

## 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 19, 2015

**TIME:** 7:00 p.m.

**PLACE:** Rosenberg City Hall  
City Hall Council Chamber  
2110 4<sup>th</sup> Street  
Rosenberg, Texas 77471

**PURPOSE:** Regular City Council Meeting, agenda as follows:

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

Call to order: City Hall Council Chamber

Invocation and Pledge of Allegiance. (Pastor Kevin K. Barber, Wellspring Church International, Richmond)

Recognition and Presentation of Plaque to Departing Mayor Vincent M. Morales, Jr., and City Council Member Dwayne Grigar. (Linda Cernosek, City Secretary)

Presentation of Certificate of Appreciation to Paula Warren and Donna Wall for Their Donation of a Rowing Machine to the Police Department. (Dallis Warren, Police Chief/Cody Daily, Police Lieutenant)

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

### GENERAL COMMENTS FROM THE AUDIENCE.

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

### COMMENTS FROM THE AUDIENCE FOR CONSENT AND REGULAR AGENDA ITEMS.

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

### CONSENT AGENDA

1. Review of Consent Agenda.  
*All Consent Agenda items listed are considered to be routine by the City Council and may be enacted by one (1) motion. There will be no separate discussion of Consent Agenda items unless a City Council Member has requested that the item be discussed, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Regular Agenda.*
  - A. Consideration of and action on Workshop Meeting Minutes for April 28, 2015, and Regular Meeting Minutes for May 05, 2015. (Linda Cernosek, City Secretary)
  - B. Consideration of and action on Resolution No. R-1968, a Resolution authorizing the City Manager to negotiate and execute, for and on behalf of the City, a Consent to Assignment Agreement relating to the temporary assignment of water under the Brazos River Authority System Water Availability Agreement by and among the City, Brazos River Authority, and Gulf Coast Water Authority. (John Maresh, Assistant City Manager of Public Services)
  - C. Consideration of and action on Resolution No. R-1967, a Resolution authorizing the City Manager to negotiate and execute, for and on behalf of the City, a Temporary Amendment to the System Water Availability Agreement by and between the City and Brazos River Authority. (John Maresh, Assistant City Manager of Public Services)

- D. Consideration of and action on approval of the issuance of Fort Bend County Municipal Utility District No. 144 (Summer Lakes and Summer Park) Refunding Tax Bonds, Series 2015, in an amount not to exceed \$6,600,000. (Jeanne H. McDonald, Attorney)
- E. Consideration of and action on Resolution No. R-1957, a Resolution authorizing the Mayor to execute and accept, for and on behalf of the City, a Special Warranty Deed being 12.12 acres of land, between the City of Rosenberg and Rosenberg Business Park, Ltd. (Travis Tanner, Executive Director of Community Development)

**REGULAR AGENDA**

- 2. Consideration of and action on Ordinance No. 2015-14, an Ordinance canvassing the returns and declaring the results of the General Municipal Election held on May 09, 2015, within the City for the purpose of electing a Mayor and six (6) Council Members; and containing other provisions relating to the subject. (Linda Cernosek, City Secretary)
- 3. Consideration of and action on Ordinance No. 2015-15, an Ordinance canvassing the returns and declaring the results of the Special Election held May 09, 2015, in the City for the purpose of submitting to the duly qualified resident electors of the City consideration of one (1) Charter proposition, and declaring that said Ordinance shall be effective immediately upon its adoption. (Linda Cernosek, City Secretary)
- 4. Consideration of and action on Ordinance No. 2015-16, an Ordinance calling a Runoff Election on Saturday, June 13, 2015, for the purpose of electing Council Member District 3; providing for early voting and for Notice of the Election; and providing for other matters relating to the Election. (Linda Cernosek, City Secretary)
- 5. Consideration of and action on Resolution No. R-1962, a Resolution authorizing the City Manager to negotiate and execute, for and on behalf of the City, an Engineering Services Agreement for the Bryan Road Reconstruction Project, by and between the City and Landtech Consultants, Inc., in an amount not to exceed \$978,565. (John Maresh, Assistant City Manager of Public Services)
- 6. Consideration of and action on Resolution No. R-1920, a Resolution awarding Bid No. 2015-06 for construction of FM 2977 Elevated Water Storage Tank; and, authorizing the City Manager to negotiate and execute, for and on behalf of the City, appropriate documents and/or agreements regarding same. (John Maresh, Assistant City Manager of Public Services)
- 7. Consideration of and action on Resolution No. R-1969, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Amendment No. 1 to the Municipal Maintenance Agreement, by and between the City and the State of Texas, acting through the Texas Department of Transportation, for permission to provide supplemental right-of-way mowing and litter removal. (Rigo Calzoncin, Public Works Director)
- 8. Consideration of and action on Ordinance No. 2015-17, an Ordinance amending the Code of Ordinances by amending Chapter 6 – Buildings and Building Regulations, Article XVII - Single-Family and Accessory Dwelling Units; Sections 6-425 Definitions and 6-426 Single-family Dwelling Units; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith; providing for severability; and providing an effective date. (Travis Tanner, Executive Director of Community Services)
- 9. Hold Executive Session to deliberate economic development negotiations regarding business prospects seeking to locate, stay or expand in the Rosenberg area pursuant to Section 551.087 of the Texas Government Code.
- 10. Adjourn Executive Session, reconvene into Regular Session, and take action as necessary as a result of Executive Session.
- 11. Consideration of action on Resolution No. R-1971, a Resolution authorizing the Mayor to execute a Performance Agreement by and among the City, the Rosenberg Development Corporation, and Paragon Outlets Rosenberg Limited Partnership.
- 12. Announcements.
- 13. Adjournment.

[EXECUTION PAGE TO FOLLOW]

**Recognition and Presentation of Plaque to  
Departing Mayor Vincent M. Morales, Jr., and  
City Council Member Dwayne Grigar.**

**Presentation of Certificate of Appreciation to  
Paula Warren and Donna Wall for Their  
Donation of a Rowing Machine to the Police  
Department.**

# City of Rosenberg

## CERTIFICATE OF APPRECIATION

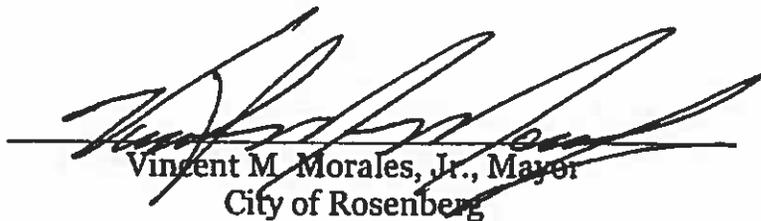
*This certificate of appreciation is presented to*

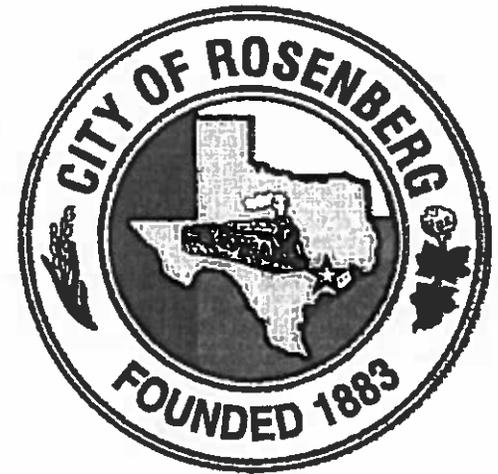
***Paula Warren***

*In recognition of your recent donation of Rowing Machine Exercise  
Equipment to the City of Rosenberg Police Department.*

*It is with gratitude that we award you this Certificate of Appreciation.*

Signed on this 19th day of May, 2015

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



# City of Rosenberg

## CERTIFICATE OF APPRECIATION

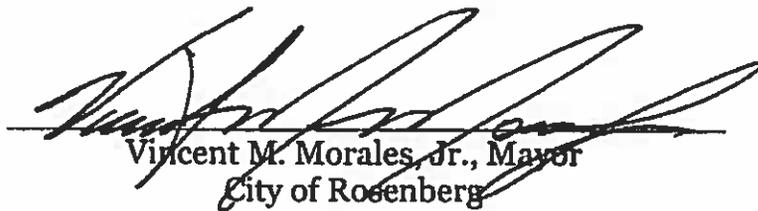
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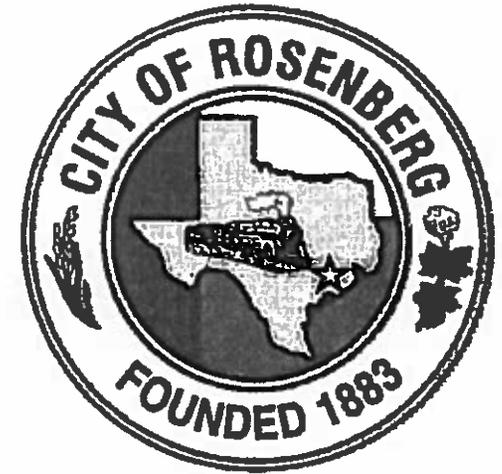
***Donna Wall***

*In recognition of your recent donation of Rowing Machine Exercise  
Equipment to the City of Rosenberg Police Department.*

*It is with gratitude that we award you this Certificate of Appreciation.*

Signed on this 19th day of May, 2015

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



**Presentation of Proclamation Proclaiming  
the Month of May 2015 as Older Americans  
Month in the City of Rosenberg.**

# Proclaiming the Month of May 2015 as Older Americans Month in the City of Rosenberg

**Whereas**, the City of Rosenberg includes a thriving community of older Americans who deserve recognition for their contributions and sacrifices to ensure a better life for future generations; and

**Whereas**, the City of Rosenberg is committed to helping all individuals live longer, healthier lives in the communities of their choice for as long as possible; and

**Whereas**, since 1965, the Older Americans Act has provided services that help older adults remain healthy and independent by complementing existing medical and health care systems, helping prevent hospital readmissions, and supporting some of life's most basic functions, such as bathing or preparing meals; and

**Whereas**, these programs also support family caregivers, address issues of exploitation, neglect and abuse of older adults, and adapt services to the needs of Native American elders; and

**Whereas**, we recognize the value of community engagement and service in helping older adults remain healthy and active while giving back to others; and

**Whereas**, our community can provide opportunities to enrich the lives of individuals of all ages by:

- Promoting and engaging in activity, wellness, and social inclusion.
- Emphasizing home- and community-based services that support independent living.
- Ensuring community members of all ages benefit from the contributions and experience of older adults.

