bend County MUD No. 158.

The Plat consists of 73 lots, four (4) blocks, and five (5) reserves with a total of 13.2161 acres. All proposed lots are a minimum of sixty feet (60') in width. This is in accordance with the approved Land Plan for Rivers Mist dated May 2006.

The Preliminary Plat of this subdivision was approved by the Planning Commission on March 18, 2015. The Final Plat is consistent with the approved Preliminary Plat and meets all applicable regulations of the City of Rosenberg. The Commission recommended approval to City Council of the Final Plat on April 15, 2015. Staff recommends approval of the Final Plat of Rivers Mist Section Three.

STATE OF TEXAS
COUNTY OF FORT BEND

We, Ventana Development Reading West, L.L.C., a Texas limited liability company, acting by and through James B. Grover, Jr., Co-Manager, owner (hereinafter referred to as Owners) of the 31.51 acre tract described in the above and foregoing map of RIVERS MIST SECTION THREE, do hereby make and establish said subdivision and development plot of said property according to all lines, dedications, restrictions and notations on said maps or plat and hereby dedicate to the use of the public forever, all streets (except those streets designated as private streets, or permanent access easements), alleys, parks, water courses, drains, easements and public places shown thereon for the purposes and considerations therein expressed; and do hereby bind ourselves, our heirs, successors and assigns to warrant and forever defend the title to the land so dedicated.

FURTHER, Owners have dedicated and by these presents do dedicate to the use of the public for public utility purpose forever unobstructed aerial easements. The aerial easements shall extend horizontally an additional eleven feet, six inches (11' 6") for ten feet (10' 0") perimeter ground easements or seven feet, six inches (7' 6") for fourteen feet (14' 0") perimeter ground easements or five feet, six inches (5' 6") for sixteen feet (16' 0") perimeter ground easements, from a plane sixteen feet (16' 0") above the ground level upward, located adjacent to and adjoining said public utility easements that are designated with aerial easements (U.E. and A.E.) as indicated and depicted hereon, whereby the aerial easement totals twenty one feet, six inches (21' 6") in width.

FURTHER, Owners have dedicated and by these presents do dedicate to the use of the public for public utility purpose forever unobstructed aerial easements. The aerial easements shall extend horizontally an additional ten feet (10' 0") for ten feet (10' 0") back-to-back ground easements, or eight feet (8' 0") for fourteen feet (14' 0") back-to-back ground easements or seven feet (7' 0") for sixteen feet (16' 0") back-to-back ground easements, from a plane sixteen feet (16' 0") above ground level upward, located adjacent to and adjoining said public utility easements that are designated with aerial easements (U.E. and A.E.) as indicated and depicted hereon, whereby the aerial easement totals thirty feet (30' 0") in width.

FURTHER, Owners do hereby covenant and agree that all of the property within the boundaries of this plat shall be restricted to prevent the drainage of any septic tanks into any public or private street, road or alley or any drainage ditch, either directly or indirectly.

FURTHER, we do hereby declare that all parcels of land designated as lots on this plat are intended for the construction of single family residential dwelling units thereon (or the placement of mobile homes) and shall be restricted for same under the terms and conditions of such restrictions filed separately.

FURTHER, we do hereby dedicate to the public a strip of land twenty (20) feet wide on each side of the center line of any and all bayous, creeks, gullies, ravines, draws and drainage ditches located in said subdivision, as easements for drainage purposes. Fort Bend County or any other governmental agency shall have the right to enter upon said easement at any and all times for the purposes of construction and maintenance of drainage facilities and structures.

FURTHER, we do hereby acknowledge the receipt of the "Orders for Regulations of Outdoor Lighting in the Unincorporated Areas of Fort Bend County, Texas", and do hereby covenant and agree and shall comply with this order as adopted by Fort Bend County Commissioners Court on March 23, 2004, and any subsequent amendments.

FURTHER, Owners do hereby covenant and agree that all of the property within the boundaries of this plat and adjacent to any drainage easement, ditch, gully, creek or natural drainage way is hereby restricted to keep such drainage ways and easements clear of fences, buildings, planting and other obstructions to the operations and maintenance of the drainage facility and that such abutting property shall not be permitted to drain directly into this easement except by means of an approved drainage structure.

FURTHER, we do hereby certify that we are the owners of all property immediately adjacent to the boundaries of the attached plot of RIVERS MIST SECTION THREE, where building setback lines or public utility easements are to be established outside of the boundaries of the above and foregoing plat and do hereby make and establish building setback lines and dedicate to the use of the public forever all public utility easements shown in said adjacent acreage.

We further acknowledge that the dedications and/or exaction's made herein are proportional to the impact of the subdivision upon the public services required in order that the development will conform with the present and future growth needs of the City and the County; we, our successors and assigns hereby waive any claim, damage, or cause of action that we may have as a result of the dedication or exaction's made herein.

IN TESTIMONY WHEREOF, Ventana Development Reading West, L.L.C., a Texas limited liability company has caused these presents to be signed by James B. Grover, Jr., Co-Manager, hereunto authorized, this ___ day of _____, 2015.

OWNER
VENTANA DEVELOPMENT READING WEST, L.L.C.,
a Texas limited liability company

By:
James B. Grover, Jr., Co-Manager

STATE OF TEXAS
COUNTY OF FORT BEND

BEFORE ME, the undersigned authority, on this day personally appeared James B. Grover, Jr., Co-Manager of Ventana Development Reading West, LLC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ___ day of _____, 2015.

Notary Public in and for the
State of TEXAS
My Notary Commission Expires _____

Charles Kennedy, Jr., Registered Professional Land Surveyor
Texas Registration No. 5708

This is to certify that the City Planning Commission of the City of Rosenberg, Texas has approved this plat and subdivision of RIVERS MIST SECTION THREE in conformance with the laws of the State of Texas, and the ordinances of the City of Rosenberg as shown hereon and authorized the recording of this plat this ___ day of _____, 2015.

By: Pete Pavlovsky, Chairman
By: Wayne Poldrack, Secretary

This is to certify that the City Council of the City of Rosenberg, has approved this plat and subdivision of RIVERS MIST SECTION THREE in conformance with the laws of the State of Texas, and the ordinances of the City of Rosenberg as shown hereon and authorized the recording of this plat this ___ day of _____, 2015.

Vincent M. Morales, Jr., Mayor

Linda Cernosek, City Secretary

I, Justin R. Ring, a Professional Engineer registered in the State of Texas, do hereby certify that this plat meets all requirements of Fort Bend County to the best of my knowledge.

Justin R. Ring, Registered Professional Engineer
Texas Registration No. 95863

Attest:
By:

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared _____ and _____ of Texas Capital Bank, National Association known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledge to me that they executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ___ day of _____, 2015.

Notary Public in and for the
State of TEXAS
My Notary Commission expires _____

Table with 2 columns: District Names, and values: WCID, MUD, LID, DID, SCHOOL, FIRE, IMPACT FEE AREA, CITY OR CITY ETJ.

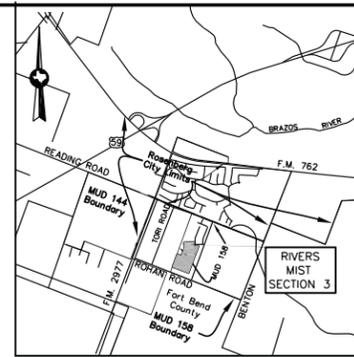
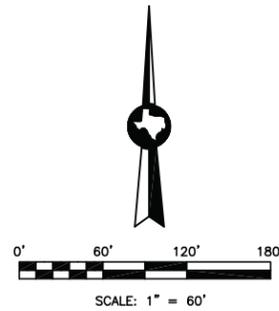
BENCH MARK: NGS W 865, DISK 0.6 MILES EAST OF CRABB, 0.6 MILES EAST, ALONG THE GULF, COLORADO AND SANTA FE RAILWAY FROM THE STATION AT CRABB, FORT BEND COUNTY, NEAR MILE POLE 58, OPPOSITE RAILROAD BRIDGE 58 A, AT A CONCRETE BRIDGE ON PAVED ROAD PARALLELING THE TRACK, IN TOP OF THE SOUTH WALL, 2.2 FEET WEST OF THE EAST END, 22 FEET SOUTH OF THE CENTERLINE OF THE ROAD, 1.5 FEET HIGHER THAN THE ROAD.

ELEVATION = 81.66 FEET, NGVD 29
PROJECT TBW: SQUARE CUT ON BACK OF CURB AT NOSE OF ESPLANADE AT THE EXISTING EASTERLY END OF READING ROAD AT THE WEST RIGHT-OF-WAY LINE OF F.M. 2977.
ELEVATION = 95.80 FEET, NGVD 29

THE SUBJECT PROPERTY LIES WITHIN ZONE "X" (UNSHADED), DEFINED AS AREAS DETERMINED TO BE OUTSIDE 500-YR FLOOD PLAIN, AS DEPICTED ON "FLOOD INSURANCE RATE" MAP NO. 4815C0265 L, DATED APRIL 2, 2014 ISSUED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, BASED ON A SCALED LOCATION OF THE SUBJECT PROPERTY ON THE REFERENCED MAP ON PAGES 1 & 2, HEREIN.

GENERAL NOTES

- 1. A.E. indicates Aerial Easement.
2. All lots shall be restricted to single family residential use.
3. All easements extend equidistant from either side of the property lines unless otherwise noted.
4. All side lot lines are either perpendicular or radial to street frontage unless otherwise noted.
5. The coordinates shown hereon are Texas South Central Zone No. 4204 State Plane Grid Coordinates (NAD83) and may be brought to surface by dividing by the following combined scale factor 0.999869043.
6. Rivers Mist Section Three contains 73- Lots 60' wide or greater
7. The top of all floor slabs shall be a minimum of 89.50 feet above mean sea level. The top slab elevation at any point on the perimeter of the slab shall not be less than 18" above natural ground or twelve inches (12") above the top of curb at the front of the lot, whichever is higher.
8. The drainage system for this subdivision is designed in accordance with the Fort Bend County Criteria Manual, which allows street ponding with intense rainfall events.
9. Sidewalks shall be built or caused to be built not less than 5 feet in width on both sides of all dedicated rights-of-way within said plot and on the contiguous right-of-way of all perimeter roads surrounding said plot, in accordance with the A.D.A.
10. This subdivisions falls within Fort Bend County Outdoor Lighting Ordinance: Zone "L22."
11. A project benchmark will be installed and documented per City of Rosenberg requirements prior to acceptance of the subdivision.
12. Elevations used for delineating contour lines are based upon U.S.C. & G.S. Datum, NVD-88 (1991 Adj.).
13. This plat was prepared to meet City of Rosenberg and Fort Bend County requirements.
14. This plat lies wholly within Fort Bend County, Fort Bend County Municipal Utility District No. 158, Fort Bend Subsidence District, Fort Bend County Drainage District, Lamar Consolidated I.S.D., and the ETJ of the City of Rosenberg.
15. Five-eighths inch (5/8") iron rods three feet (3') in length with cap stamped "E.H.R.A. 713-784-4500" are set on all perimeter boundary corners, all angle points, all points of curvature and tangency, and all block corners, unless otherwise noted.
16. All lots shall have a minimum of five (5') foot side building lines.
17. The square footage totals as shown hereon are based on the mathematical closure of the courses and distances reflected on this plat. It does not include the tolerances that may be present due to the positional accuracy of the boundary monumentation.
18. Approval of this plat will expire one year from City Council approval if not recorded in the Real Property Records of the County of Fort Bend.
19. F.B.C. M.U.D. No. 158 is responsible for the maintenance of Reserve "A", Reserve "B" and Reserve "C".
20. All property to drain into the drainage easement through an approved drainage structure.
21. All drainage easements shall be kept clear of fences, buildings, vegetation, and other obstructions to the operation and maintenance of the drainage facility.
22. A minimum distance of 10' shall be maintained between residential dwellings.
23. This plat was prepared from information furnished by StarTex Title Company, Certificate No. 45710PL, effective date March 24, 2015. The surveyor has not abstracted the above property.
24. There are no pipelines nor pipeline easements within the limits of the subdivision.



VICINITY MAP
N.T.S. KEYMAP 606W

I, Richard Stolle's, P.E., Fort Bend County Engineer, do hereby certify that the Plat of this Subdivision complies with all of the existing rules and regulations of this office as adopted by the Fort Bend County Commissioners' Court. However, no certification is hereby given as to the effect of drainage from this subdivision on the intercepting drainage artery or parent stream or on any other area or subdivision within the watershed.

Richard Stolle's, P.E.
Fort Bend County Engineer

Approved by the Commissioner's Court of Fort Bend County, Texas, this ___ day of _____, 2015.

Richard Morrison
Precinct 1, County Commissioner

W.A. (Andy) Meyers
Precinct 3, County Commissioner

Robert E. Hebert
County Judge

Grady Prestage
Precinct 2, County Commissioner

James Patterson
Precinct 4, County Commissioner

STATE OF TEXAS
COUNTY OF FORT BEND

I, Laura Richard, County Clerk in and for Fort Bend County, hereby certify that the foregoing instrument with its certificate of authentication was filed for recordation in my office on ___ 2015, at ___ o'clock ___ M. in Plat Number(s) ___ of the Plat Records of Fort Bend County, Texas.

Witness my hand and seal of office, at Richmond, Texas, the day and date last above written.

Laura Richard, County Clerk
Fort Bend County, Texas

By:
Deputy

PARK LAND DEDICATION TABLE
RIVERS MIST SECTION THREE
TOTAL PARK LAND DEDICATION REQUIRED = 0.73 AC
TOTAL PRIVATE PARK LAND DEDICATION = 0.365 AC
PRIVATE PARK LAND DEDICATION:
PARK LAND CREDIT (RESERVE "A")
TOTAL PRIVATE PARK LAND DEDICATION = 0.6237 AC
MONEY IN LIEU OF PUBLIC PARK LAND
(0.365 AC X 100 X \$560 = \$20,440.00)

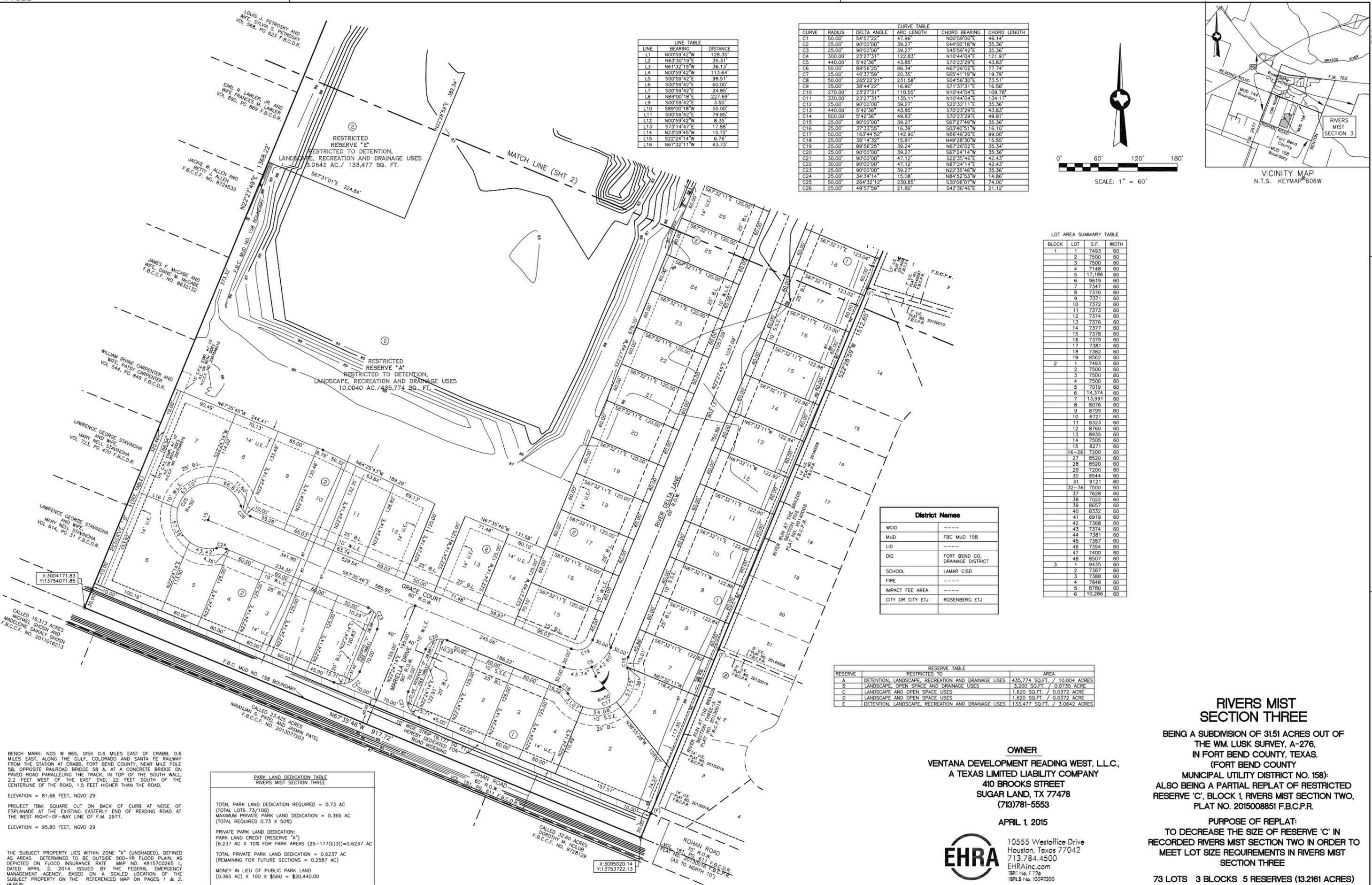
OWNER
VENTANA DEVELOPMENT READING WEST, L.L.C.,
A TEXAS LIMITED LIABILITY COMPANY
410 BROOKS STREET
SUGAR LAND, TX 77478
(713)781-5553

APRIL 1, 2015



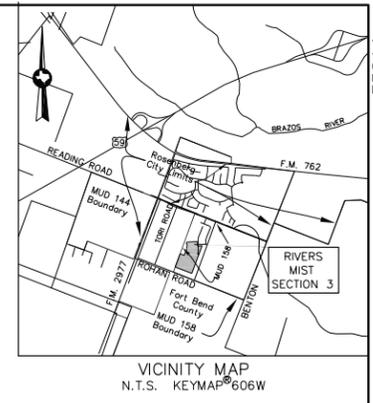
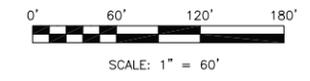
10555 Westoffice Drive
Houston, Texas 77042
713.784.4500
EHRAinc.com
TBP# No. F726
TBP#S No. 10092300

RIVERS MIST SECTION THREE
BEING A SUBDIVISION OF 31.51 ACRES OUT OF THE WM. LUSK SURVEY, A-276, IN FORT BEND COUNTY, TEXAS. (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 158): ALSO BEING A PARTIAL REPLAT OF RESTRICTED RESERVE 'C', BLOCK 1, RIVERS MIST SECTION TWO, PLAT NO. 2015008851 F.B.C.P.R. PURPOSE OF REPLAT: TO DECREASE THE SIZE OF RESERVE 'C' IN RECORDED RIVERS MIST SECTION TWO IN ORDER TO MEET LOT SIZE REQUIREMENTS IN RIVERS MIST SECTION THREE 73 LOTS 3 BLOCKS 5 RESERVES (13,2161 ACRES)



LINE	BEARING	DISTANCE
L1	N00°59'42"W	128.35'
L2	N63°30'19"E	35.31'
L3	N61°32'19"W	36.13'
L4	N00°59'42"W	113.64'
L5	S00°59'42"E	98.51'
L6	S00°59'42"E	60.00'
L7	S00°59'42"E	24.85'
L8	N89°00'18"E	227.69'
L9	S00°59'42"E	3.50'
L10	S89°00'18"W	55.00'
L11	S00°59'42"E	79.85'
L12	N00°59'42"W	8.35'
L13	S73°14'47"E	17.88'
L14	N23°09'45"W	15.72'
L15	S22°24'14"W	6.76'
L16	N67°32'11"W	63.73'

CURVE	RADIUS	DELTA ANGLE	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	50.00'	54°57'22"	47.96'	N00°59'00"E	46.14'
C2	25.00'	90°00'00"	39.27'	S44°00'18"W	35.36'
C3	25.00'	90°00'00"	39.27'	S45°59'42"E	35.36'
C4	300.00'	23°27'31"	122.83'	N10°44'04"E	121.97'
C5	440.00'	5°42'36"	43.85'	S70°23'29"E	43.83'
C6	55.00'	89°52'25"	86.34'	N67°26'02"E	77.74'
C7	25.00'	46°37'59"	20.35'	S65°41'19"W	19.79'
C8	50.00'	26°52'22"	23.58'	S04°56'30"E	73.51'
C9	25.00'	36°44'22"	16.90'	S71°37'31"E	16.58'
C10	270.00'	23°27'31"	110.55'	N10°44'04"E	109.78'
C11	330.00'	23°27'31"	135.11'	N10°44'04"E	134.17'
C12	25.00'	90°00'00"	39.27'	S22°32'11"E	35.36'
C13	440.00'	5°42'36"	43.85'	S70°23'29"E	43.83'
C14	500.00'	5°42'36"	49.83'	S70°23'29"E	49.81'
C15	25.00'	90°00'00"	39.27'	S67°27'49"W	35.36'
C16	25.00'	37°33'55"	16.39'	S03°40'51"W	16.10'
C17	50.00'	16°34'45"	142.90'	N66°46'20"E	99.00'
C18	25.00'	36°14'32"	15.81'	N49°28'30"W	15.55'
C19	25.00'	89°56'25"	39.24'	N67°26'02"E	35.34'
C20	25.00'	90°00'00"	39.27'	S67°24'14"W	35.36'
C21	30.00'	90°00'00"	47.12'	S22°35'46"E	42.43'
C22	30.00'	90°00'00"	47.12'	N67°24'14"E	42.43'
C23	25.00'	90°00'00"	39.27'	N22°35'46"W	35.36'
C24	25.00'	34°34'14"	15.08'	N84°52'53"W	14.86'
C25	50.00'	26°43'12"	230.85'	S30°06'07"W	74.00'
C26	25.00'	49°57'59"	21.80'	S42°36'46"E	21.12'



BLOCK	LOT	S.F.	WIDTH
1	1	7493	60
	2	7500	60
	3	7500	60
	4	7148	60
	5	17,186	60
	6	9619	60
	7	7347	60
	8	7370	60
	9	7371	60
	10	7372	60
	11	7373	60
	12	7374	60
	13	7376	60
	14	7377	60
	15	7378	60
	16	7379	60
	17	7381	60
	18	7382	60
	19	8562	60
2	1	7493	60
	2	7500	60
	3	7500	60
	4	7500	60
	5	7019	60
	6	14,374	60
	7	13,991	60
	8	8076	60
	9	8799	60
	10	8721	60
	11	8323	60
	12	8760	60
	13	8935	60
	14	7605	60
	15	8271	60
	16-26	7200	60
	27	8520	60
	28	8520	60
	29	7200	60
	30	9544	60
	31	9121	60
	32-36	7500	60
	37	7628	60
	38	7022	60
	39	8657	60
	40	8332	60
	41	6919	60
	42	7368	60
	43	7374	60
	44	7381	60
	45	7387	60
	46	7394	60
	47	7400	60
	48	8507	60
3	1	9435	60
	2	7387	60
	3	7388	60
	4	7848	60
	5	8780	60
	6	10,266	60

District Names	Code
WCID	----
MUD	FBC MUD 158
LID	----
DID	FORT BEND CO. DRAINAGE DISTRICT
SCHOOL	LAMAR CISD
FIRE	----
IMPACT FEE AREA	----
CITY OR CITY ETJ	ROSENBERG ETJ

RESERVE	RESTRICTED TO	AREA
A	DETENTION, LANDSCAPE, RECREATION AND DRAINAGE USES	435,774 SQ.FT. / 10,004 ACRES
B	LANDSCAPE, OPEN SPACE AND DRAINAGE USES	3,200 SQ.FT. / 0.0735 ACRE
C	LANDSCAPE AND OPEN SPACE USES	1,620 SQ.FT. / 0.0372 ACRE
D	LANDSCAPE AND OPEN SPACE USES	1,620 SQ.FT. / 0.0372 ACRE
E	DETENTION, LANDSCAPE, RECREATION AND DRAINAGE USES	1,33,477 SQ.FT. / 3,0642 ACRES

OWNER
VENTANA DEVELOPMENT READING WEST, L.L.C.,
 A TEXAS LIMITED LIABILITY COMPANY
 410 BROOKS STREET
 SUGAR LAND, TX 77478
 (713)781-5553

APRIL 1, 2015



10555 Westoffice Drive
 Houston, Texas 77042
 713.784.4500
 EHRAinc.com
 TSP# No. F-78
 TSP# No. 0092300

RIVERS MIST SECTION THREE
 BEING A SUBDIVISION OF 31.51 ACRES OUT OF THE WM. LUSK SURVEY, A-276, IN FORT BEND COUNTY, TEXAS.
 (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 158):
 ALSO BEING A PARTIAL REPLAT OF RESTRICTED RESERVE 'C', BLOCK 1, RIVERS MIST SECTION TWO, PLAT NO. 2015008851 F.B.C.P.R.
PURPOSE OF REPLAT:
 TO DECREASE THE SIZE OF RESERVE 'C' IN RECORDED RIVERS MIST SECTION TWO IN ORDER TO MEET LOT SIZE REQUIREMENTS IN RIVERS MIST SECTION THREE
73 LOTS 3 BLOCKS 5 RESERVES (13,216 ACRES)