**Now Therefore**, I, Vincent M. Morales, Jr., Mayor of the City of Rosenberg, Texas, do hereby proclaim May 2015 to be Older Americans Month and urge every resident to take time this month to recognize older adults and the people who serve and support them as powerful and vital individuals who greatly contribute to the community.



**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Official Seal of the City of Rosenberg to be affixed this the 19th day of May, 2015.

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

## **General Comments from the Audience:**

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

## **Comments from the Audience for Consent and Regular Agenda Items:**

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

# **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. City Council Workshop Meeting Minutes – April 28, 2015**
- 2. Regular City Council Meeting Minutes – May 05, 2015**

**CITY OF ROSENBERG**  
**CITY COUNCIL WORKSHOP MEETING**  
**\*\*\*DRAFT\*\*\***

On this the 28th day of April, 2015, the City Council of the City of Rosenberg, Fort Bend County, Texas, met in a Special Workshop Session, in the Rosenberg City Hall Council Chamber, located at 2110 4th Street, Rosenberg, Texas.

**PRESENT**

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**

John Maresh	Assistant City Manager of Public Services
Scott M. Tschirhart	City Attorney
Anne Stark	Assistant City Secretary
Jeff Trinker	Executive Director of Support Services
Joyce Vasut	Executive Director of Administrative Services
Tonya Palmer	Building Official
Dallis Warren	Police Chief
Tommy Havelka	Police Officer
Wade Goates	Fire Chief
Angela Fritz	Executive Director of Information Services
James Lewis	Information Services Manager
Steven Trevino	Information Technology Specialist
Fernando DeLaGarza	Information Technology Specialist
Melissa Pena	Project Director
Kaye Supak	Executive Assistant

**During a City Council Workshop, the City Council does not take final action on the agenda items and any consideration of final action will be scheduled at a Regular or Special City Council Meeting. Public comments are welcomed at Regular or Special City Council Meetings. No public comments will be received at a Workshop Meeting.**

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

**CALL TO ORDER.**

Mayor Pro Tem McConathy called the meeting to order at 6:00 p.m.

**AGENDA**

- REVIEW AND DISCUSS OLD RICHMOND ROAD AND JENNETTA STREET RECONSTRUCTION PROJECT ENGINEERING DESIGN PROGRESS REPORT, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**  
*Executive Summary:* This item has been included to provide City Council with an update on the engineering design phase of the Old Richmond Road and Jennetta Street Reconstruction Project.

**Key Discussion Points:** John Maresh, Assistant City Manager of Public Services, gave a brief background and introduced Thomas Kuykendall of CivilCorp to give an update on the project. The proposed roadway includes a turn lane and divider at the intersection of Jennetta Street and Old Richmond Road, stripping and replacing the pavement with concrete on both streets, improved drainage conditions by clearing ditches and replacing culverts, and a possible right of way adjustment at 8<sup>th</sup> Street to avoid confusion about stop conditions and reflect a traditional roadway. Estimated costs for the project as presented are \$2.4M for Old Richmond Road improvements, \$400K for Jennetta Street improvements, and \$75K for the addition of a turn lane. After discussion, the general consensus of Council was to include the following cost estimates in the next update:

- Three-way stops at both Jennetta Street and 8<sup>th</sup> Street intersections at Old Richmond Road
- Cost of asphalt versus concrete, and associated maintenance
- 28 foot wide pavement (versus 24 feet) for bike paths
- Right of way acquisitions
- Sidewalk improvements
- Curb and gutter

2. **REVIEW AND DISCUSS PRESENTATION ON ORGANIZATIONAL TECHNOLOGY PLAN, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

**Executive Summary:** Staff will present an overview of the City's Organizational Technology Plan for City Council's review and consideration. The Technology Plan aligns the Technology Department's planning efforts with the City's strategic goals, and outlines key strategic areas for focus. It lays a roadmap for development of the City's digital city capabilities, and leverages best practices in IT management to provide better organizational controls and resource management, and improved systems and service delivery.

**Key Discussion Points:** Angela Fritz, Executive Director Information Services, and James Lewis, Director of Technology, gave a presentation reflecting the City's current technology standpoint versus that of our peers, and where the City should be in terms of a centralized enterprise system and its support. After some discussion, the general consensus of Council was in favor of the overall plan and understanding of its necessity. Council looks forward to delving into the specifics during the budget cycle.

3. **ADJOURNMENT.**

There being no further business, Mayor Pro Tem McConathy adjourned the meeting at 7:05 p.m.

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Linda Cernosek, TRMC, City Secretary

**CITY OF ROSENBERG  
REGULAR COUNCIL MEETING MINUTES**

**\*\*\*DRAFT\*\*\***

On this the 5<sup>th</sup> day of May, 2015, the City Council of the City of Rosenberg, Fort Bend County, Texas, met in a Regular Session, in the Rosenberg City Hall Council Chamber, located at 2110 4th Street, Rosenberg, Texas.

**PRESENT**

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

**STAFF PRESENT**

Robert Gracia	City Manager
Scott M. Tschirhart	City Attorney
Linda Cernosek	City Secretary
John Maresh	Assistant City Manager of Public Services
Jeff Trinker	Executive Director of Support Services
Joyce Vasut	Executive Director of Administrative Services
Travis Tanner	Executive Director of Community Development
Charles Kalkomey	City Engineer
Lisa Olmeda	Human Resources Director
Dallis Warren	Police Chief
Tracie Dunn	Assistant Police Chief
Tommy Havelka	Police Officer
Wade Goates	Fire Chief
Angela Fritz	Executive Director of Information Services
Randall Malik	Economic Development Director
James Lewis	Information Services Manager
Daniel Kelleher	Main Street Manager
Kaye Supak	Executive Assistant

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

**CALL TO ORDER.**

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

**INVOCATION AND PLEDGE OF ALLEGIANCE.**

Pastor Jason Martin, Calvary Baptist Church, Rosenberg, gave the invocation and led the pledge of allegiance to the flag.

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

**PRESENTATION OF PROCLAMATION PROCLAIMING THE WEEK OF MAY 17-23, 2015, AS NATIONAL PUBLIC WORKS WEEK IN THE CITY OF ROSENBERG.**

Mayor Morales presented a Proclamation Proclaiming the Week of May 17-23, 2015, as National Public Works Week in the City of Rosenberg.

**PRESENTATION OF PROCLAMATION PROCLAIMING THE MONTH OF MAY 2015 AS MOTORCYCLE SAFETY AND AWARENESS MONTH IN THE CITY OF ROSENBERG.**

Mayor Morales presented a Proclamation Proclaiming the Month of May 2015 as Motorcycle Safety and Awareness Month in the City of Rosenberg.

**PRESENTATION OF PROCLAMATION PROCLAIMING THE MONTH OF MAY 2015 AS NATIONAL PRESERVATION MONTH IN THE CITY OF ROSENBERG.**

Mayor Morales presented a Proclamation Proclaiming the Month of May 2015 as National Preservation Month in the City of Rosenberg.

**PRESENTATION OF AWARDS TO THE WINNERS OF THE ROSENBERG ARCHITECTURAL APPRECIATION PHOTOGRAPHY CONTEST.**

Mayor Morales presented Awards to the Winners of the Rosenberg Architectural Appreciation Photography Contest:

- Keith Marrero            1<sup>st</sup> Place      Color photo of the Cole Theater
- Srin Sandarrajan        2<sup>nd</sup> Place     black & white photo of the Vogelsang & BR Provisions Building
- Elvia Morales            3<sup>rd</sup> Place     black & white photo of Old City Hall

**PRESENTATION OF ROSENBERG IMAGE COMMITTEE BEAUTIFICATION AND RENOVATION AWARDS.**

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

- Rogelio and Lorena Bolanos      2260 Moss Bluff Lane
- Cheryl Richardson                2026 Briar Ridge Drive
- Mario and Maria Valencia        1014 Frances Drive
- Jerry and Sandra Wheeler        1314 Elizabeth Avenue
- Discount Auto Care and Tire      4307 Avenue H

**GENERAL COMMENTS FROM THE AUDIENCE.**

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- *James Urbish, 2514 Cypress Lane, Rosenberg, Texas 77471, thanked Mayor and Council for their service in office, and congratulated them for a job well done.*

**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.**

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).**

**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.

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).**

**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.

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

**COMMENTS FROM THE AUDIENCE FOR CONSENT AND REGULAR AGENDA ITEMS.**

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**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").**

**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.

➤ Sharon Wallingford, Richmond resident, has been involved with TSTC in the past, thinks highly

of the program, and is very supportive their project in Rosenberg.

**Action:** The public hearing was opened at 7:33:56 p.m. There being no comments from the audience, the public hearing was closed at 7:34:10 p.m.

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.**

**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 memorandum included in the agenda packet 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.

**Key Discussion Points:** Travis Tanner gave a brief overview of the item and introduced representatives from TSTC to answer questions. Cliff Whittingstall from PBK Architects gave a presentation regarding the proposed site plans for the campus. The presentation will be updated and made available on the Rosenberg Development Corporation website. The general consensus of the Council was in support of the Resolution, and of the plan as a whole.

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

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.**

**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.

**Key Discussion Points:** Vincent M. Morales, Jr., Mayor gave an overview of the item. After some discussion, the general consensus of Council was not in favor of the Resolution. Mayor Morales then tabled the item.

**Action:** Item was tabled.

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**

**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 6<sup>th</sup> 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.

**Key Discussion Points:** John Maresh, Assistant City Manager of Public Services read the Executive Summary and explained that the pipeline will go under the railroad tracks.

**Action:** Councilor McConathy made a motion, seconded by Councilor Euton to approve 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. The motion carried by a unanimous vote.

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.**

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

An Executive Session was held 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.**

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

8. **ANNOUNCEMENTS.**

- The Downtown Chocolate Walk will be held on Sunday, May 17<sup>th</sup>, from 12:00 p.m. – 5:00 p.m.
- A City of Rosenberg National Day of Prayer event will be held on Thursday, May 7, 2015 at 7:00 p.m. at the City Hall Gazebo

9. **ADJOURNMENT.**

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

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Linda Cernosek, TRMC, City Secretary



# CITY COUNCIL COMMUNICATION

May 19, 2015

ITEM #	ITEM TITLE
B	<b>Resolution No. R-1968 – Consent to Assignment of the System Water Availability Agreement</b>
<b>ITEM/MOTION</b>	
Consideration of and action on Resolution No. R-1968, a Resolution authorizing the City Manager to negotiate and execute, for and on behalf of the City, a Consent to Assignment Agreement relating to the temporary assignment of water under the Brazos River Authority System Water Availability Agreement by and among the City, Brazos River Authority, and Gulf Coast Water Authority.	
<b>FINANCIAL SUMMARY</b>	
<b>ELECTION DISTRICT</b>	

**Annualized Dollars:**

- One-time
- Recurring
- N/A

**Budgeted:**

- Yes  No  N/A

**Source of Funds:**

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

**SUPPORTING DOCUMENTS:**

**MUD #:** N/A

1. Resolution No. R-1968
2. Dominguez Correspondence – 04-29-15
3. System Water Availability Agreement – 10-18-07
4. Resolution No. R-1946 – 04-07-15
5. Resolution No. R-1749 – 02-04-14
6. Resolution No. R-1617 – 05-01-12
7. Resolution No. R-1326 – 06-07-11
8. Resolution No. R-1311 – 04-19-11
9. City Council Meeting Minute Excerpt – 04-07-15
10. City Council Meeting Minute Excerpt – 02-04-14
11. City Council Meeting Minute Excerpt – 05-01-12
12. City Council Meeting Minute Excerpt – 06-07-11
13. City Council Meeting Minute Excerpt – 04-19-11

**APPROVALS**

**Submitted by:**

John Maresh  
Assistant City Manager of  
Public Services

**Reviewed by:**

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

**Approved for Submittal to City Council:**

Robert Gracia  
City Manager

**EXECUTIVE SUMMARY**

On April 07, 2015, City Council approved Resolution No. R-1946, authorizing the City Manager to execute an Amended and Restated Agreement relating to the temporary assignment of the City's Brazos River Authority (BRA) surface water supply to the Gulf Coast Water Authority (GCWA) at the same rate paid to the BRA. The assignment is subject to BRA consent on an annual basis. The Temporary Consent to Assignment Agreement has been approved for each of the prior years of 2011 - 2014.

The City's annual allocation of BRA surface water is four thousand five hundred (4,500) acre feet and the Agreement under consideration provides the BRA consent to assign the full amount for the time period from the effective date of the Agreement to December 31, 2015.

The GCWA is required to reimburse the City for the assigned water at the same rate charged by the BRA. For

FY2015, the BRA rate is \$69.50/acre foot for a total of \$312,750.00. By assigning the surface water allocation to GCWA, the City will be able to recoup this full amount. These dollars will be placed back into the Subsidence (GRP) Fund to help fund the alternative water supply internal projects currently under design/construction and the Brazosport Water Authority Water Supply Agreement which are all necessary to comply with the Fort Bend Subsidence District unfunded mandate to reduce groundwater withdrawals by thirty percent (30%) effective October 01, 2016.

Staff recommends approval of Resolution No. R-1968, with the Agreement attached as Exhibit "A", as presented.

**RESOLUTION NO. R-1968**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A CONSENT TO ASSIGNMENT AGREEMENT RELATING TO THE TEMPORARY ASSIGNMENT OF WATER UNDER THE BRAZOS RIVER AUTHORITY SYSTEM WATER AVAILABILITY AGREEMENT BY AND AMONG THE CITY OF ROSENBERG, TEXAS, BRAZOS RIVER AUTHORITY, AND GULF COAST WATER AUTHORITY.**

\* \* \* \* \*

**WHEREAS**, the City has received a request for the assignment of certain Brazos River Authority water allocations from the Gulf Coast Water Authority due to additional needs; and,

**WHEREAS**, the City approved Resolution No. R-1326 on June 07, 2011, Resolution No. R-1479 on May 01, 2012, Resolution No. R-1617 on February 19, 2013, Resolution No. R-1749 on February 04, 2014, and Resolution No. R-1946 on April 07, 2015, authorizing assignment of a portion of the City’s annual allocation of Brazos River Authority water supply; and,

**WHEREAS**, the City currently has a surplus allocation of surface water available from the Brazos River Authority for the year 2015; now, therefore,

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

Section 1. The City Manager is hereby authorized to negotiate and execute a Consent to Assignment Agreement (Agreement) relating to the temporary assignment of water under the Brazos River Authority System Water Availability Agreement, by and among the City of Rosenberg, Texas, Brazos River Authority, and Gulf Coast Water Authority.

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**

**CONSENT TO ASSIGNMENT**

This Consent to Assignment ("Assignment") is entered into to be effective this \_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date") by and between Brazos River Authority ("BRA"), a river authority of the State of Texas, the City of Rosenberg ("Assignor"), and Gulf Coast Water Authority ("Assignee").

**RECITALS**

**WHEREAS**, BRA and Assignor entered into a System Water Availability Agreement ("Agreement") with an effective date of October 1, 2007 whereby BRA agreed to make available and Purchaser agreed to purchase 4,500 acre-feet of raw water per Fiscal Year;

**WHEREAS**, by letter dated April 2, 2015, Assignor has requested to temporarily assign 4,500 acre feet of water under the Agreement to Assignee.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, BRA, Assignor, and Assignee agree as follows:

1. The BRA hereby consents to the temporary assignment of 4,500 acre feet of water under the Agreement to the Assignee from the Effective Date of this Assignment to December 31, 2015.
2. The Assignee hereby agrees to abide by all of the terms and conditions contained in the Agreement.
3. The Assignee hereby agrees to comply with all BRA water reporting requirements.
4. This Assignment shall in no way relieve Assignor from any of its obligations under the Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Assignment to be duly executed, intending to be bound thereby.

**BRAZOS RIVER AUTHORITY**

**CITY OF ROSENBERG**

By: \_\_\_\_\_

By: \_\_\_\_\_

**PHIL FORD**

Title: **GENERAL MANAGER/CEO**

Title:

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

**GULF COAST WATER AUTHORITY**

By: \_\_\_\_\_

Title:

ATTEST:

\_\_\_\_\_



Brazos River Authority



QUALITY • CONSERVATION • SERVICE

April 29, 2015

Mr. John Maresh  
Assistant City Manager  
City of Rosenberg  
P.O. Box 32  
Rosenberg, TX 77471-0032

Dear John:

Enclosed please find the following documents:

- Three copies of the Consent to Assignment. Please sign all copies and return them to me. Once we have all the original signatures, we will provide you an original copy.
- Two copies of the Temporary Amendment. Please sign both copies and return them to me. I'll have our General Manager sign them and we will return an original copy to you.
- Please do not date the documents.

If you have any questions, please don't hesitate to contact me.

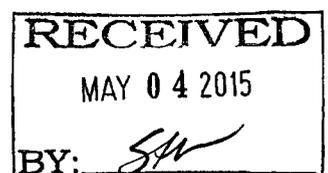
Sincerely,

*Kathy Riccio*

*for* CATHY DOMINGUEZ  
Regional Government & Customer  
Relations Manager, Lower Basin

CD:kld  
Enclosures

4600 Cobbs Drive • P.O. Box 7555 • Waco, Texas 76714-7555  
254-761-3100 • FAX 254-761-3215



# SYSTEM WATER AVAILABILITY AGREEMENT

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*Brazos River Authority  
P. O. Box 7555  
Waco, Texas 76714-7555  
(254) 776-1441*



**CITY OF ROSENBERG**

**SYSTEM WATER AVAILABILITY AGREEMENT  
BETWEEN  
BRAZOS RIVER AUTHORITY  
AND  
CITY OF ROSENBERG**

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**AGREEMENT** made and entered into this the 18<sup>th</sup> day of October 2007, by and between **BRAZOS RIVER AUTHORITY** ("BRA"), a river authority of the State of Texas, and **CITY OF ROSENBERG** ("Purchaser") of Fort Bend County, Texas.

**1. RECITALS.** BRA owns and operates various lakes in the Brazos River Basin. BRA also has entered into contracts with the United States of America by virtue of which it has obtained the right to utilize for water supply purposes a portion of the usable storage space in various lakes owned and operated by the United States Army Corps of Engineers. BRA is authorized by the State of Texas to store State waters in the lakes owned by BRA and various lakes owned and operated by the United States Army Corps of Engineers in the Brazos River Basin, hereinafter collectively called the "System", and to make such stored waters available for beneficial use.

BRA is authorized to operate the System as a hydrologic unit pursuant to an order of the Texas Water Commission (formerly, Texas Natural Resource Conservation Commission "TNRCC", now Texas Commission on Environmental Quality "TCEQ") issued on July 23, 1964 ("System Operation Order"). The Final Determination of All Claims of Water Rights in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin Maintained by the Brazos River Authority, Fort Bend County W.C.I.D. No. 1 and Galveston County Water Authority ("Final Determination") issued on June 26, 1985, by TCEQ clarified and amplified the System Operation Order. Under the System Operation Order as adjudicated by the Final Determination, BRA is authorized to operate the System as a hydrologic unit to more efficiently utilize the reservoirs that make up the System to make water available to meet the needs of BRA's customers.

Purchaser wishes to contract for BRA to make available 4,500 acre-feet of water per Fiscal Year under the terms of this Agreement pursuant to the System-wide pricing methodology, and BRA agrees to make water available to Purchaser pursuant to the terms and conditions herein provided.

**2. DEFINITIONS.**

- a) The term "Agreement" means this agreement.
- b) The term "Annual Contracted Amount" shall mean the total volume, expressed in acre-feet per Fiscal Year, which BRA agrees to make available and Purchaser agrees to purchase. For this Agreement, the amount is 4,500 acre-feet.
- c) The term "BRA" shall mean Brazos River Authority.