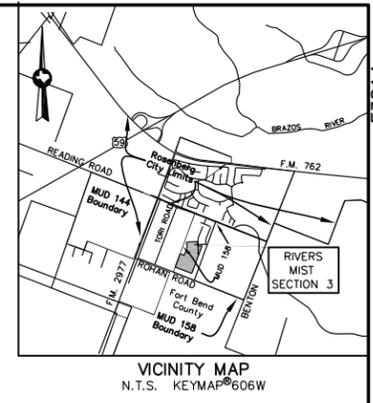
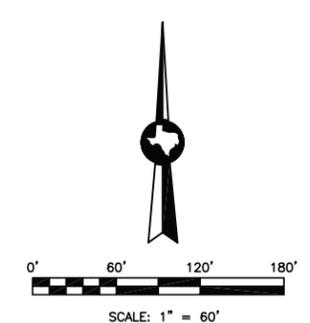
BENCH MARK: NGS W 865, DISK 0.6 MILES EAST OF CRABB, 0.6 MILES EAST, ALONG THE GULF, COLORADO AND SANTA FE RAILWAY FROM THE STATION AT CRABB, FORT BEND COUNTY, NEAR MILE POLE 58, OPPOSITE RAILROAD BRIDGE 58 A, AT A CONCRETE BRIDGE ON PAVED ROAD PARALLELING THE TRACK, IN TOP OF THE SOUTH WALL, 2.2 FEET WEST OF THE EAST END, 22 FEET SOUTH OF THE CENTERLINE OF THE ROAD, 1.5 FEET HIGHER THAN THE ROAD.
 ELEVATION = 81.66 FEET, NGVD 29
 PROJECT TBM: SQUARE CUT ON BACK OF CURB AT NOSE OF ESPLANADE AT THE EXISTING EASTERLY END OF READING ROAD AT THE WEST RIGHT-OF-WAY LINE OF F.M. 2977.
 ELEVATION = 95.80 FEET, NGVD 29

PARK LAND DEDICATION TABLE	
RIVERS MIST SECTION THREE	
TOTAL PARK LAND DEDICATION REQUIRED = 0.73 AC (TOTAL LOTS 73/100)	
MAXIMUM PRIVATE PARK LAND DEDICATION = 0.365 AC (TOTAL REQUIRED 0.73 X 50%)	
PRIVATE PARK LAND DEDICATION: PARK LAND CREDIT (RESERVE "A") (6.237 AC X 10% FOR PARK AREAS (25-177(E)3))=0.6237 AC	
TOTAL PRIVATE PARK LAND DEDICATION = 0.6237 AC (REMAINING FOR FUTURE SECTIONS = 0.2587 AC)	
MONEY IN LIEU OF PUBLIC PARK LAND (0.365 AC) X 100 X \$560 = \$20,440.00	



LOT AREA SUMMARY TABLE

BLOCK	LOT	S.F.	WIDTH
1	1	7493	60
1	2	7500	60
1	3	7500	60
1	4	7148	60
1	5	17,186	60
1	6	9619	60
1	7	7347	60
1	8	7370	60
1	9	7371	60
1	10	7372	60
1	11	7373	60
1	12	7374	60
1	13	7376	60
1	14	7377	60
1	15	7378	60
1	16	7379	60
1	17	7381	60
1	18	7382	60
1	19	8562	60
2	1	7493	60
2	2	7500	60
2	3	7500	60
2	4	7500	60
2	5	7019	60
2	6	14,374	60
2	7	13,991	60
2	8	8076	60
2	9	8799	60
2	10	8721	60
2	11	8323	60
2	12	8760	60
2	13	8935	60
2	14	7505	60
2	15	8271	60
2	16-26	7500	60
2	27	8520	60
2	28	8520	60
2	29	7200	60
2	30	9544	60
2	31	9121	60
2	32-36	7500	60
2	37	7628	60
2	38	7022	60
2	39	8657	60
2	40	8332	60
2	41	6919	60
2	42	7368	60
2	43	7374	60
2	44	7381	60
2	45	7387	60
2	46	7394	60
2	47	7400	60
2	48	8507	60
3	1	9435	60
3	2	7387	60
3	3	7388	60
3	4	7848	60
3	5	8780	60
3	6	10,286	60



LINE TABLE

LINE	BEARING	DISTANCE
L1	N00°59'42"W	128.35'
L2	N63°30'19"E	35.31'
L3	N61°32'19"W	36.13'
L4	N00°59'42"W	113.64'
L5	S00°59'42"E	98.51'
L6	S00°59'42"E	60.00'
L7	S00°59'42"E	24.85'
L8	N89°00'18"E	227.89'
L9	S00°59'42"E	3.50'
L10	S89°00'18"W	55.00'
L11	S00°59'42"E	79.85'
L12	N00°59'42"W	8.35'
L13	S73°14'47"E	17.98'
L14	N23°09'45"W	15.72'
L15	S22°24'14"W	6.76'
L16	N67°32'11"W	63.73'

CURVE TABLE

CURVE	RADIUS	DELTA ANGLE	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	50.00'	54°57'22"	47.96'	N00°59'00"E	46.14'
C2	25.00'	90°00'00"	39.27'	S44°00'18"W	35.36'
C3	25.00'	90°00'00"	39.27'	S45°59'42"E	35.36'
C4	300.00'	23°27'31"	122.83'	N10°44'04"E	121.97'
C5	440.00'	5°42'36"	43.85'	S70°23'29"E	43.83'
C6	55.00'	89°56'25"	86.34'	N67°26'02"E	77.74'
C7	25.00'	46°37'59"	20.35'	S65°41'19"W	19.79'
C8	50.00'	265°22'21"	231.56'	S04°56'30"E	73.51'
C9	25.00'	38°44'22"	16.90'	S71°37'31"E	16.58'
C10	270.00'	23°27'31"	110.55'	N10°44'04"E	109.78'
C11	330.00'	23°27'31"	135.11'	N10°44'04"E	134.17'
C12	25.00'	90°00'00"	39.27'	S22°32'11"E	35.36'
C13	440.00'	5°42'36"	43.85'	S70°23'29"E	43.83'
C14	500.00'	5°42'36"	49.83'	S70°23'29"E	49.81'
C15	25.00'	90°00'00"	39.27'	S67°27'49"W	35.36'
C16	25.00'	37°33'55"	16.39'	S03°40'51"W	16.10'
C17	50.00'	163°44'52"	142.90'	N66°46'20"E	99.00'
C18	25.00'	36°14'32"	15.81'	N49°29'30"W	15.55'
C19	25.00'	89°56'25"	39.24'	N67°26'02"E	35.34'
C20	25.00'	90°00'00"	39.27'	S67°24'14"W	35.36'
C21	30.00'	90°00'00"	47.12'	S22°35'46"E	42.43'
C22	30.00'	90°00'00"	47.12'	N67°24'14"E	42.43'
C23	25.00'	90°00'00"	39.27'	N22°35'46"W	35.36'
C24	25.00'	34°34'14"	15.08'	N84°52'53"W	14.86'
C25	50.00'	264°32'12"	230.85'	S30°06'07"W	74.00'
C26	25.00'	49°57'59"	21.80'	S42°36'46"E	21.12'

PARK LAND DEDICATION TABLE
RIVERS MIST SECTION THREE

TOTAL PARK LAND DEDICATION REQUIRED = 0.73 AC
(TOTAL LOTS 73/100)
MAXIMUM PRIVATE PARK LAND DEDICATION = 0.365 AC
(TOTAL REQUIRED 0.73 X 50%)

PRIVATE PARK LAND DEDICATION:
PARK LAND CREDIT (RESERVE "A")
(6.237 AC X 10% FOR PARK AREAS (25-177(E)3))=0.6237 AC

TOTAL PRIVATE PARK LAND DEDICATION = 0.6237 AC
(REMAINING FOR FUTURE SECTIONS = 0.2587 AC)

MONEY IN LIEU OF PUBLIC PARK LAND
(0.365 AC) X 100 X \$560 = \$20,440.00

RESERVE TABLE

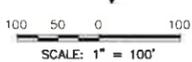
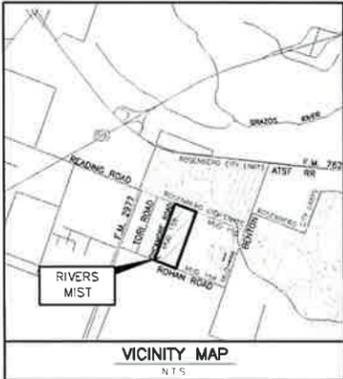
RESERVE	RESTRICTED TO	AREA
A	DETENTION, LANDSCAPE, RECREATION AND DRAINAGE USES	435,774 SQ.FT. / 10,004 ACRES
B	LANDSCAPE, OPEN SPACE AND DRAINAGE USES	3,200 SQ.FT. / 0.0735 ACRE
C	LANDSCAPE AND OPEN SPACE USES	1,620 SQ.FT. / 0.0372 ACRE
D	LANDSCAPE AND OPEN SPACE USES	1,620 SQ.FT. / 0.0372 ACRE
E	DETENTION, LANDSCAPE, RECREATION AND DRAINAGE USES	133,477 SQ.FT. / 3,0642 ACRES

OWNER
VENTANA DEVELOPMENT READING WEST, L.L.C.,
A TEXAS LIMITED LIABILITY COMPANY
410 BROOKS STREET
SUGAR LAND, TX 77478
(713)781-5553

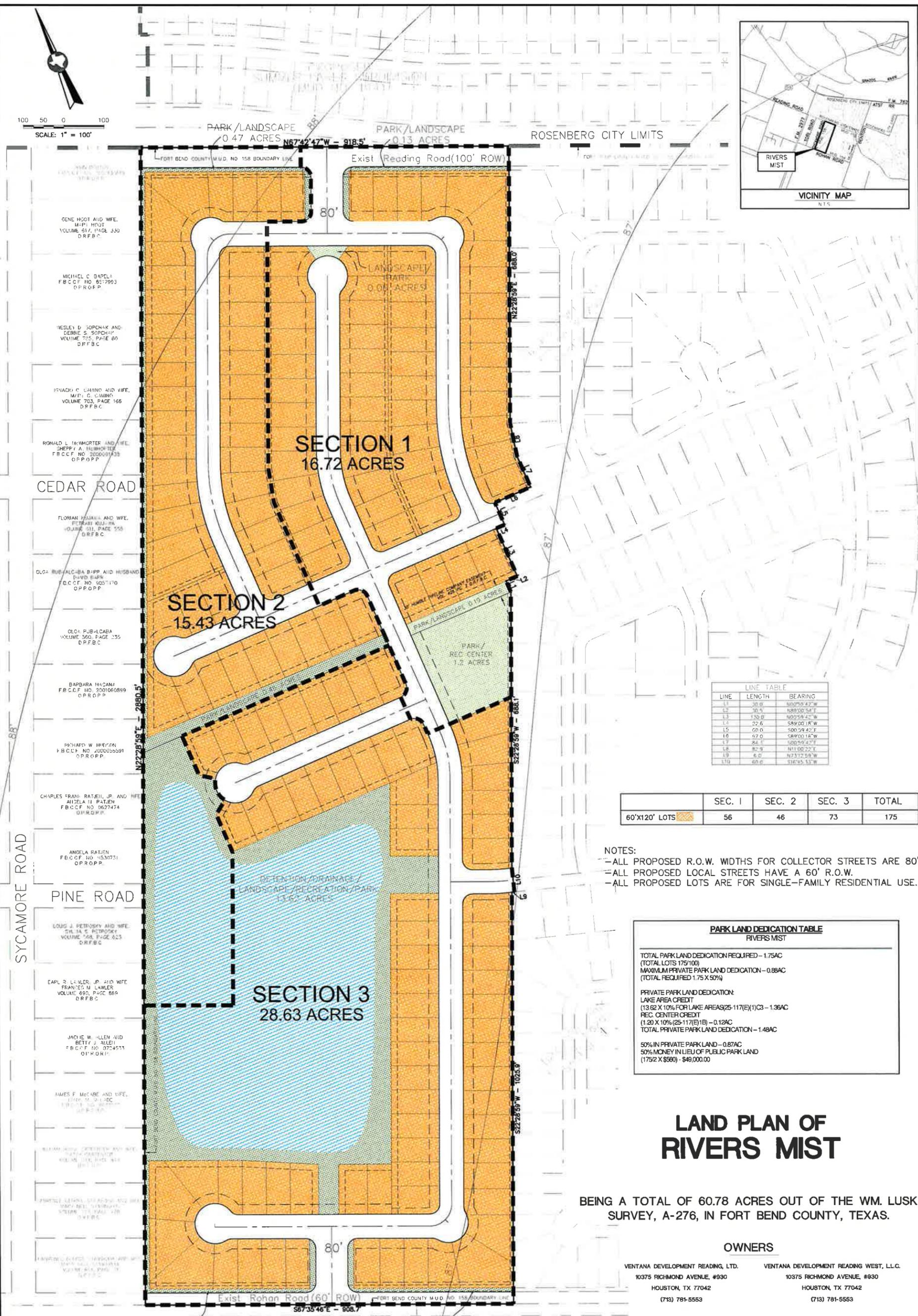
APRIL 1, 2015



RIVERS MIST SECTION THREE
BEING A SUBDIVISION OF 31.51 ACRES OUT OF THE WM. LUSK SURVEY, A-276, IN FORT BEND COUNTY, TEXAS. (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 158)
ALSO BEING A PARTIAL REPLAT OF RESTRICTED RESERVE 'C', BLOCK 1, RIVERS MIST SECTION TWO, PLAT NO. 2015008851 F.B.C.P.R.
PURPOSE OF REPLAT:
TO DECREASE THE SIZE OF RESERVE 'C' IN RECORDED RIVERS MIST SECTION TWO IN ORDER TO MEET LOT SIZE REQUIREMENTS IN RIVERS MIST SECTION THREE
73 LOTS 3 BLOCKS 5 RESERVES (13,2161 ACRES)



SCALE: 1" = 100'



LINE TABLE

LINE	LENGTH	BEARING
1.1	30.0	N67°42'47"W
1.2	30.0	S89°00'18"W
1.3	130.0	N67°42'47"W
1.4	22.6	S89°00'18"W
1.5	60.0	S00°59'42"E
1.6	97.0	S89°00'18"W
1.7	84.0	S00°59'42"E
1.8	80.0	N11°00'22"E
1.9	6.0	N72°17'58"W
1.10	60.0	S16°45'13"W

	SEC. 1	SEC. 2	SEC. 3	TOTAL
60'X120' LOTS	56	46	73	175

- NOTES:
- ALL PROPOSED R.O.W. WIDTHS FOR COLLECTOR STREETS ARE 80'
 - ALL PROPOSED LOCAL STREETS HAVE A 60' R.O.W.
 - ALL PROPOSED LOTS ARE FOR SINGLE-FAMILY RESIDENTIAL USE.

PARK LAND DEDICATION TABLE
RIVERS MIST

TOTAL PARK LAND DEDICATION REQUIRED - 1.75AC
(TOTAL LOTS 175/100)

MAXIMUM PRIVATE PARK LAND DEDICATION - 0.88AC
(TOTAL REQUIRED 1.75 X 50%)

PRIVATE PARK LAND DEDICATION:
LAKE AREA CREDIT
(13.62 X 10% FOR LAKE AREAS(25-117(E))1(C)3 - 1.36AC
REC. CENTER CREDIT
(1.20 X 10% (25-117(E)1B) - 0.12AC
TOTAL PRIVATE PARK LAND DEDICATION - 1.48AC

50% IN PRIVATE PARK LAND - 0.87AC
50% MONEY IN LIEU OF PUBLIC PARK LAND
(175/2 X \$500) - \$49,000.00

LAND PLAN OF RIVERS MIST

BEING A TOTAL OF 60.78 ACRES OUT OF THE WM. LUSK SURVEY, A-276, IN FORT BEND COUNTY, TEXAS.

OWNERS

VENTANA DEVELOPMENT READING, LTD. 10375 RICHMOND AVENUE, #930 HOUSTON, TX 77042 (713) 781-5553	VENTANA DEVELOPMENT READING WEST, L.L.C. 10375 RICHMOND AVENUE, #930 HOUSTON, TX 77042 (713) 781-5553
---	--

MAY 3, 2006



DISCLAIMER: (5/3/06) THIS PLAT HAS NOT YET BEEN GRANTED FINAL APPROVAL FROM THE CITY OF ROSENBERG PLANNING COMMISSION, AND MAY BE SUBJECT TO CHANGE.

Action taken: Commissioner Poldrack moved, seconded by Commissioner Parsons, to make a recommendation to City Council to recommend approval to City Council of the Final Plat of Park Place Boulevard Street Dedication, being a subdivision of 2.3580 acres out of the Robert E. Handy Survey, A-187, in the City of Rosenberg, Fort Bend County, Texas (Fort Bend County Municipal Utility District No. 144). The motion carried unanimously by those present.

6. CONSIDERATION OF AND ACTION ON A FINAL PLAT OF RIVERS MIST SECTION THREE, BEING A SUBDIVISION OF 31.51 ACRES OUT OF THE WM. LUSK SURVEY, A-276, IN FORT BEND COUNTY, TEXAS. (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 158): ALSO BEING A PARTIAL REPLAT OF RESTRICTED RESERVE 'C', BLOCK 1, RIVERS MIST SECTION TWO, PLAT NO. 2015008851 F.B.C.P.R.; 73 LOTS, 4 BLOCKS AND 5 RESERVES (13.2161 ACRES)

Executive Summary: The Final Plat of Rivers Mist Section Three is located off of River Delta Lane and Rohan Road, south of Rivers Mist Sections One and Two. The Final Plat is in the Extraterritorial Jurisdiction (ETJ) and in Fort Bend County MUD No. 158.

The Plat consists of 73 lots, four (4) blocks, and five (5) reserves with a total of 13.2161 acres. All proposed lots are a minimum of sixty feet (60') in width. This is in accordance with the approved Land Plan for Rivers Mist dated May 2006.

The Preliminary Plat of this subdivision was approved by the Planning Commission on March 18, 2015. The Final Plat is consistent with the approved Preliminary Plat and meets all applicable regulations of the City of Rosenberg. Therefore staff recommends that the Planning Commission recommend approval to City Council of the Final Plat of Rivers Mist Section Three.

Key Discussion:

- Mr. Tanner presented the item and reviewed the Executive Summary.
- Commissioner Poldrack inquired about the price range of the homes.
- Mr. Tanner replied that he was not aware of the price range.
- Mr. Parsons inquired about the estimated value of the homes.
- Mr. Tanner replied that this question could be posed to the developer at most, but that action could not be taken by the City based on the price of the homes.

Action Taken: Commissioner Casias moved, seconded by Commissioner Parsons, to recommend approval to City Council of the Final Plat of Rivers Mist Section Three, being a subdivision of 31.51 acres out of the WM. Lusk Survey, A-276, in Fort Bend County, Texas. (Fort Bend County Municipal Utility District No. 158): Also being a partial replat of restricted Reserve 'C', Block 1, Rivers Mist Section Two, Plat No. 2015008851 F.B.C.P.R.; 73 lots, 4 blocks and 5 reserves (13.2161 acres). The motion carried unanimously by those present.

7. CONSIDERATION OF AND ACTION ON A FINAL PLAT OF THE TRAILS AT SEABOURNE PARKE SECTION TWO, A SUBDIVISION OF 22.691 ACRES LOCATED IN THE G.M. STONE 1/3 LEAGUE SURVEY, ABSTRACT 312, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 147); 108 LOTS, 6 BLOCKS.

Executive Summary: The Final Plat of The Trails at Seabourne Parke Section Two consists of approximately 22.691 acres and 108 residential lots. It is located south of J. Meyer Road and off of Heath Ridge, Oak Briar, and Cottage Creek Lanes, immediately southwest of The Trails at Seabourne Parke Section One. The Plat is within the City Limits and located in Fort Bend County MUD No. 147.

All proposed lots are fifty feet (50') in width and a minimum of 6,000 square feet in size. The Land Plan was approved before the current standards relating to lot size. The Plat conforms to the approved Land Plan dated June 2003 (see attached). Recordation of plats in this development last occurred in 2005. The development was recently assigned to a new developer, LGI Homes, that wishes to develop in accordance with the previously approved Land Plan. A Plat of this subdivision was approved by the Planning Commission and City Council in 2006 and 2007, but was never subsequently recorded and therefore expired, hence the new Plat submittal.

There are no apparent conflicts with applicable regulations or with the original Land Plan. In addition to the Utility Agreement and Land Plan, this Plat/development is subject to a Road Improvement Agreement related to improvements to J. Meyer Road that, due to conditions that have changed over the last several years since platting last occurred, must be modified to address needed road improvements before any infrastructure permits

3. CONSIDERATION OF AND ACTION ON A PRELIMINARY PLAT OF RIVERS MIST SECTION THREE, BEING A SUBDIVISION OF 31.51 ACRES OUT OF THE WM. LUSK SURVEY, A-276, IN FORT BEND COUNTY, TEXAS. (FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 158): ALSO BEING A PARTIAL REPLAT OF RESTRICTED RESERVE 'C', BLOCK 1, RIVERS MIST SECTION TWO, PLAT NO. 2015008851 F.B.C.P.R. PURPOSE OF REPLAT: TO DECREASE THE SIZE OF RESERVE 'C' IN RECORDED RIVERS MIST SECTION TWO IN ORDER TO MEET LOT SIZE REQUIREMENTS IN RIVERS MIST SECTION THREE; 73 LOTS, 4 BLOCKS AND 5 RESERVES (13.2161 ACRES)

Executive Summary: As discussed in the previous agenda item, the Preliminary Plat of Rivers Mist Section Three is located off of River Delta Lane and Rohan Road, south of Rivers Mist Sections One and Two. The proposed Plat is in the Extraterritorial Jurisdiction (ETJ) and in Fort Bend County MUD No. 158.

The Plat consists of 73 lots, four (4) blocks, and five (5) reserves totaling 13.2161 acres. All proposed lots are a minimum of sixty feet (60') in width. This is in accordance with the approved Land Plan for Rivers Mist dated May 2006.

The proposed Plat meets all applicable regulations of the City of Rosenberg. Therefore staff recommends approval of the Preliminary Plat of Rivers Mist Section Three.

Key Discussion:

- Mr. Tanner presented the item and reviewed the Executive Summary.
- Chairperson Pavlovsky inquired about the purpose of the proposed Plat and if it was to decrease the size of Reserve C.
- Mr. Tanner stated that the purpose of the proposed Plat was to decrease the size of Reserve 'C' in recorded Rivers Mist Section Two, in order to meet lot size requirements in Rivers Mist Section Three. This is basically a partial replat of Rivers Mist Section Two.
- Commissioner Parsons inquired if Rivers Mist Section Three was the final plat of this subdivision.
- Commissioner Poldrack inquired about square footage requirements.
- Mr. Tanner replied that there were not requirements. The property is located in the ETJ, not in the City; and that the City would not require square footage requirements elsewhere in the City.
- Commissioner Poldrack inquired about deed restrictions.
- Mr. Tanner replied that there are most likely deed restrictions.
- Commissioner Parsons inquired about ingress and egress to the property and commented that the proposed street names are not referenced on the Land Plan, making it difficult to fit with the Land Plan.
- Mr. Tanner replied that the current land plan is dated 2006 and the street names were not determined at that time. Mr. Tanner further stated that the property has access to both Reading and Rohan Roads, and Mr. Kalkomey stated that there are connections to the adjacent subdivision as well.

Action Taken: Commissioner Casias moved, seconded by Commissioner Parsons, to approve the Preliminary Plat of Rivers Mist Section Three, being a subdivision of 31.51 acres out of the WM. Lusk Survey, A-276, in Fort Bend County, Texas. (Fort Bend County Municipal Utility District No. 158): Also being a partial replat of restricted Reserve 'C', Block 1, Rivers Mist Section Two, Plat No. 2015008851 F.B.C.P.R. Purpose of replat: to decrease the size of Reserve 'C' in recorded Rivers Mist Section Two in order to meet lot size requirements in Rivers Mist Section Three; 73 lots, 4 blocks and 5 reserves (13.2161 acres) The motion carried unanimously.

4. REVIEW AND DISCUSS THE PROPOSED ROSE MEADOWS DEVELOPMENT, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.

Executive Summary: The developer of Rose Ranch (Fort Bend County MUD No. 66) and their land planner have approached City staff regarding continued development of the property. The last residential plat that was filed in this development was in 2005 (Section One, 165 lots). The subdivision is built out and development has essentially been dormant since that time.

The existing Land Plan was approved under previous City ordinances relating to lot size, etc., but the developer may want to significantly change the layout, necessitating compliance with current City ordinances. A revised Land Plan has not been submitted at this time. However, the developer has requested the opportunity to discuss this item with the Planning Commission. At this time they are referring to the development as "Rose Meadows," hence the title of the Agenda item.

Key Discussion:



CITY COUNCIL COMMUNICATION

May 05, 2015

ITEM #	ITEM TITLE
2	Public Hearing – Texas State Technical College Financing

ITEM/MOTION

Hold public hearing regarding proposed financing to be issued by the Clifton Higher Education Finance Corporation in a maximum amount of \$27,000,000 for the purpose of financing an approximately 105,000 square foot education building and related site work (the "Project") for the TSTC Foundation (the "Foundation"), with the Project building to be leased to the Texas State Technical College System ("TSTC").