- d) The term "Board" shall mean the Board of Directors of Brazos River Authority.
- e) The term "Budgeted Cost of Service" shall mean all reasonable economic requirements to develop, operate, maintain, protect and/or expand the System. Specific costs include, but are not limited to, personnel, operations, capital, infrastructure, financing, administration and overhead.
- f) The term "Fiscal Year" shall mean BRA's fiscal year from September 1 through August 31, or such other annual fiscal year period as BRA may later determine.
- g) The term "Industrial Use" shall mean the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial feedlot operations, commercial fish production, and the development of power by means other than hydroelectric.
- h) The term "Irrigation Use" shall mean the use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.
- i) The term "Mining Use" shall mean the use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.
- j) The term "Municipal Use" shall mean the use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways.
- k) The term "Overuse" shall mean withdrawal or release of water in excess of the amount contracted.
- l) The term "Purchaser" shall mean City of Rosenberg.
- m) The term "Reuse" shall mean the use of any portion of any of the water sold hereunder that remains unconsumed after the water is used for the purpose authorized herein.
- n) The term "System" shall mean BRA's Water Supply System and shall include the BRA's facilities, infrastructure and properties insofar as they are related to making water available from the BRA together with all future extensions, improvements, enlargements, and additions to and replacements of the System, and all replacements thereof whether from surface water supplies, groundwater, or a combination thereof, unless specifically excluded from the System by resolution of the Board.
- o) The term "System Operation Order" shall mean that certain order of the TCEQ or its predecessor dated July 23, 1964, as adjudicated by order of the TCEQ or its predecessor on June 26, 1985, in the Final Determination of all Claims of Water Rights in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin Maintained by the Brazos River Authority, Fort Bend County W.C.I.D. No. 1 and Galveston County Water Authority.
- p) The term "System Rate" shall mean the rate per acre-foot of water established by BRA from time to time under the system-wide pricing methodology for water made available to Purchaser from the System under this Agreement.

**3. EFFECTIVE DATE.** The effective date of this Agreement is **October 1, 2007.**

**4. AVAILABILITY OF WATER.** While this Agreement remains in force, BRA agrees to make available to Purchaser for withdrawal from the System an amount of water not to exceed the Annual Contracted Amount. Such water will be withdrawn

from the System and accounted for by BRA as provided by the System Operation Order, as modified by the Final Determination. Purchaser agrees that it is contracting to have water made available to it in amounts and at such times and locations as are provided for herein and that the water to be provided under this Agreement is subject to local availability. Purchaser acquires no property right in the water made available to it under this Agreement beyond the right to have the water made available to it for diversion and use under the terms of this Agreement. BRA agrees to make water available from the System, and Purchaser acquires no rights or interests in any of the water supply sources that comprise the System above and beyond those rights that accrue to it as a customer of the System under this Agreement. Purchaser represents, and BRA relies on such representation, that all water to be made available by BRA under this Agreement to Purchaser shall be used solely for municipal purposes. Utilization of water supplied under this agreement for other purposes shall be deemed a breach of contract and grounds for termination of contract.

**5. DATE AND PLACE OF PAYMENTS.** Payments to be made hereunder shall be made at BRA's office in Waco, McLennan County, Texas. BRA contemplates that by the first day of each Fiscal Year (currently September 1) it will have adopted budgets for BRA for said Fiscal Year and established the System Rate for said Fiscal Year. Payments for water made available each Fiscal Year may be made under one of three payment options from which Purchaser will select at the beginning of each Fiscal Year. Annual payments shall be made on or before September 15 of each year. Quarterly payments shall be made on or before September 15, December 15, March 15, and June 15 of each year. Monthly payments shall be made on or before the fifteenth of each month each year. Quarterly payments or monthly payments shall include a multiplier to be applied to the annual payment to allow BRA to recover interest lost on any unpaid balance plus a service charge for administrative costs, including but not limited to costs involving the billing, accounting, and collecting for the quarterly or monthly payments. The multiplier to recover lost interest revenue and the service charge for administrative costs shall be determined on an annual basis using the method approved by the Board and shall be just and reasonable. Because the effective date of this Agreement is **October 1, 2007**, the amount of water available to Purchaser and the payment owed by Purchaser will be prorated for the remaining **eleven (11) months** of Fiscal Year 2008.

If, in accordance with Section 6b) of this Agreement, BRA increases the payment due from Purchaser during a Fiscal Year, it shall notify Purchaser of any increased amount of payment due for the remainder of the Fiscal Year and the increased amount shall be paid by Purchaser (i) within 30 days after receipt of notice of the increase if Purchaser has already paid all amounts otherwise due to BRA for such Fiscal Year, or (ii) in approximately equal installments added to any further installment amounts owed by Purchaser for the remainder of such Fiscal Year if Purchaser has selected a payment option which resulted in Purchaser still having payments due to BRA during the remainder of such Fiscal Year.

**6. UNCONDITIONAL NATURE OF PAYMENT OBLIGATION; PRICE.**  
a) Purchaser unconditionally agrees to pay BRA annually for the water agreed to be made available to Purchaser hereunder at a price equal to the product of

multiplying the System Rate times the Annual Contracted Amount regardless of whether the full Annual Contracted Amount of water is diverted and used by Purchaser.

b) The System Rate shall be established annually by the Board; it shall be calculated by utilizing a Budgeted Cost of Service basis considering the water supply System costs and the acre-feet of long term water sold under contract; and it shall be just reasonable and non-discriminatory. Purchaser shall be provided 15 days notice of the proposed amount and the meeting date at which the System Rate shall be established and shall be provided an invoice before the payment is due and payable. The System Rate has been established by the Board at a rate of \$54.50 per acre-foot of water agreed to be made available annually to Purchaser for the current Fiscal Year. BRA shall not increase the System Rate other than on a Fiscal Year basis, which determines the system rate for the following Fiscal Year under this Agreement, except for unforeseeable reasons of a serious or substantial nature. Such reasons include Force Majeure, government legislation or regulations, or permit requirements.

**7. SOURCE OF PAYMENTS.** The payments to be made hereunder by Purchaser shall constitute operating expenses of Purchaser's water works system or Purchaser's combined water works and sewer system. Purchaser shall charge rates for services of its water works system or its combined water works and sewer systems that will be sufficient to pay the operating and maintenance expenses thereof, including the payments provided for hereunder, and the interest on and principal of, as the same come due and mature, obligations issued by Purchaser now or hereafter payable from the revenues of said system or systems.

**8. INTEREST ON PAST DUE PAYMENT.** In the event of failure of Purchaser to make any payment to BRA provided to be made in this Agreement at the time when same shall be due, the past due payment shall bear interest at the lesser of the highest rate allowed by applicable law or 18 percent per year.

**9. REMEDIES FOR NONPAYMENT OR DEFAULT.** Should Purchaser fail to make any payment to BRA when due hereunder or otherwise be in default under this Agreement, BRA at its sole option and in addition to and without impairing any other remedy available to it on account of the default, may elect to either (i) suspend its duty to make available water to Purchaser under this Agreement or (ii) terminate this Agreement, by providing written notice of such termination delivered to Purchaser on or before 30 days before the date specified in said notice of termination, provided that the nonpayment or other default with respect to which notice of termination of this Agreement has been given, shall not be cured by the date specified in such notice. Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

**10. REMEDIES FOR OVERUSE.** Purchaser recognizes that any diversion of water in excess of its Annual Contracted Amount may impact BRA's ability to make available water to BRA's other raw water customers. Purchaser agrees that if for any reason it needs to exceed the Annual Contracted Amount, Purchaser will give written notice to BRA 30 days in advance of the need for such additional water and in such

notice will state the reason for the additional need, the amount of water needed to be made available, and the duration of the need. BRA, in its sole discretion, may make all or a portion of the requested water available. Nothing contained herein shall obligate the BRA to provide water in excess of the Annual Contracted Amount nor should Purchaser rely on additional water being made available in excess of the Annual Contracted Amount except as approved by BRA under the terms stated herein.

In the event that BRA determines that it can make all or a portion of the requested water available without adversely impacting its ability to make water available to its other customers, Purchaser shall pay for such water to be made available in advance of diversion at a rate that is equal to twice the current System Rate.

In the event Purchaser fails to notify BRA of its need for additional water to be made available, and exceeds the Annual Contracted Amount or should Purchaser, after notification of BRA and BRA's determination that additional water is not available for Purchaser's use, nonetheless exceeds the Annual Contracted Amount, BRA may, at its option, charge the Purchaser for the overuse at a rate of three times the System Rate and/or cancel this Agreement by providing written notice of such cancellation delivered to Purchaser on or before thirty (30) days before the date specified in said notice of cancellation.

In the event Purchaser uses water in excess of its Annual Contracted Amount twice in any five-year period, BRA may, if such additional water can be made available on a long-term basis, cause this Agreement to be amended to increase the Annual Contracted Amount to the maximum total annual amount requested by Purchaser in any one Fiscal Year. Such Amendment shall not excuse Purchaser from paying for any water used in excess of the amount agreed to be made available under this Agreement prior to amendment of this Agreement at the appropriate rate under the paragraph above. Following any such amendment, Purchaser shall pay for all water to be made available to Purchaser under this Agreement and such amendment at the System Rate.

Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

## **11. DIVERSION RATE.**

a) At least seven (7) working days before it shall desire to divert water agreed to be made available pursuant to this Agreement, Purchaser shall notify BRA of the date on which it desires to start pumping water at the diversion point, the minimum number of days it will continue pumping, and the rate at which it desires to pump. BRA shall make releases of water from System at such times and in such amounts as will make water available for Purchaser to pump water continuously at the diversion point(s) at the rate thus specified without violation of water rights of others. When Purchaser shall desire to discontinue pumping or to change the rates at which it shall be able to pump water continuously at the diversion point(s), it shall notify BRA at least two (2) working days in advance of the date on which pumping is to be discontinued or on which the rate at which it is to be able to pump is to be changed, specifying in said

notice the rate at which it desires to be able to pump continuously thereafter, and BRA shall discontinue releases or appropriately modify the releases made by it so as to make water available for Purchaser to pump continuously at the new rate, beginning on the date specified in said notice. Notices under this Section 11.a, Diversion Rate, may be given by telephone but must be confirmed in writing within two (2) days.

b) The pumping rates specified in the notices given under provisions of Section 11.a, above, shall be expressed in cubic feet per second (cfs).

c) The number of days for which pumping will continue, as specified in notices given under provisions of Section 11.a, above, shall be at least five (5) days.

d) The quantities of water agreed to be made available by BRA to Purchaser under this Agreement shall be determined as follows: convert the release rate from System made to allow Purchaser to pump at the rate requested under Section 11.a, above, from cfs to acre-feet per day (by multiplying the number of cfs by 1.9835), then multiply the converted release rate by the number of days for which Purchaser shall have indicated in notices given under Section 11.a, above, that it desires to pump continuously at such rates. When the total quantity of water released from System for pumping by Purchaser during any Fiscal Year, as computed in accordance with the preceding sentence, equals the Annual Contracted Amount, except as allowed by BRA pursuant to Section 10 of this Agreement, Purchaser shall have no further right hereunder to call on BRA to make water available and BRA shall have no further obligation hereunder to make water available to Purchaser during the remainder of such Fiscal Year.