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. Notice of Public Hearing
2. Publisher's Affidavit – 04-20-15
3. Owens Correspondence – 04-23-15

APPROVALS

Submitted by:

Travis Tanner

Travis Tanner, AICP
 Executive Director of
 Community Development

Reviewed by:

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

Approved for Submittal to City Council:

John Maresh

John Maresh
 Acting City Manager

EXECUTIVE SUMMARY

This public hearing is required by law because an education facilities corporation, more specifically the Clifton Higher Education Finance Corporation, is issuing tax exempt financing to benefit Texas State Technical College (TSTC) in Rosenberg. The site consists of approximately eighty (80) acres of land located off Interstate 69 between FM 2218 and Louise Street. However, this Agenda item deals with financing of only the initial 42 acres of the property that is being developed; TSTC will develop the property in phases. While this financing will not represent debt of the City of Rosenberg, the Internal Revenue Code requires a public hearing and subsequent approval by the City since the Project site is in the City Limits. In accordance with applicable laws, notice of the hearing was published in the newspaper more than fourteen (14) days before the meeting date. TSTC representatives will be available to discuss and answer questions regarding this Agenda item.

NOTICE OF PUBLIC HEARING

The public is hereby notified that the City Council of the City of Rosenberg, Texas, will hold a public hearing on May 5, 2015 at 7:00 p.m. at the Rosenberg City Hall, 2110 4th Street, Rosenberg, Texas 77471, with regard to a financing to be issued by the Clifton Higher Education Finance Corporation in a maximum amount of \$27,000,000 to finance an approximately 105,000 square foot education building and related site work (the "Project") for The TSTC Foundation (the "Foundation"), with the Project building to be leased to the Texas State Technical College System ("TSTC"). The Project location is approximately 42 acres on the north side of the U.S. Highway 59 and Southwest Freeway access road approximately 2,400 feet west of FM 2218. The designated address of the Project building is 26706 Southwest Freeway, Rosenberg, Texas 77471. The land which is the Project site will be owned by TSTC which will ground lease the Project site to the Foundation. The Foundation will own and construct the Project building. The Foundation will lease the Project building to TSTC which will conduct instructional technical programs in the building. The users of the Project will be the Foundation, TSTC, students, faculty and staff engaged in the TSTC instructional programs, and members of the general public.

THIS INDEBTEDNESS IS NOT AN OBLIGATION OF THE CITY OF ROSENBERG, TEXAS.

The public is invited to attend this meeting. Interested persons desiring to submit comments prior to the meeting shall submit the same to Travis Tanner of the City of Rosenberg, Texas. Comments should be mailed or delivered to the Rosenberg City Hall Annex, 2220 4th Street, Rosenberg, Texas 77471, attention: Travis Tanner.

4-20

City of Rosenberg

Public Hearing

PUBLISHER'S AFFIDAVIT

THE STATE OF TEXAS §
COUNTY OF FORT BEND §

Before me, the undersigned authority, on this day personally appeared Lee Hartman who being by me duly sworn, deposes and says that he is the Publisher of *Fort Bend Herald* and that said newspaper meets the requirements of Section 2051.044 of the Texas Government Code, to wit:

1. it devotes not less than twenty-five percent (25%) of its total column lineage to general interest items;
2. it is published at least once each week;
3. it is entered as second-class postal matter in the county where it is published; and
4. it has been published regularly and continuously since 1959.
5. it is generally circulated within Fort Bend County.

Publisher further deposes and says that the attached notice was published in said newspaper on the following date(s) to wit:

4-20

_____, A.D. 2015



Lee Hartman
Publisher

SUBSCRIBED AND SWORN BEFORE ME by Lee Hartman, who

X a) is personally known to me, or

_____ b) provided the following evidence to establish his/her identity, _____

on this the 21st day of April, A.D. 2015
to certify which witness my hand and seal of office.

Kimberly L Rodriguez
Notary Public, State of Texas

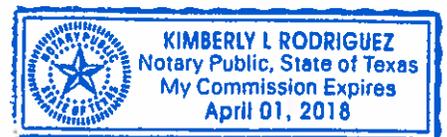
(CLIPPING) (S)

NOTICE OF PUBLIC HEARING

The public is hereby notified that the City Council of the City of Rosenberg, Texas, will hold a public hearing on May 5, 2015 at 7:00 p.m. at the Rosenberg City Hall, 2110 4th Street, Rosenberg, Texas 77471, with regard to a financing to be issued by the Clifton Higher Education Finance Corporation in a maximum amount of \$27,000,000 to finance an approximately 105,000 square foot education building and related site work (the "Project") for The TSTC Foundation (the "Foundation"), with the Project building to be leased to the Texas State Technical College System ("TSTC"). The Project location is approximately 42 acres on the north side of the U.S. Highway 59 and Southwest Freeway access road approximately 2,400 feet west of FM 2218. The designated address of the Project building is 25706 Southwest Freeway, Rosenberg, Texas 77471. The land which is the Project site will be owned by TSTC which will ground lease the Project site to the Foundation. The Foundation will own and construct the Project building. The Foundation will lease the Project building to TSTC which will conduct instructional technical programs in the building. The users of the Project will be the Foundation, TSTC, students, faculty and staff engaged in the TSTC instructional programs, and members of the general public.

THIS INDEBTEDNESS IS NOT AN OBLIGATION OF THE CITY OF ROSENBERG, TEXAS.

The public is invited to attend this meeting. Interested persons desiring to submit comments prior to the meeting shall submit the same to Travis Tanner of the City of Rosenberg, Texas. Comments should be mailed or delivered to Rosenberg City Hall Annex, 2220 4th Street, Rosenberg, Texas 77471, attention: Travis Tanner.



TSTC Public Hearing

May 5, 2015

Rosenberg City Hall

7 PM

April 24, 2015

To: TSTC

C/O City of Rosenberg, Texas

Attn: Travis Tanner

From: Aaron and Coleen Owens

3114 Mockingbird Lane

Rosenberg, Texas 77471

Re: Request to Address Council - Comments and Questions on the New TSTC Campus

Welcome to the neighborhood. We are adjoining landowners to the property that you have purchase and have been neighbors to the previous landowners for over 35-1/2 years.

The following is a list of questions and concerns as they impact our property and home.

- **Security – when do you intend to build fences between our property and your property? As you build out and clear the property, you are opening to the public access to our back yards. The previous owners kept the property fenced and gates closed. Will the campus be closed during non-class hours? Will you have 24 hour security on site?**

- Do you plan on providing on campus housing? Dorms or apartments? If you are providing living space, where on the property will those building be located?
- How are you addressing drainage along the Mockingbird Lane portion of the property? Our side of the street has always drained to this property.
- The existing water and sewer utilities are limited on Airport Ave. What are the plans to connect to the city utilities?
- How are you addressing the displacement of the native wildlife that has for years been living on the property – Owls, red tail hawks, rabbits, coyotes, opossums, seasonal migratory birds, etc.?
- How will your night lighting affect our property? Will your lights or car head lights shine in our windows?
- Will you be building a road / driveway to the campus from Airport Ave? If so, where will it be located? How close will it be to our property? Will the road be open during school hours only or open 24 hours? Do you plan on building a bridge across Dry Creek? If so, where?
- Do you have a plan for the facilities to be located next to the Mockingbird Lane residences? Parking lots, roads, buildings, green space, landscaping, noise abatement?

Regards,

Aaron and Coleen Owens

281-342-8521



CITY COUNCIL COMMUNICATION

May 05, 2015

ITEM #	ITEM TITLE
3	Resolution No. R-1963 – Support for Texas State Technical College Financing

ITEM/MOTION

Consideration of and action on Resolution No. R-1963, a Resolution in support of tax exempt financing to be undertaken by the Clifton Higher Education Finance Corporation for the benefit of the TSTC Foundation and the Texas State Technical College System.

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-1963
2. Pleitz Correspondence – 04-23-15

MUD #: N/A

APPROVALS

Submitted by:

Travis Tanner

Travis Tanner, AICP
Executive Director of
Community Development

Reviewed by:

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

Approved for Submittal to City Council:

John Maresh

John Maresh
Acting City Manager

EXECUTIVE SUMMARY

As discussed in the previous Agenda item, this item/resolution is required by law because the Clifton Higher Education Finance Corporation (Corporation) is issuing tax exempt financing to benefit Texas State Technical College (TSTC) in Rosenberg. As discussed, the overall site consists of approximately eighty (80) acres of land located off of Interstate 69 between FM 2218 and Louise Street. This Agenda item deals with financing of only the initial forty-two (42) acres of the property that is being developed; TSTC will develop the property in phases. While the financing will not represent debt of the City of Rosenberg, the Internal Revenue Code requires a hearing and subsequent approval by the City since the project site is in the City. TSTC representatives will be available to discuss and answer questions regarding this Agenda item. The City Attorney has also reviewed and has no objections to the item.

Details of the process can be found in the attached memorandum from Dan Pleitz, attorney representing TSTC in this transaction. This Agenda item does not represent the approval of anything other than the Corporation's financing for the project. TSTC is currently going through the platting process with the City and complying with applicable standards. Staff recommends approval of Resolution No. R-1963 as presented.

RESOLUTION NO. R-1963

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, IN SUPPORT OF TAX EXEMPT FINANCING TO BE UNDERTAKEN BY THE CLIFTON HIGHER EDUCATION FINANCE CORPORATION FOR THE BENEFIT OF THE TSTC FOUNDATION AND THE TEXAS STATE TECHNICAL COLLEGE SYSTEM.

* * * * *

WHEREAS, the Henderson-Wessendorf Foundation is donating to the Texas State Technical College System (“TSTC”) approximately 42 acres of land (the “Site”) located on the north side of the Interstate 69/U.S. Highway 59 Southwest Freeway access road, approximately 2,400 feet west of FM 2218; and,

WHEREAS, the TSTC Foundation (the “Foundation”) intends to (i) lease the Site from TSTC and construct and own an approximately 105,000 square foot educational building (having an address of 26706 Southwest Freeway, Rosenberg, Texas) on the Site; and (ii) to undertake related site work on the same 42 acres (with such building and site work being the “Project”); and,

WHEREAS, the Foundation will then lease such building to TSTC for TSTC to construct a vocational education program at the Project Site; and,

WHEREAS, the Foundation is borrowing the money to construct the Project building and to undertake the Site work and desires to borrow such money at a tax exempt interest rate; and,

WHEREAS, the Clifton Higher Education Finance Corporation (the “Clifton Corporation”) has agreed to issue tax exempt debt in a maximum amount of \$27,000,000 to finance the Project; and,

WHEREAS, under the provisions of Section 147(f) of the Internal Revenue Code, in order for the debt to be issued on a tax exempt basis it must be approved by both the City of Clifton, Texas (as “issuer jurisdiction” where the debt will be issued), and by the City of Rosenberg, Texas (as “host jurisdiction” where the Project is located); and,

WHEREAS, the users of the Project will be TSTC, the Foundation, and students, faculty and staff engaged in the TSTC instructional programs, and members of the general public; and,

WHEREAS, this City Council has held a public hearing regarding this matter at this same City Council meeting, following publication of notice regarding such hearing more than fourteen (14) days before the date of this meeting; and,

WHEREAS, such debt shall not constitute a debt of the City of Rosenberg in any manner whatsoever; now, therefore,

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

Section 1. The City Council of the City of Rosenberg hereby approves the Project and the financing described above and authorizes the issuance of such financing by the Clifton Higher Education Finance Corporation in an amount not to exceed \$27,000,000 to finance the Project. It is the intent of the City Council of the City of Rosenberg that this Resolution constitute approval of the Clifton Corporation to finance the Project which is located inside the city limits of the City of Rosenberg, Texas.

Section 2. This approval is given with the understanding that the Project Site shall be owned by TSTC; that the Project building shall be owned by the Foundation; and, that the Project building shall then be leased by the Foundation to TSTC to undertake the TSTC instructional program.

Section 3. The Mayor and the City Secretary are hereby authorized and directed to execute and deliver any and all documents deemed necessary to carry out the intents and purposes of this Resolution.

Section 4. NOTHING IN THIS RESOLUTION SHALL BE CONSTRUED TO CREATE ANY OBLIGATION OF THE CITY OF ROSENBERG WITH REGARD TO THE REPAYMENT OF THE FINANCING OR WITH REGARD TO THE CONSTRUCTION, OWNERSHIP OR OPERATION OF THE PROJECT. THE FINANCING SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE CITY OF ROSENBERG, TEXAS, OR A PLEDGE OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION, AND THE LENDER ON THE FINANCING SHALL NEVER HAVE THE RIGHT TO BE PAID IN WHOLE OR IN PART OUT OF ANY FUNDS OF THE CITY OF ROSENBERG, TEXAS, BY REASON OF THIS APPROVAL.

FURTHER, THIS APPROVAL DOES NOT INCLUDE ANY APPROVAL REGARDING THE PLANS OR SPECIFICATIONS FOR THE PROJECT OR WITH REGARD TO THE CONSTRUCTION OF THE PROJECT AND THIS APPROVAL IS GIVEN SOLELY FOR THE LIMITED PURPOSE OF APPROVING THE TAX EXEMPT FINANCING REFERRED TO ABOVE.

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

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

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



NAMAN HOWELL
SMITH & LEE^{PLLC}
ATTORNEYS AT LAW

MEMORANDUM
from
Dan Pleitz

(254) 755-4100
Fax (254) 754-6331
E-mail: pleitz@namanhowell.com

TO: City Council of City of Rosenberg, Texas

DATE: April 24, 2015

RE: Tax Exempt Financing for the Benefit of Texas State Technical College System and The TSTC Foundation

To the City Council:

We are acting as bond counsel on a transaction where the Clifton Higher Education Finance Corporation will be issuing up to a maximum of \$27,000,000 in tax exempt financing to benefit The TSTC Foundation (the "Foundation") and Texas State Technical College System ("TSTC"). Under this transaction the Henderson-Wessendorf Foundation will be gifting approximately 42 acres of land to TSTC. TSTC will lease the land to its Foundation. The Foundation will then build and own an approximately 105,000 square foot educational building on that site as well as making necessary site improvements. The Foundation will then lease the building to TSTC and TSTC will conduct its educational program (primarily vocational training) at the site.

The site is located out near the intersection of U.S. Highway 59 about a half mile west of FM 2218. The site is to the north of the U.S. Highway 59 access road. The address of the building has been assigned and it is 26706 Southwest Freeway in Rosenberg.

The \$27,000,000 (which is a maximum amount and may be less based on final project costs) will be loaned to the Foundation which will use that same money to build the building and make the site improvements.

For this debt to be tax exempt (which mean at a lower interest rate) the debt has to be issued by an educational facilities corporation (the Foundation can not issue tax exempt debt directly). We have located such a corporation (the "Clifton Higher

Education Finance Corporation”) in the City of Clifton, Texas and they will be facilitating this transaction.

Under Section 147(f) of the Internal Revenue Code, for this transaction to be tax exempt it has to be approved both by the City of Clifton (where the debt will be issued) and by the City of Rosenberg (which has jurisdiction over the site of the new project). That is a three step process (in each of these cities), as follows:

1. A notice is published in the local Rosenberg paper about the transaction. We have attached a copy of that notice.

2. At least 14 days after the notice, a public hearing is held in regard to the transaction. That public hearing is tentatively scheduled for the City Council meeting on May 5, 2015.

3. After the public hearing the transaction has to be approved by either the City Council of Rosenberg or the Mayor (if the Mayor is elected at large). We have prepared a resolution (also enclosed) for the City Council to give its approval.

This debt is not a debt of the City of Rosenberg in any manner whatsoever. The entire obligation to repay the debt is legally on The TSTC Foundation. However, this transaction would not be possible without financial assistance from the George Foundation and the Henderson-Wessendorf Foundation who are providing a guaranty of the debt. Additionally, a number of local entities including the Rosenberg Development Corporation and the Richmond EDC are also making contributions to the transaction.

We would be happy to discuss this transaction with any members of the Council or the City staff. If any of you have any questions, please do not hesitate to contact me at the following address and phone number:

Dan Pleitz
Naman, Howell, Smith & Lee, PLLC
P.O. Box 1470
Waco, Texas 76703
254-755-4100
pleitz@namanhowell.com

This is a very important transaction for Rosenberg as well as for TSTC and we appreciate your kind consideration of this approval request.

Thank you.



CITY COUNCIL COMMUNICATION

May 05, 2015

ITEM #	ITEM TITLE
4	Resolution No. R-1964 - Support for House Bill No. 3634

ITEM/MOTION

Consideration of and action on Resolution No. R-1964, a Resolution in support of House Bill No. 3634 relating to the authority of a municipality to impose a local tax on the sale of certain motor fuel and to the use of the tax revenue by the municipality; authorizing penalties.

FINANCIAL SUMMARY

Annualized Dollars:

One-time
 Recurring
 N/A

Budgeted:

Yes No N/A

Source of Funds: N/A

ELECTION DISTRICT

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

SUPPORTING DOCUMENTS:

1. Resolution No. R-1964
2. House Bill No. 3634 – Introduced by Representative Ron Reynolds

MUD #: N/A

APPROVALS

Submitted by:

Vincent M. Morales, Jr./rl

Vincent M. Morales, Jr.
Mayor

Reviewed by:

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

Approved for Submittal to City Council:

John Maresh
Acting City Manager

EXECUTIVE SUMMARY

This Agenda item has been included to provide City Council an opportunity to offer its support to Texas House Bill No. 3634 which would allow for municipalities to levy a tax on certain motor fuels and further directs the resulting tax revenue to be used on roadways and roadway signage.

RESOLUTION NO. R-1964

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, IN SUPPORT OF HOUSE BILL NO. 3634 RELATING TO THE AUTHORITY OF A MUNICIPALITY TO IMPOSE A LOCAL TAX ON THE SALE OF CERTAIN MOTOR FUEL AND TO THE USE OF THE TAX REVENUE BY THE MUNICIPALITY; AUTHORIZING PENALTIES.

* * * * *

WHEREAS, House Bill No. 3634 states that a municipality, by ordinance adopted by the governing body of the municipality, may impose a tax on the sale of motor fuel sold in the municipality to propel a motor vehicle on the public highways of this state if the imposition of the tax is approved at an election called for that purpose held in the municipality; and,

WHEREAS, the Rate of Tax authorized may be imposed in increments of one cent for each net gallon of gasoline or diesel fuel or each gasoline equivalent or diesel gallon equivalent of compressed natural gas or liquefied natural gas sold in the municipality to propel a motor vehicle on the public highways of this state, with a maximum rate of five cents for each net gallon, gasoline gallon equivalent, or diesel gallon equivalent; and,

WHEREAS, the Adoption Election Procedure calls for (a) an election to adopt the tax authorized by Chapter 329 Municipal Motor Fuel Sales Tax for Transportation is called by an ordinance adopted by the governing body of the municipality; (b) at an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local tax on the sale of motor fuel in the City of Rosenberg, Texas, at the maximum rate of five center per gallon"; and,

WHEREAS, the Computation of Tax states: (a) A person, including a dealer, who makes a sale of motor fuel in a municipality authorized to impose the tax to a person who uses the motor fuel to propel a motor vehicle on the public highways of this state shall collect the tax authorized by this chapter for the benefit of the municipality; (b) the seller shall add the amount of the tax authorized by this chapter to the selling price of motor fuel, and the tax is a part of the motor fuel prices, is a debt owed to the seller, and is recoverable at law in the same manner as the fuel charge for motor fuel; and (c) the tax authorized by this chapter is in addition to the tax imposed by Chapter 162; and,

WHEREAS, the Effective Date of Tax shall be after the imposition of the tax has been approved in a municipality, the governing body of the municipality shall issue an ordinance prescribing the date the adoption of the tax shall take effect. The tax may not be collected before the 90th day after the date the election results are canvassed; and,

WHEREAS, the Use of Tax Proceeds, except as provided by Section 329.010, a municipality may use net tax revenue received under this chapter only for: (1) the construction, maintenance, repair, and rehabilitation of streets, roads, intersections, thoroughfares, and bridges located in the municipality; and (2) the purchase, installation, maintenance, and operation of traffic improvements, including signs, signals, and other mechanical, digital, or electronic traffic control devices, located in the municipality; now, therefore,

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

Section 1. The City Council of the City of Rosenberg supports House Bill No. 3634 and urges the 84th Texas Legislature to support this bill and any other legislation that would authorize a municipality to impose a local tax on the sale of certain motor fuel and to the use of the tax revenue by the municipality; authorizing penalties.

Section 2. The City Council hereby calls on other communities and jurisdictions to join this action by passing similar Resolutions.

Section 3. That copies of this Resolution be immediately transmitted to state representatives.

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

ATTEST:

APPROVED:

Linda Cernosek, **CITY SECRETARY**

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

By: Reynolds

H.B. No. 3634

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the authority of a municipality to impose a local tax on
3 the sale of certain motor fuel and to the use of the tax revenue by
4 the municipality; authorizing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subtitle C, Title 3, Tax Code, is amended by
7 adding Chapter 329 to read as follows:

8 CHAPTER 329. MUNICIPAL MOTOR FUEL SALES TAX FOR TRANSPORTATION

9

PURPOSES

10 Sec. 329.001. DEFINITIONS. In this chapter:

11 (1) "Compressed natural gas" has the meaning assigned
12 by Section 162.001.

13 (2) "Dealer" has the meaning assigned by Section
14 162.001.

15 (3) "Diesel fuel" has the meaning assigned by Section
16 162.001.

17 (4) "Diesel gallon equivalent" has the meaning
18 assigned by Section 162.001.

19 (5) "Gasoline" has the meaning assigned by Section
20 162.001.

21 (6) "Gasoline gallon equivalent" has the meaning
22 assigned by Section 162.001.

23 (7) "Liquefied natural gas" has the meaning assigned
24 by Section 162.001.

1 (8) "Motor fuel" means gasoline, diesel fuel,
2 compressed natural gas, or liquefied natural gas.

3 (9) "Motor vehicle" has the meaning assigned by
4 Section 162.001.

5 (10) "Net gallon" has the meaning assigned by Section
6 162.001.

7 (11) "Public highway" has the meaning assigned by
8 Section 162.001.

9 (12) "Sale" has the meaning assigned by Section
10 162.001.

11 Sec. 329.002. TAX ON SALE OF MOTOR FUEL AUTHORIZED.
12 Notwithstanding Section 162.014, Tax Code, a municipality, by
13 ordinance adopted by the governing body of the municipality, may
14 impose a tax on the sale of motor fuel sold in the municipality to
15 propel a motor vehicle on the public highways of this state if
16 imposition of the tax is approved at an election called for that
17 purpose and held in the municipality.

18 Sec. 329.003. RATE OF TAX. The tax authorized by this
19 chapter may be imposed in increments of one cent for each net gallon
20 of gasoline or diesel fuel or each gasoline gallon equivalent or
21 diesel gallon equivalent of compressed natural gas or liquefied
22 natural gas sold in the municipality to propel a motor vehicle on
23 the public highways of this state, with a maximum rate of five cents
24 for each net gallon, gasoline gallon equivalent, or diesel gallon
25 equivalent.

26 Sec. 329.004. ADOPTION ELECTION PROCEDURE. (a) An
27 election to adopt the tax authorized by this chapter is called by an

1 ordinance adopted by the governing body of the municipality.

2 (b) At an election to adopt the tax, the ballot shall be
3 prepared to permit voting for or against the proposition: "The
4 adoption of a local tax on the sale of motor fuel in (insert name of
5 municipality) at the maximum rate of five cents per gallon."

6 Sec. 329.005. COMPUTATION OF TAX. (a) A person, including
7 a dealer, who makes a sale of motor fuel in a municipality
8 authorized to impose the tax to a person who uses the motor fuel to
9 propel a motor vehicle on the public highways of this state shall
10 collect the tax authorized by this chapter for the benefit of the
11 municipality.

12 (b) The seller shall add the amount of the tax authorized by
13 this chapter to the selling price of motor fuel, and the tax is a
14 part of the motor fuel price, is a debt owed to the seller, and is
15 recoverable at law in the same manner as the fuel charge for motor
16 fuel.

17 (c) The tax authorized by this chapter is in addition to the
18 tax imposed by Chapter 162.

19 Sec. 329.006. EXEMPTIONS APPLICABLE. The exemptions
20 provided by Sections 162.104, 162.204, and 162.356 apply to the tax
21 authorized by this chapter.

22 Sec. 329.007. EFFECTIVE DATE OF TAX. After the imposition
23 of the tax has been approved in a municipality, the governing body
24 of the municipality shall issue an ordinance prescribing the date
25 the adoption of the tax will take effect. The tax may not be
26 collected before the 90th day after the date the election results
27 are canvassed.

1 Sec. 329.008. COLLECTION AND ENFORCEMENT OF TAX. (a) A
2 person, including a dealer, required to collect the tax authorized
3 by this chapter shall report and send the taxes to the comptroller
4 as provided by the comptroller.

5 (b) The comptroller or municipality, as appropriate, may
6 prescribe monetary penalties, including interest charges, for
7 failure to keep records required by this chapter, to report when
8 required, or to pay the tax when due.

9 Sec. 329.009. REFUND. (a) A person who has paid the tax
10 authorized by this chapter on motor fuel used by the person for a
11 purpose other than to propel a motor vehicle on the public highways
12 of this state or for a use exempted under Section 329.006 may file a
13 claim for a refund.

14 (b) The comptroller shall prescribe the procedures a person
15 must use to obtain a refund under this section.

16 Sec. 329.010. ALLOCATION OF TAXES. (a) Not later than the
17 last day of the first month following each calendar quarter, the
18 comptroller shall send to the municipality an amount equal to
19 three-fourths of the taxes collected during that calendar quarter
20 after payment of all refunds allowed by law and expenses of
21 collection.

22 (b) The comptroller shall deposit one-fourth of the taxes
23 collected to the credit of the available school fund.