**12. WITHDRAWAL FACILITIES.** The provision of facilities for diversion of the water agreed to be made available by BRA to Purchaser hereunder shall be solely the responsibility of Purchaser. Where applicable, BRA may allow the construction of such facilities on and across BRA land, subject to the conditions that the design and location of such facilities are approved by BRA, that Purchaser prepare and furnish all documents necessary for approving the easement, and that Purchaser operate the facilities located on BRA land in a manner acceptable to BRA. At the termination of this Agreement, all facilities must be removed and the land restored to its original condition in a manner acceptable to BRA. Upon execution of this Agreement, the BRA and the Purchaser shall agree on a point of diversion which shall be attached hereto in the form of a map as Exhibit. Any Subsequent change of the point of diversion must be approved in writing by the BRA.

**13. METERING.** Purchaser agrees that, at its sole cost and expense, it shall own, install, operate and maintain meters for the accurate measuring of all water diverted by Purchaser under this Agreement in order to aid BRA in accurately reporting water usage to the TCEQ as required by applicable law or regulation. Such meter or meters shall be tested and calibrated for accuracy by and at the expense of Purchaser once each Fiscal Year at intervals of approximately 12 months, and a report of such test and calibration shall be furnished to BRA. BRA shall be given at least two prior days notice of the time of any test and calibration of Purchaser's meters, or any of them, and BRA shall have the right to have a representative present at each test to observe the test and any adjustments found thereby to be necessary. BRA shall have the right to inspect and check the accuracy of Purchaser's meter or meters at any time during usual business hours after not less than one nor more than five (5) days notice. In the event

any question arises at any time as to the accuracy of any such meter, such meter shall be tested promptly upon demand of BRA, the expense of such test to be borne by BRA if the meter is found to be correct and by Purchaser if it is found to be incorrect. Readings within 5% of accuracy, plus or minus, shall be considered correct. If, as a result of any test, any meter is found to be registering inaccurately (i.e., in excess of 5% of accuracy, plus or minus), the readings of such meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, the period shall be extended back 180 days from the date of the initial BRA demand for meter testing, and the records of readings shall be adjusted accordingly. Following each test of a meter, Purchaser shall cause the same to be calibrated to register accurately.

**14. REPORTING.** Purchaser agrees that it will keep accurate records of the daily readings from the meter or meters installed pursuant to Section 13., Metering, above. These records shall be subject to inspection by BRA at reasonable times and places. Purchaser shall submit reports to BRA by the 10<sup>th</sup> day of each month showing the amount of water diverted under this Agreement each day during the preceding month. Failure to comply with this reporting requirement will be deemed a breach of this Agreement and may result in termination of Agreement.

**15. SYSTEM EXPANSION.** Purchaser and BRA understand that BRA may desire to make water available to other customers in a manner or in an amount which may necessitate expansion or enlargement of or additions to the System and that in connection with any such expansion, enlargement or addition, BRA will incur additional costs. The reasonable costs incurred by BRA related to such expansion, enlargement, or addition shall be costs of the System.

**16. CONSERVATION OF WATER.** It is the intent of the parties to this Agreement to provide to the maximum extent practicable for the conservation of water, and Purchaser agrees that it is a condition of this Agreement that it shall maintain and operate its facilities in a manner that will prevent unnecessary waste of water. BRA, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water conservation. Purchaser agrees to abide by the "Brazos River Authority Drought Contingency Policy" adopted by the Board on January 16, 1989, or any subsequent Drought Contingency Policy duly adopted by the Board and any Drought Contingency Plans developed under the Drought Contingency Policy. If required by applicable law or regulation or by BRA, Purchaser agrees to implement a water conservation and drought management program in accordance with a water conservation plan and that the water made available and diverted by Purchaser pursuant to this Agreement will be used in accordance with such conservation plan. If required by applicable law or regulation Purchaser agrees that, in the event Purchaser furnishes water or water services to a third party that in turn will furnish the water or services to the ultimate consumer, the requirements relative to water conservation shall be met through contractual agreements between Purchaser and the third party providing for the establishment and implementation of a water conservation program in compliance with such applicable law or regulation.

**17. WATER QUALITY.** As a further condition of this Agreement, Purchaser also agrees that it will comply with applicable water quality standards of the State in the diversion, use, or discharge of water made available hereunder. Should Purchaser be determined by any competent legal authority to have degraded the quality of water of the State or to have violated any water quality standard established by law or lawfully adopted regulation, and subsequently fail to take action with reasonable diligence to correct such deficiency as directed by competent legal authority, such failure shall constitute breach under this Agreement and may result in termination of this Agreement.

BRA, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water quality protection. If required by applicable law or regulation, Purchaser agrees to implement appropriate water quality protection measures including, without limitation, a non-point source water pollution abatement program in accordance with a non-point source water pollution abatement plan.

**18. WATER SURPLUS TO PURCHASER'S NEEDS.** Purchaser may not unilaterally cancel this Agreement or reduce the amounts of water agreed to be made available to it and for which availability it is obligated to pay under the terms of Sections 4., 6., and 10. above. Purchaser may not sell or make available to others the water agreed to be made available to it under this Agreement, except in the case of municipal uses, as potable treated water. However, should Purchaser determine that it has water surplus to its anticipated needs from the water to be made available by BRA under this Agreement, Purchaser may notify BRA as to the amount of water no longer needed to be made available to it. BRA will use reasonable efforts to find a third party who is able and willing to pay for such availability for a period to the end of or beyond the term of this Agreement. If BRA is successful in finding such a third party suitable to it to acquire Purchaser's interest in its available surplus for a period of time to the end of or beyond the term of this Agreement, this Agreement will be amended to reduce the amount of water to be made available to Purchaser by the amount of availability paid for by such third party, and Purchaser will be relieved of the obligation to make payments for such availability of water.

**19. REUSE.** All rights to reuse treated wastewater effluent or untreated water made available under this Agreement that is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water ("Reuse Water") shall remain with the BRA. Purchaser may not use, sell, or make available to others, any form of Reuse Water without the express written consent of the BRA. However, Purchaser may directly reuse treated wastewater effluent or untreated water provided that such water has not been previously disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

**20. INTERBASIN TRANSFER.** Water made available under this Agreement shall not be transferred or used outside of the Brazos River Basin unless Purchaser obtains the express written consent of BRA and obtains all required governmental approvals.

**21. SHORTAGES AND YEARLY REPORTS.** BRA makes no guarantee that any lakes or other sources of supply in the System will be maintained at any specific level at any particular time. Purchaser bears all transportation losses prior to final diversion. It is fully understood by the parties hereto that the level of lakes or other sources of supply in the System will vary as a result of weather conditions beyond the control of BRA, the use of water from the System by other water customers of BRA, and in Federal Reservoirs, as a result of releases made by the U.S. Army Corps of Engineers and that this instrument is merely an agreement to require BRA to make available water when and if water is present in the System, and to allow Purchaser to make withdrawals of the water subject to the general law on distribution and allocation of water during shortages of supply and in conformity with BRA's water rights from the TCEQ and the System Order.

BRA covenants that it will use its best reasonable efforts in accordance with accepted hydrological engineering practices to provide the quantities of water agreed to be provided herein. In the event of a drought of greater severity than that previously experienced, or if for any other reason water in the System becomes in short supply, BRA agrees, and Purchaser covenants, that BRA may fairly and equitably apportion and ration the available water supply from the System among all its several customers, including Purchaser. Purchaser herein acknowledges that it shall hold BRA harmless from any and all liability, damages, claims or actions which may exist as a result of shortages of water to be made available.

**22. OPERATION OF SYSTEM; BRA'S OTHER CONTRACTS.** The right of BRA to maintain and operate the System and at any and all times in the future to impound, release and make available waters therefrom in any lawful manner and to any lawful extent BRA may see fit is recognized by Purchaser; and, except as otherwise provided herein, there shall be no obligation hereunder upon BRA to pump or not pump, store or not to store, or to release and make available or not to release or make available any waters at any time or to maintain any waters at any specified level or to operate the System in any manner not in compliance with applicable laws or regulations, BRA's water rights and System Operation Order. BRA may enter into agreements with other parties regarding the System, including its operation and maintenance and the storage, release and making available water therefrom. BRA makes no representation as to the quality of the water in the System.

**23. FORCE MAJEURE.** Notwithstanding anything herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, terrorist activity, riots, sabotage, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply in the System, strikes or other differences with labor (whether or not within the power of the parties to settle same), decrees or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such party and not due to

negligence of such party. Each party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

**24. WAIVER.** Any waiver at any time by any party of its rights with respect to default or any right granted under this Agreement shall not be deemed a waiver of such rights with respect to any subsequent default or matter.

**25. NOTICES AND CERTIFICATIONS.** Notices and certifications provided for in this Agreement shall be in writing. The same shall be delivered by mailing certified mail, postage paid, return receipt requested, or hand delivered, to the respective parties at the following addresses:

**BRA:** Brazos River Authority  
P.O. Box 7555  
Waco, Texas 76714-7555  
Telephone: (254) 761-3100  
Fax: (254) 761-3207

**Purchaser:** City of Rosenberg  
2110 Fourth Street  
Rosenberg, Texas 77471  
Telephone: 832-595-3310  
Fax: 832-595-3311

Either party may change its address as shown above by written notice to the other party.

**26. OTHER REQUIREMENTS.** This Agreement is subject to all conditions, provisions, and limitations included in BRA's water rights from the applicable State agency and the System Operation Order. Further, this Agreement is subject to all applicable Federal, State and local laws, and any applicable ordinances, rules, orders and regulations of any local, State or Federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation of any governmental authority.

**27. SEVERABILITY.** The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

**28. TERMINATION.** This Agreement may be terminated by either party for material breach of the terms of this Agreement or as provided herein. Upon receipt of notice of termination by BRA, the Purchaser shall immediately discontinue all diversions of use of water made available hereunder.