24 Sec. 329.011. USE OF TAX PROCEEDS. Except as provided by
25 Section 329.010, a municipality may use net tax revenue received
26 under this chapter only for:

27 (1) the construction, maintenance, repair, and

1 rehabilitation of streets, roads, intersections, thoroughfares,
2 and bridges located in the municipality; and

3 (2) the purchase, installation, maintenance, and
4 operation of traffic improvements, including signs, signals, and
5 other mechanical, digital, or electronic traffic control devices,
6 located in the municipality.

7 SECTION 2. This Act takes effect September 1, 2015.



CITY COUNCIL COMMUNICATION

May 05, 2015

ITEM #	ITEM TITLE
5	Resolution No. R-1961 – Union Pacific Railroad Company Pipeline Crossing Agreement
ITEM/MOTION	

Consideration of and action on Resolution No. R-1961, a Resolution authorizing the City Manager to execute, for and on behalf of the City, a Pipeline Crossing Agreement related to the North Side Water Line Improvement Project – Phase II, by and between the City and Union Pacific Railroad Company, in the amount of \$6,700.00

FINANCIAL SUMMARY	ELECTION DISTRICT
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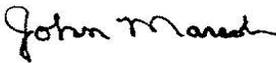
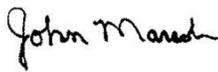
Annualized Dollars:	Budgeted:	<input checked="" type="checkbox"/> District 1
<input checked="" type="checkbox"/> One-time	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<input type="checkbox"/> District 2
<input type="checkbox"/> Recurring		<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:

MUD #: N/A

1. Resolution No. R-1961
2. Peters Correspondence – 04-20-15
3. Project Location Map
4. Resolution No. R- 1960 – 04-21-15
5. Resolution No. R-1878 – 12-02-14
6. City Council Meeting Draft Minute Excerpt – 04-21-15
7. City Council Meeting Minute Excerpt – 12-02-14

APPROVALS

Submitted by:	Reviewed by:	Approved for Submittal to City Council:
	<input checked="" type="checkbox"/> Exec. Dir. of Administrative Services <i>gm</i>	
John Maresh Assistant City Manager of Public Services	<input type="checkbox"/> Asst. City Manager of Public Services	John Maresh Acting City Manager
	<input checked="" type="checkbox"/> City Attorney <i>DNRBHZ/rl</i>	
	<input type="checkbox"/> City Engineer	
	<input checked="" type="checkbox"/> Project Director <i>mp</i>	

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 Crossing Agreement (Agreement) from each railroad for the replacement water line. This particular Agreement is with the Union Pacific Railroad 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 Crossing Agreement fee is \$6,700.00. The Contractor that is awarded the construction bid will be responsible to obtain the Railroad Protective Liability Insurance. A similar agreement with the BNSF Railway Company was approved by City Council with Resolution No. R-1960 on April 21, 2015.

Staff and the City Attorney have reviewed the Agreement and recommend approval of Resolution No. R-1961 as presented.

RESOLUTION NO. R-1961

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A PIPELINE CROSSING AGREEMENT RELATED TO THE NORTH SIDE WATER LINE IMPROVEMENTS PROJECT – PHASE II, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND UNION PACIFIC RAILROAD COMPANY, IN THE AMOUNT OF \$6,700.00.

* * * * *

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

Section 1. The City Council of the City of Rosenberg hereby authorizes the City Manager to execute a Pipeline Crossing Agreement (Agreement) related to the North Side Water Line Improvements Project – Phase II, by and between the City and Union Pacific Railroad Company in the amount of \$6,700.00.

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

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

ATTEST:

APPROVED:

Linda Cernosek, **City Secretary**

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

Pipeline Crossing 080808
Last Modified: 03/29/10
Form Approved, AVP-Law

Folder No. 2923-16

PIPELINE CROSSING AGREEMENT

Mile Post: 35.82, Glidden Subdivision/Branch
Location: Rosenberg, Fort Bend County, Texas

THIS AGREEMENT (“Agreement”) is made and entered into as of April 20, 2015, (“Effective Date”) by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (“Licensor”) and **CITY OF ROSENBERG**, a Texas municipal corporation to be addressed at Po Box 32, Rosenberg, Texas 77471 (“Licensee”).

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 12 inch encased pipeline for transporting and conveying potable water only

across Licensor's track(s) and property (the “Pipeline”) in the location shown and in conformity with the dimensions and specifications indicated on the print dated March 25, 2015 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying potable water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery depicting the Pipeline crossing, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Six Thousand Seven Hundred Dollars (\$6,700.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Article 5. INSURANCE.

A. During the life of the License, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this license, those statutes shall apply.

D. Licensee hereby acknowledges that it has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

CITY OF ROSENBERG

By: _____
Kylan Crawford
Senior Manager – Real Estate

By: _____
Name Printed: _____
Title: _____

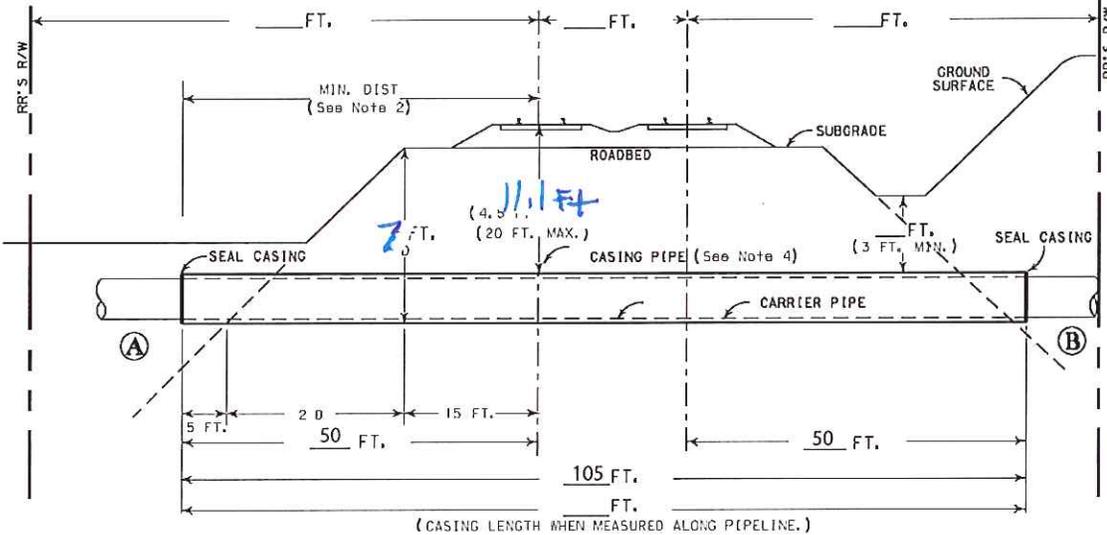
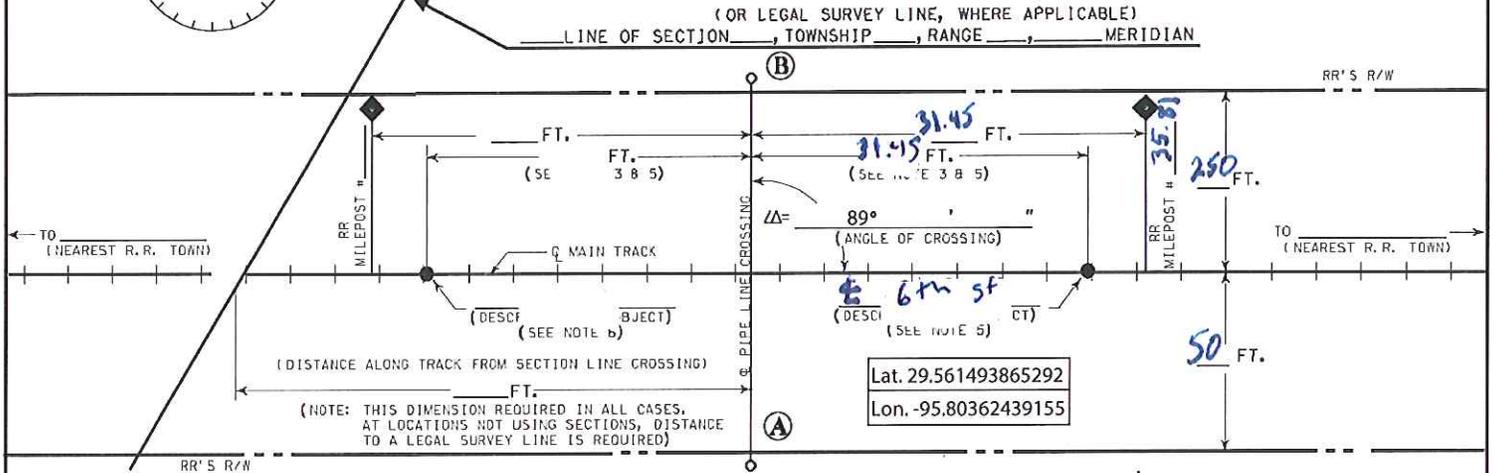
PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING



ENCASED NON-FLAMMABLE PIPELINE CROSSING

FORM DR-0404-B
REV 10-22-2007
www.uprr.com
NO SCALE

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.



Note: Refer to Areama volume 1 part 5 for requirement relating to pipeline crossings

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; NO;
- B) IF YES, NAME OF STREET 6TH STREET
- D) DISTRIBUTION LINE OR TRANSMISSION LINE
- C) CARRIER PIPE :
COMMODITY TO BE CONVEYED POTABLE WATER
OPERATING PRESSURE 60 PSI
WALL THICKNESS 0.528 ; DIAMETER 12 ; MATERIAL PVC ;
- E) CASING PIPE :
WALL THICKNESS 0.375 ; DIAMETER 20 ; MATERIAL STEEL ;
NOTE : CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S) :
 DRY BORE AND JACK (WET BORE NOT PERMITTED) ;
 TUNNEL ; OTHER _____
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES; NO;
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 50 (30' MIN.)
- I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES ; DOES NOT ; EXIST IN VICINITY OF WORK TO BE PERFORMED . TICKET NO. 20150213015

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

Glidden Sub

(SUBDIVISION)

M. P. 35.82 E. S. 1889+86.55

ENCASED POTABLE WATER CROSSING AT

ROSENBERG Port Bend TX
(NEAREST CITY) (COUNTY) (STATE)

CITY OF ROSENBERG

(APPLICANT)

RR FILE NO. 0292316 DATE 3/25/15

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE : 1-800-336-9193

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support,

the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

**KEVIN N. STEWART
MGR TRACK MNTCE
2802 Moy St
HOUSTON, TX 77007
W: 713 577-0488
C: 713 458-8364**

**CASEY R. BUUS
MGR SIGNAL MNTCE
124 COMMERCE ST
EAGLE LAKE, TX 77434
C: 832 545-2980**

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of

any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensee whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety

practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.
- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensor or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON**

LICENSOR'S PROPERTY.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT,

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the

Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

Approved: Insurance Group
Created: 9/23/05
Last Modified: 03/29/10
Form Approved, AVP-Law

EXHIBIT C
Union Pacific Railroad Company
Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: “Contractual Liability Railroads” ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Railroad Company Property” as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: “Coverage For Certain Operations In Connection With Railroads” ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Property” as the Designated Job Site.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Licensee’s statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Licensee must maintain “Railroad Protective Liability” insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

The definition of “JOB LOCATION” and “WORK” on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

E. Umbrella or Excess insurance. If Licensee utilizes umbrella or excess policies, and these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above (except worker’s compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad’s negligence whether sole or partial, active or passive, and shall not be limited by Licensee’s liability under the indemnity provisions of this Agreement.

G. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law This waiver must be stated on the certificate of insurance.

I. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

J. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee and its contractor are responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.



April 20, 2015
Folder: 2923-16

LANE GRIFFITH
CITY OF ROSENBERG
PO BOX 32
ROSENBERG TX 77471

Re: Proposed 12 Inch Encased potable water Pipeline Crossing of Railroad Property at Mile Post 35.82 on the Glidden Subdivision at or near Rosenberg, Fort Bend County, Texas

Lane Griffith:

Attached are duplicate originals of an agreement covering your use of the Railroad Company's right of way. Please execute the attached documents IN DUPLICATE and return in the enclosed self-addressed envelope.

An original copy of the fully-executed document will be returned to you, when approved and processed by the Railroad Company. Also, please provide a resolution or other authorization for the party executing the documents, *if signature authorization is required by your Entity*.

Railroad Protective Liability Insurance (RPLI) may be obtained from any insurance company which offers such coverage. Union Pacific has also worked with a national broker, Marsh USA, to make available RPLI to you or your contractor. You can find additional information, premium quotes, and application forms at (uprr.marsh.com).

- Payment in the amount of **Six Thousand Seven Hundred Dollars (\$6,700.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. Please include your payment, **with Folder No. 2923-16 noted on that document**. If you require formal billing, you may consider this letter as a formal bill and that 94-6001323 is this Corporation's correct Federal Taxpayer Identification Number.
- Railroad Protective Liability Insurance (RPLI) may be obtained from any insurance company which offers such coverage. Union Pacific has also worked with a national broker, Marsh USA, to make available RPLI to you or your contractor. You can find additional information, premium quotes, and application forms at (uprr.marsh.com).

If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

If you have any questions, please contact me at (402) 544-8620.

Sincerely,

Daniel Peters
Asst. Manager

CITY OF ROSENBERG

BRAZOS RIVER

WOW Cem

Brazos Park

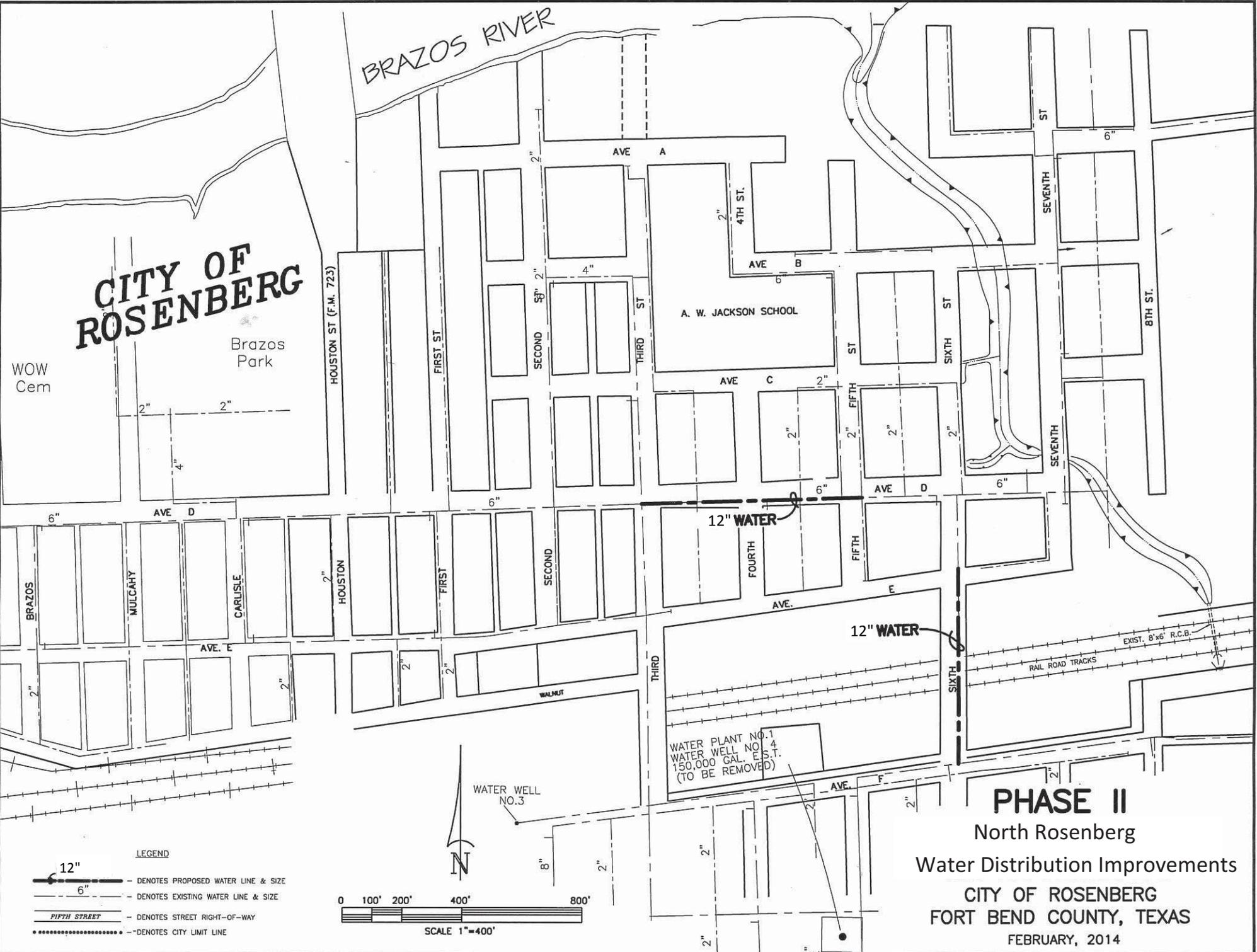
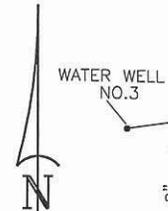
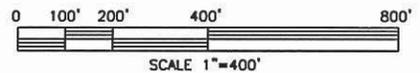
HOUSTON ST (F.M. 723)

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-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.

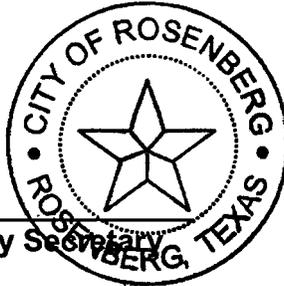
Section 2. A copy of said Pipeline License is attached hereto as Exhibit “A” and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this 21st day of April 2015.

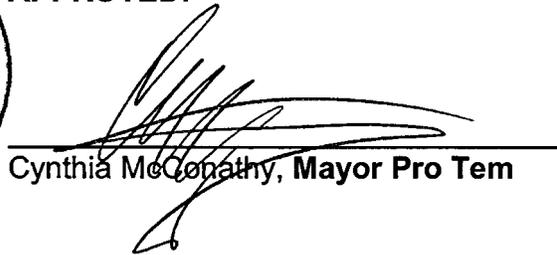
ATTEST:



Anne Stark, Assistant City Secretary



APPROVED:



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 Licenser in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licenser, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licenser;

24.1.2 report and restore any damage to the Premises or Licenser'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 Licenser 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 Licenser 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 Licenser 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 Licenser has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licenser, provide a bill of sale in a form acceptable to Licenser conveying the Pipeline and the other Improvements to Licenser.

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 Licenser 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: _____

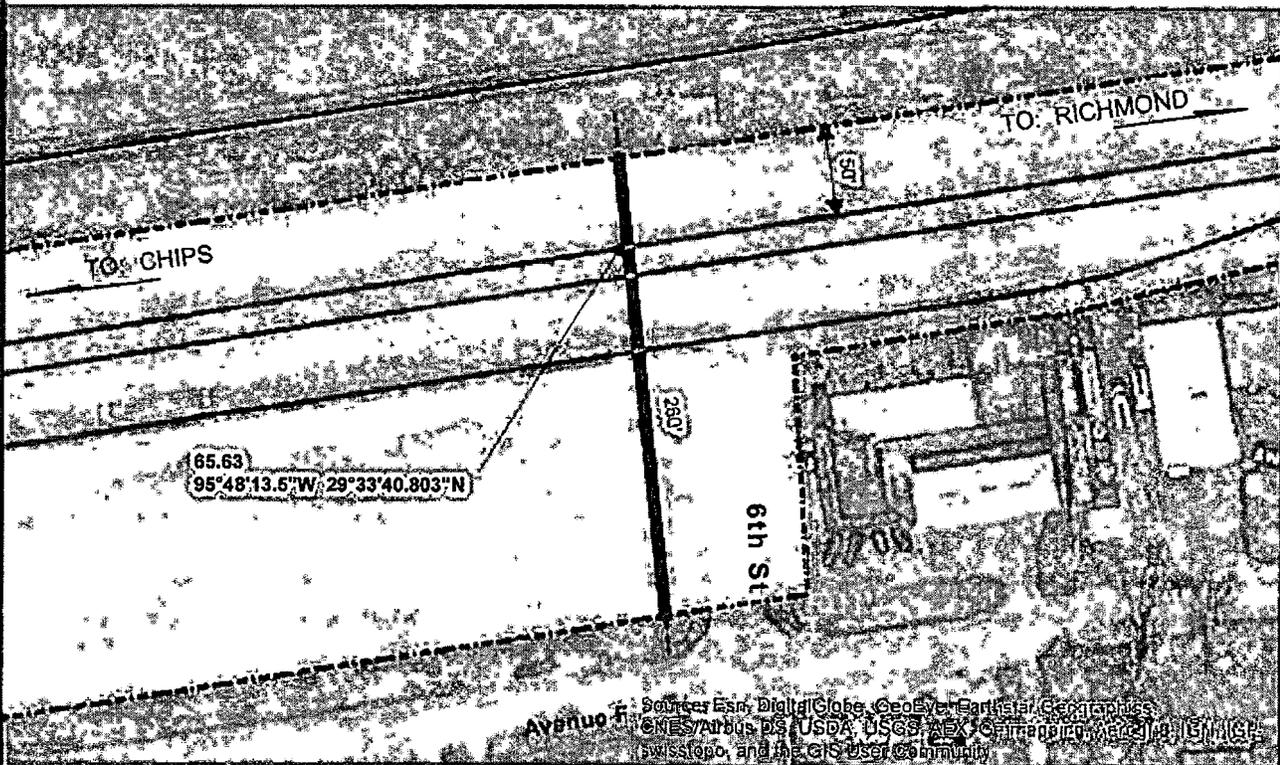
Date: _____

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



DESCRIPTION OF PIPELINE
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	12"	20"	LENGTH ON R/W:	260'	260'
CONTENTS:	POTABLE WATER		WORKING PRESSURE:	-	
PIPE MATERIAL:	PVC	STEEL	BURY: BASE/RAIL TO TOP OF CASING		8'
SPECIFICATIONS / GRADE:	C-800 DR-14	AWWA C151 CLASS 52	BURY: NATURAL GROUND		4'
WALL THICKNESS:	0.943"	0.375"	BURY: ROADWAY DITCHES		4'
COATING:	N/A	N/A	CATHODIC PROTECTION		N/A

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

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.

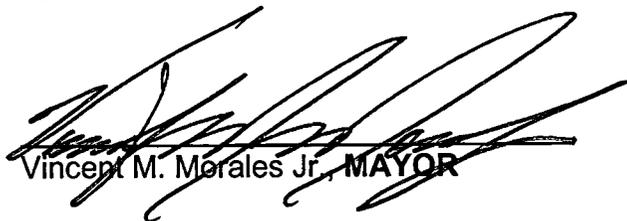
Section 2. A copy of such Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

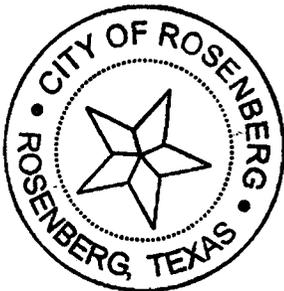
PASSED, APPROVED, AND RESOLVED this 1nd day of December 2014.

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.

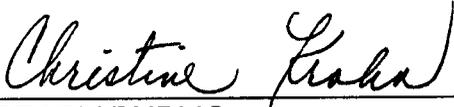


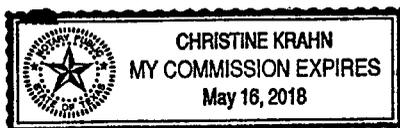

Linda Cernosek, TRMC, City Secretary
City of Rosenberg, Texas

**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



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.

Key Discussion Points: John Maresh read the Executive Summary. He added that this program is an incentive during the summer months to reduce our load in order to help prevent the necessity of rolling black outs. There is a generator at the water treatment plant, and it is actually beneficial to exercise it during these periods in order to ensure that it is in good working condition. If, for any reason, the generator was unable to kick on, then we would just go back onto the power load and not receive the credit.

Action: Councilor Euton made a motion, seconded by Councilor Barta, to approve 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.. The motion carried by a unanimous vote of those present.

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.**

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.

Key Discussion Points: John Maresh read the Executive Summary. After brief discussion, the general consensus was to pass the Resolution.

Action: Councilor Euton made a motion, seconded by Councilor Grigar, to approve 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. The motion carried by a unanimous vote of those present.

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.**

Executive Summary: At the January 27, 2015 Workshop Meeting, City Council requested specific

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.

Key Discussion Points: John Maresh read the Executive Summary. He added that this program is an incentive during the summer months to reduce our load in order to help prevent the necessity of rolling black outs. There is a generator at the water treatment plant, and it is actually beneficial to exercise it during these periods in order to ensure that it is in good working condition. If, for any reason, the generator was unable to kick on, then we would just go back onto the power load and not receive the credit.

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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.

Key Discussion Points: John Maresh read the Executive Summary. After brief discussion, the general consensus was to pass the Resolution.

Action: Councilor Euton made a motion, seconded by Councilor Grigar, to approve 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. The motion carried by a unanimous vote of those present.

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.**

Executive Summary: At the January 27, 2015 Workshop Meeting, City Council requested specific

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

ITEM 6

Hold Executive Session to consult with City Attorney on pending litigation regarding Texas Department of Transportation v. Rosenberg eminent domain proceedings pursuant to Section 551.071 of the Texas Government Code; to deliberate the potential purchase, exchange, lease, or value of real property pursuant to Section 551.072 of the Texas Government Code; and, to deliberate personnel matters regarding the employment, evaluation and duties of the City Manager pursuant to Section 551.074 of the Texas Government Code.

ITEM 7

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

ITEM 8

Announcements.

ITEM 9

Adjournment.