**29. INDEMNITY/HOLD HARMLESS CLAUSE.** The Purchaser shall comply with the requirements of all applicable laws, rules and regulations and shall exonerate, indemnify and hold BRA harmless from any and all liability or damages resulting from failure to do so. In addition, the Purchaser agrees to keep, save and hold BRA harmless from any and all actions, liabilities, damages, judgments, costs and expenses including reasonable attorney's fees, in case an action is filed or does in any way accrue against BRA, its' officials, officers, and employees in consequence of this Agreement or for any negligent act or omission of the Purchaser related to the provision of water made available under this Agreement or that may result from the carelessness or lack of skill of the Purchaser or the Purchaser's agents, subconsultant, or employees.

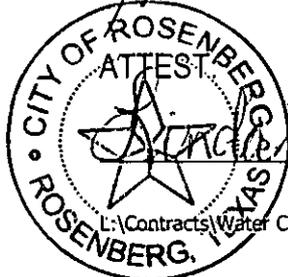
**30. ASSIGNMENT.** This Agreement may be assigned by BRA at its discretion. This Agreement may be assigned by Purchaser only with the written consent of BRA. Assignment of a portion of the water made available to Purchaser, or any assignment which requires change in diversion location, type of use or change in the service area must be authorized under Section 18., Water Surplus to Purchaser's Needs, or as stated above.

**31. CANCELLATION OF NONPAYMENT.** Should Purchaser fail to make any payment to BRA when due hereunder, BRA may cancel this Agreement by written notice of such nonpayment and statement of BRA's election to cancel this Agreement by reason thereof delivered to Purchaser on or before 30 days before the date specified in said notice for cancellation, provided that the nonpayment with respect to which notice has been given shall not be cured by the date thus specified in such notice.

**32. TERM OF AGREEMENT.** The term of this Agreement shall begin on the Effective Date, Section 3., and shall end on August 31, 2050. This Agreement shall be extended thereafter at the written request of Purchaser under the terms and conditions of BRA's standard long-term water availability contract at that time for so long as, and to the extent that, BRA continues to have the right and ability to make available the amount of water to be made available to Purchaser hereunder. The amount of water to be made available under any extension of this Agreement may be pro rated to account for loss of System yield over time.

**CITY OF ROSENBERG**

By *Joe M. Gurecky*  
Joe M. Gurecky  
Mayor



**BRAZOS RIVER AUTHORITY**

By *Phillip J. Ford*  
Phillip J. Ford  
General Manager/CEO

ATTEST:

*Lina Russell*

RESOLUTION NO. R-1946

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, AN AMENDED AND RESTATED AGREEMENT RELATING TO THE TEMPORARY ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER WATER SUPPLY CONTRACT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND GULF COAST WATER AUTHORITY.

\* \* \* \* \*

**WHEREAS**, the City has received a request for the assignment of certain Brazos River Authority water allocations from the Gulf Coast Water Authority due to additional needs; and,

**WHEREAS**, the City approved Resolution No. R-1311 on April 19, 2011, Resolution No. R-1326 on June 07, 2011, Resolution No. R-1479 on May 01, 2012, Resolution No. R-1617 on February 19, 2013, and Resolution No. R-1749 on February 02, 2014, authorizing assignment of a portion of the City's allocation of Brazos River Authority water supply; and,

**WHEREAS**, the City currently has a surplus allocation of surface water available from the Brazos River Authority for year 2015 and future years; now, therefore,

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

Section 1. The City Manager is hereby authorized to negotiate and execute an Amended and Restated Agreement Relating to the Temporary Assignment of Rights and Obligations under Water Supply Contract (Agreement), by and between the City of Rosenberg, Texas, and Gulf Coast Water Authority.

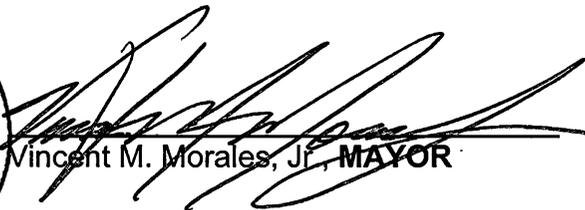
Section 2. A copy of such Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

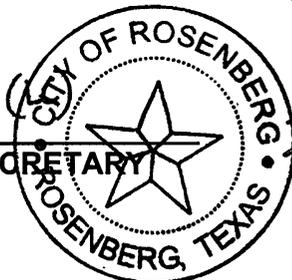
**PASSED, APPROVED, AND RESOLVED** this 7<sup>th</sup> day of April 2015.

**ATTEST:**

**APPROVED:**

  
Linda Cernosek, CITY SECRETARY

  
Vincent M. Morales, Jr., MAYOR



**Amended and Restated Agreement  
Relating to the Temporary Assignment of Rights and Obligations  
under Water Supply Contract**

This Amended and Restated Agreement Relating to Temporary Assignment of Rights and Obligations under Water Supply Contract (the "Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), between the City of Rosenberg, Texas (the "City"), a Home Rule City located in Ft. Bend County, Texas, and the Gulf Coast Water Authority ("GCWA"), a Texas conservation and reclamation district located in Galveston County, Texas.

**RECITALS**

The City and GCWA previously entered into an Agreement Relating to the Temporary Assignment of Rights and Obligations under Water Supply Contract on the 1<sup>st</sup> day of May, 2011. Said prior agreement expired December 31, 2014. Both parties desire to renew and continue said agreement subject to the terms set forth herein in this Agreement.

City has entered into a "System Water Availability Agreement" with the Brazos River Authority (the "BRA Contract"), a true and correct copy of which has been delivered to GCWA and by reference is incorporated into this Agreement for all purposes.

City has determined that portions of the water supply under the BRA Contract is currently in excess of the City's water supply needs.

GCWA is willing to use and pay for the water available to City under the BRA Contract that is temporarily in excess of the City's needs.

**AGREEMENT**

The City and GCWA agree as follows:

1. This agreement is subject to:

a. the City and GCWA obtaining and maintaining any and all required consents and approvals from the Brazos River Authority, including but not limited to the initial consent for the year 2015 and consent for each annual period thereafter during the term of this Agreement, if required by the BRA thereafter. City and GCWA agree to cooperate with the other in obtaining such consents and approvals, but GCWA shall have the primary burden of obtaining and maintaining such consents. If such consents and approvals for each subsequent year are not obtained by November 1st preceding the start of the next calendar year, either party may partially suspend this Agreement as to such year by written notice of intent to partially cancel delivered at least thirty days before the intended partial cancellation date. It is contemplated that additional terms that have been negotiated between the BRA and GCWA will be added by amendment to the BRA Contract after assignment. The GCWA has requested and the BRA has agreed in

principle to the following terms:

1. water made available may be used for industrial use in addition to municipal use;
2. water made available may be used in the San Jacinto-Brazos Coastal Basin in accordance with and to the extent permitted by BRA's Certificate of Adjudication No. 12-5167; and
3. GCWA Briscoe and Juliff Pump Stations will be added as diversion points in addition to GCWA American Pump Station.

The final language and form of the amendment shall be subject to BRA's discretion.

Any amendment to the BRA Contract that GCWA and BRA may agree to shall be in effect only so long as this Agreement remains in effect.

b. GCWA obtaining any other federal and state regulatory approvals required for GCWA to divert and use the water made available to GCWA under this Agreement.

2. During the term of this Agreement, City assigns to GCWA the City's right to receive water from BRA under the BRA Contract up to the following amounts for each year ending Aug. 31 this Agreement remains in effect as shown on **Exhibit A** hereto.

3. During the term of this Agreement, GCWA assumes City's obligations under the BRA Contract proportionate to the volume of water that GCWA is allowed to use under this Agreement.

4. GCWA will make the following payments under this Agreement for years in which BRA consents to assignment as provided by Section 1.a. above:

a. Pay, or reimburse City, as appropriate, amounts due to the BRA under the BRA Contract for the volume of water that GCWA is allowed to use under this Agreement and such payments shall be made to the City for payment to the BRA.

b. Pay City a \$1,000.00 lump sum annual payment in the first month of each calendar year that this Agreement is effective to allow GCWA to receive water under the BRA Contract, as consideration for the rights assigned under this Agreement, such payment being due without demand or invoice.

c. Pay City, within thirty calendar days of demand, any expenses incurred by City in obtaining the consents required by BRA, filing water use reports with BRA for water used by GCWA under this Agreement and curing any breach of the BRA Contract relating in whole or in part to actions, or failure to act, of the GCWA under this Agreement

5. City represents that it is currently not in default under the BRA Contract and has not received any notice of default under the BRA Contract. City and GCWA agree to immediately transmit to each other any notice of default received from BRA relating to the BRA Contract. Subject to Section 7 below, if City or GCWA receives a notice of default that is based, in whole or in part, relating to an alleged breach of the BRA Contract based upon the actions, or failure to act, of either party, the non - defaulting party may terminate this Agreement upon thirty days written notice to the defaulting party.

6. This Agreement shall terminate at midnight on December 31, of any year hereafter, if either party provides one hundred and twenty (120) days prior written notice of termination; otherwise, this Agreement will remain in effect for the term of the BRA Contract. To the extent GCWA has incurred any obligation to BRA or to City under this Agreement that is not fully satisfied as of the date of termination, the applicable portions of this Agreement shall survive such termination until GCWA satisfies the obligation.

7. If City or GCWA asserts that either has breached this Agreement, or the BRA Contract, the party asserting the breach shall give notice of the alleged breach to the other party and the other party has ten business days to cure the alleged breach, if any.

#### 8. General Provisions:

8.1, Force Majeure. If either party is rendered unable, by Force Majeure, to carry out any of its obligations under this Agreement, it is agreed that upon that party's giving written notice of the Force Majeure to the other party as soon as possible after the occurrence of the Force Majeure, the obligations of the party giving the notice, to the extent it is affected by Force Majeure and to the extent that due diligence is being used to resume performance, will be suspended for the duration of the Force Majeure. The term "Force Majeure" as used in this Agreement includes, but is not limited to, acts of God, acts of the public enemy, epidemics, explosions, breakage or damage to machinery, pipelines, and any other incapacities of either party not within the control of the party claiming the inability, which by exercise of due diligence and care the party could not have avoided.

8.2. Assignability. Neither party may assign this Agreement without the prior written consent of the other party.

8.3. Notice. All notices required under this Agreement must be in writing and sent by United States mail, private mail or courier service, by facsimile or be delivered in person. All notices must be sent or delivered to the following addresses or as the City or the GCWA may hereafter designate by written notice:

If to the City:

City of Rosenberg  
Attn: City Manager  
PO Box 32  
2110 Fourth Street

Rosenberg, Texas 77471

If to the GCWA:

Gulf Coast Water Authority  
Attn: General Manager  
3630 FM 1765  
Texas City, Texas 77591

8.4 Waiver. The failure of a party to insist upon strict performance of any provision of this Agreement will not constitute a waiver of or estoppel against the party asserting the right to require that performance in the future, nor will a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a future breach.

8.5. Parties in interest. This Agreement is for the sole and exclusive benefit of the City and the GCWA and will not be construed to confer any benefit or right upon any other person.

8.6. Severability. If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the parties.

8.7. Law Governing and Venue. Texas law governs this Agreement and any lawsuit on this Agreement must be filed in a court that has jurisdiction in Fort Bend County, Texas.

8.8. Mandatory Mediation. Prior to either party filing suit, the parties will submit to non-binding mediation in Fort Bend County, Texas. The complaining party will notify the non-complaining party of its demand hereunder and notice will be delivered by certified mail, return receipt requested, or receipted delivery to the address set forth above. If the mediation is not conducted and completed within 80 business days of the non-complaining party's actual receipt of such notice, this Section is deemed void and is of no force or effect. The parties agree (1) to work in good faith to select a mutually agreeable mediator, date, time and place and (2) to conduct the mediation negotiations in good faith. Unless agreed to the contrary in a writing signed by both, the parties agree to share equally in the cost of any mediation or mediator's fees, but otherwise bear their own respective mediation expenses, including legal fees. Notwithstanding the foregoing, if it is necessary for a party to seek emergency relief of an extraordinary nature, pre-suit mediation need not be conducted.

8.9 Entire Agreement. This Agreement represents the entire agreement between the City and the GCWA and supersedes all prior negotiations, representations, or contracts, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

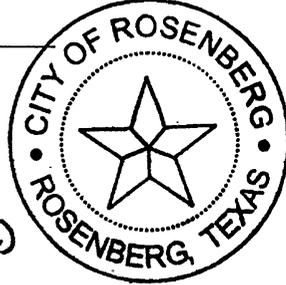
8.10 Counterpart Originals. This Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on

each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. Signatures provided by a confirmed telecopy shall be accepted as originals.

CITY OF ROSENBERG, TEXAS

By: *Robert Gracia*  
Robert Gracia, City Manager

4/8/15  
Date



ATTEST:

*Linda Cernosek* (LC)  
Linda Cernosek, City Secretary

GULF COAST WATER AUTHORITY

By: \_\_\_\_\_  
Ivan Langford, General Manager

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Renee Dondonay, Admin Assist.

EXHIBIT A

ACRE\_FEET PER YEAR

Year Ending Aug. 31	<u>Amount in Acre-Feet</u>
<u>2015</u>	<u>4,500</u>
<u>2016</u>	<u>4,500</u>
<u>2017</u>	<u>4,500</u>
<u>2018</u>	<u>4,500</u>
<u>2019</u>	<u>4,500</u>
<u>2020</u>	<u>4,500</u>
<u>2021</u>	<u>4,500</u>
<u>2022</u>	<u>4,500</u>
<u>2023</u>	<u>4,500</u>
<u>2024</u>	<u>4,500</u>
<u>2025</u>	<u>4,500</u>
<u>2026</u>	<u>4,500</u>
<u>2027</u>	<u>4,500</u>
<u>2028</u>	<u>4,500</u>
<u>2029</u>	<u>4,500</u>
<u>2030</u>	<u>4,500</u>
<u>2031</u>	<u>4,500</u>
<u>2032</u>	<u>4,500</u>
<u>2033</u>	<u>4,500</u>
<u>2034</u>	<u>4,500</u>
<u>2035</u>	<u>4,500</u>
<u>2036</u>	<u>4,500</u>
<u>2037</u>	<u>4,500</u>
<u>2038</u>	<u>4,500</u>
<u>2039</u>	<u>4,500</u>
<u>2040</u>	<u>4,500</u>
<u>2041</u>	<u>4,500</u>
<u>2042</u>	<u>4,500</u>
<u>2043</u>	<u>4,500</u>
<u>2045</u>	<u>4,500</u>
<u>2046</u>	<u>4,500</u>
<u>2047</u>	<u>4,500</u>
<u>2048</u>	<u>4,500</u>
<u>2049</u>	<u>4,500</u>
<u>2050</u>	<u>4,500</u>

RESOLUTION NO. R-1749

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A CONSENT TO ASSIGNMENT AGREEMENT RELATING TO THE TEMPORARY ASSIGNMENT OF WATER UNDER THE BRAZOS RIVER AUTHORITY SYSTEM WATER AVAILABILITY AGREEMENT, BY AND AMONG THE CITY OF ROSENBERG, TEXAS, BRAZOS RIVER AUTHORITY, AND GULF COAST WATER AUTHORITY.

\* \* \* \* \*

**WHEREAS**, the City has received a request for the assignment of certain Brazos River Authority water allocations from the Gulf Coast Water Authority due to additional needs; and,

**WHEREAS**, the City approved Resolution No. R-1326 on June 07, 2011, Resolution No. R-1479 on May 01, 2012, and Resolution No. R-1617 on February 19, 2013, authorizing assignment of a portion of the City's annual allocation of Brazos River Authority water supply; and,

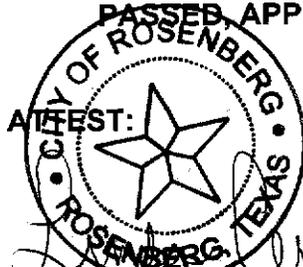
**WHEREAS**, the City currently has a surplus allocation of surface water available from the Brazos River Authority for the year 2014;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

Section 1. The City Manager is hereby authorized to negotiate and execute an Agreement relating to the temporary assignment of water under the Brazos River Authority System Water Availability Agreement, by and among the City of Rosenberg, Texas, Brazos River Authority and Gulf Coast Water Authority.

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 4<sup>th</sup> day of February 2014.



*Linda Cernosek*  
Linda Cernosek, CITY SECRETARY

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

**CONSENT TO ASSIGNMENT**

This Consent to Assignment ("Assignment") is entered into to be effective this \_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date") by and between Brazos River Authority ("BRA"), a river authority of the State of Texas, the City of Rosenberg ("Assignor"), and Gulf Coast Water Authority ("Assignee").

**RECITALS**

**WHEREAS**, BRA and Assignor entered into a System Water Availability Agreement ("Agreement") with an effective date of October 1, 2007 whereby BRA agreed to make available and Purchaser agreed to purchase 4,500 acre-feet of raw water per Fiscal Year;

**WHEREAS**, by letter dated December 19, 2013, Assignor has requested to temporarily assign 4,380 acre feet of water under the Agreement to Assignee.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, BRA, Assignor, and Assignee agree as follows:

1. The BRA hereby consents to the temporary assignment of 4,380 acre feet of water under the Agreement to the Assignee for the period from January 1, 2014 to December 31, 2014.
2. The Assignee hereby agrees to abide by all of the terms and conditions contained in the Agreement.
3. This Assignment shall in no way relieve Assignor from any of its obligations under the Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Assignment to be duly executed, intending to be bound thereby.

**BRAZOS RIVER AUTHORITY**

**CITY OF ROSENBERG**

By: \_\_\_\_\_  
**PHIL FORD**

By: \_\_\_\_\_

Title: **GENERAL MANAGER/CEO**

Title:

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

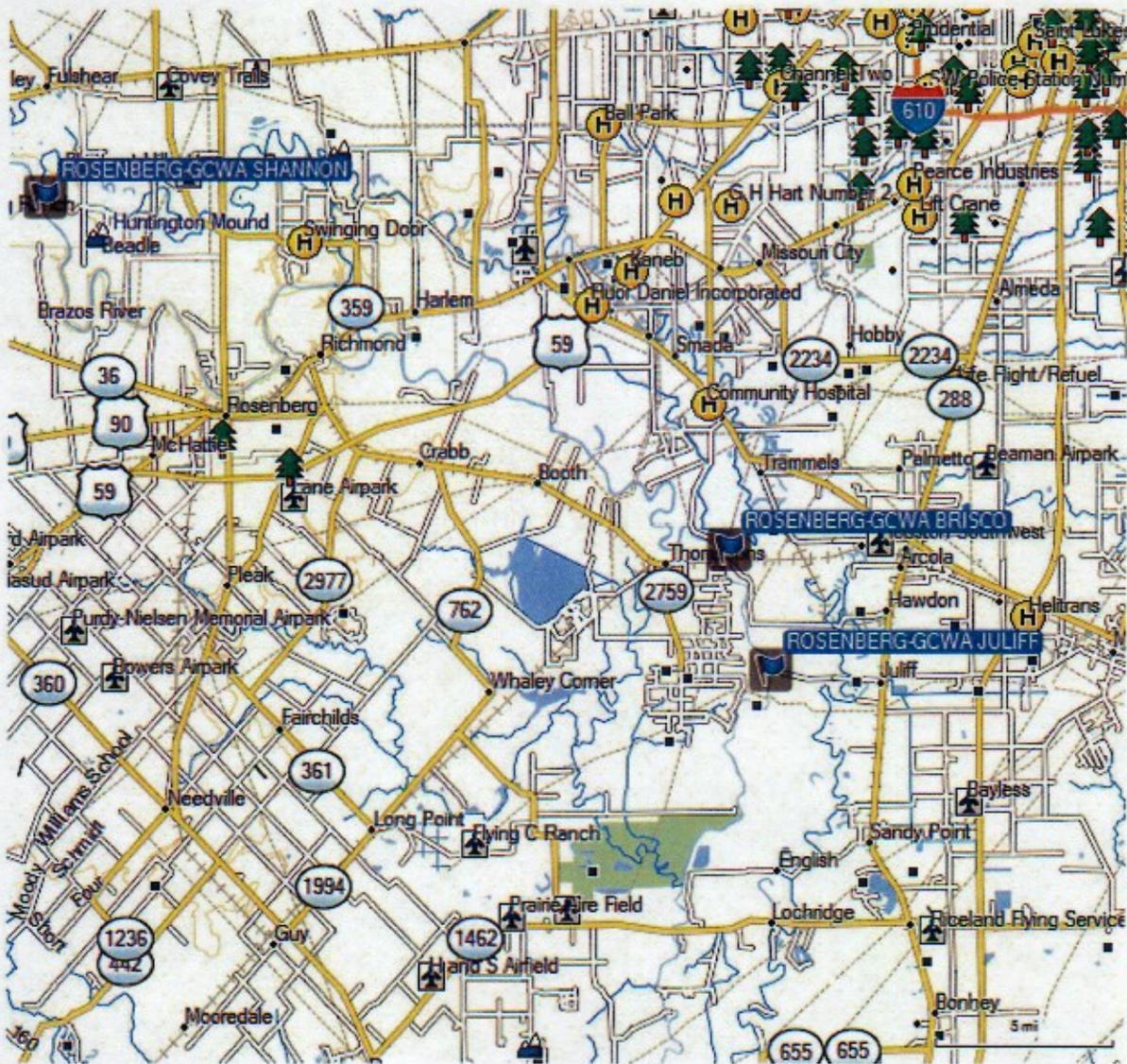
**GULF COAST WATER AUTHORITY**

By: \_\_\_\_\_

Title:

ATTEST:

\_\_\_\_\_



**Assignment: ROSENBERG TO GULF COAST WATER AUTHORITY, 4380-AF (MU)**

ID: GCWA-ROSENBERG 14

SHANNON, N29.64528 W95.90139, HPDT2 RMOT2 (1202), MAIN STEM

BRISCO, N29.50361 W95.55361, RMOT2 ROST2 (1202), MAIN STEM

JULIFF, N29.45532 W95.53233, RMOT2 ROST2 (1202), MAIN STEM

Prepared by M. McCart, Water Services Coordinator, 01/14/2014

RESOLUTION NO. R-1617

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A CONSENT TO ASSIGNMENT AGREEMENT RELATING TO THE TEMPORARY ASSIGNMENT OF WATER UNDER THE BRAZOS RIVER AUTHORITY SYSTEM WATER AVAILABILITY AGREEMENT, BY AND AMONG THE CITY OF ROSENBERG, TEXAS, BRAZOS RIVER AUTHORITY, AND GULF COAST WATER AUTHORITY.

\* \* \* \* \*

**WHEREAS**, the City has received a request for the assignment of certain Brazos River Authority water allocations from the Gulf Coast Water Authority due to additional needs; and,

**WHEREAS**, the City approved Resolution No. R-1326 on June 07, 2011, and Resolution No. R-1479 on May 01, 2012, authorizing assignment of a portion of the City's annual allocation of Brazos River Authority water supply; and,

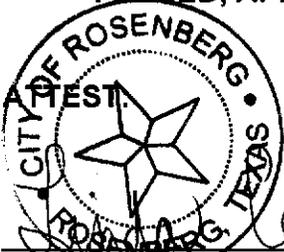
**WHEREAS**, the City currently has a surplus allocation of surface water available from the Brazos River Authority for years 2013, and 2014;

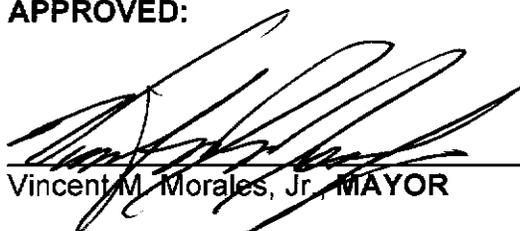
**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

Section 1. The City Manager is hereby authorized to negotiate and execute an Agreement relating to the temporary assignment of water under the Brazos River Authority System Water Availability Agreement, by and among the City of Rosenberg, Texas, Brazos River Authority and Gulf Coast Water Authority.

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 19<sup>th</sup> day of February 2013.

  
  
Linda Gethousek, CITY SECRETARY

APPROVED:  
  
Vincent M. Morales, Jr., MAYOR

**CONSENT TO ASSIGNMENT**

This Consent to Assignment ("Assignment") is entered into to be effective this \_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date") by and between Brazos River Authority ("BRA"), a river authority of the State of Texas, the City of Rosenberg ("Assignor"), and Gulf Coast Water Authority ("Assignee").

**RECITALS**

**WHEREAS**, BRA and Assignor entered into a System Water Availability Agreement ("Agreement") on October 18, 2007 whereby BRA agreed to make available and Purchaser agreed to purchase 4,500 acre-feet of raw water per Fiscal Year;

**WHEREAS**, by letter dated January 4, 2013, Assignor has requested to temporarily assign 4,380 acre feet of water under the Agreement to Assignee.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, BRA, Assignor, and Assignee agree as follows:

1. The BRA hereby consents to the temporary assignment of 4,380 acre feet of water under the Agreement to the Assignee for the period from February 1, 2013 to December 31, 2013.

2. The Assignee hereby agrees to abide by all of the terms and conditions contained in the Agreement.

3. This Assignment shall in no way relieve Assignor from any of its obligations under the Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Assignment to be duly executed, intending to be bound thereby.

**BRAZOS RIVER AUTHORITY**

**CITY OF ROSENBERG**

By: \_\_\_\_\_  
**PHIL FORD**

By: \_\_\_\_\_

Title: **GENERAL MANAGER/CEO**

Title:

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

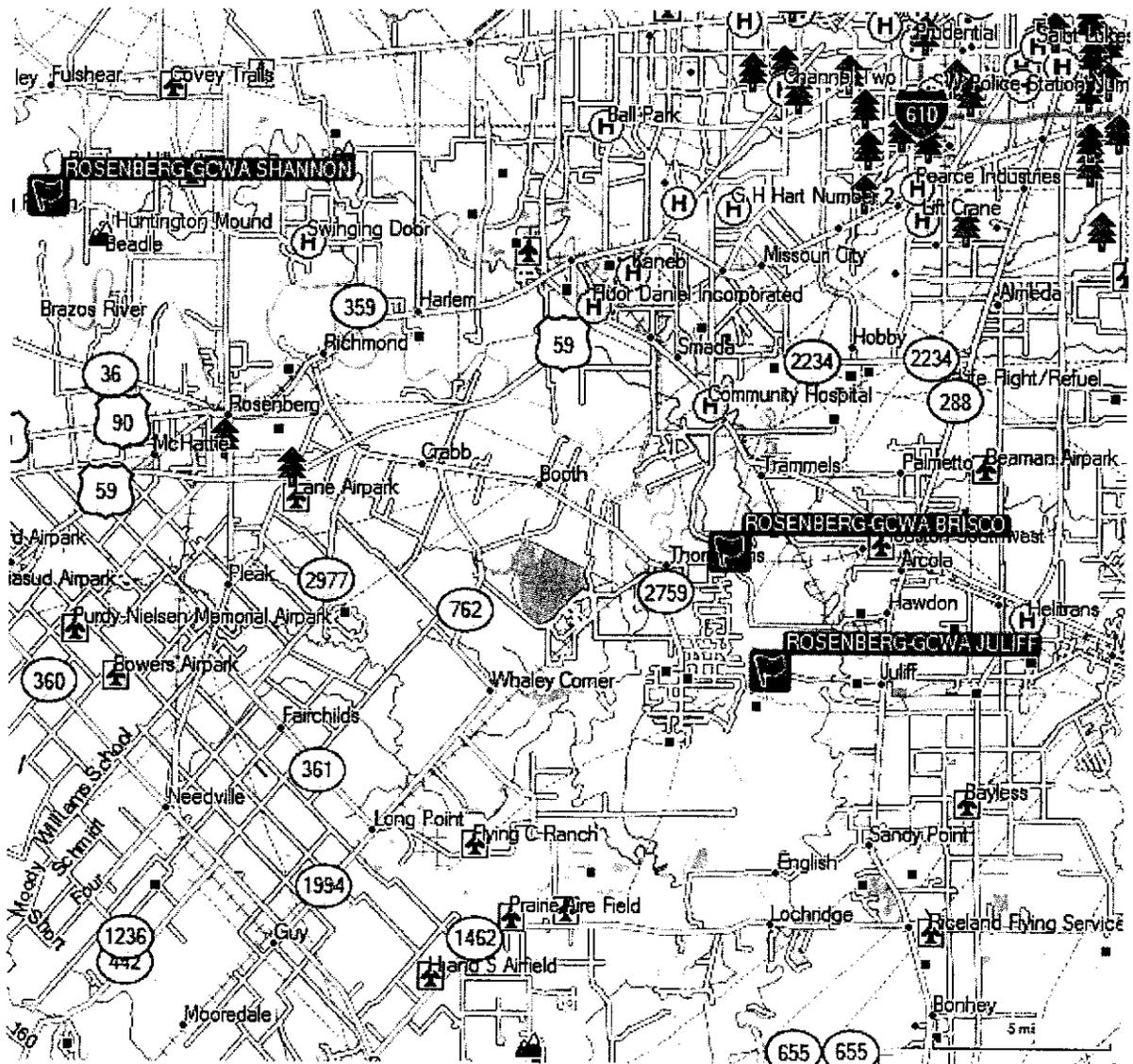
**GULF COAST WATER AUTHORITY**

By: \_\_\_\_\_

Title:

ATTEST:

\_\_\_\_\_



**Assignment: ROSENBERG TO GULF COAST WATER AUTHORITY, 4380-AF (MU)**

ID: GCWA-ROSENBERG 13  
 SHANNON, N29.64528 W95.90139, HPDT2 RMOT2 (1202), MAIN STEM  
 BRISCO, N29.50361 W95.55361, RMOT2 ROST2 (1202), MAIN STEM  
 JULIFF, N29.45532 W95.53233, RMOT2 ROST2 (1202), MAIN STEM

Prepared by M. Summers, Water Services Coordinator, 12/27/12

RESOLUTION NO. R-1326

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 RELATING TO THE TEMPORARY ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER WATER SUPPLY CONTRACT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND GULF COAST WATER AUTHORITY.

\* \* \* \* \*

**WHEREAS**, the City has received a request for the assignment of certain Brazos River Authority water allocations from the Gulf Coast Water Authority due to additional needs; and,

**WHEREAS**, the City approved Resolution No. R-1311 on April 19, 2011, authorizing assignment of a portion of the City's 2011 allocation of Brazos River Authority water supply; and,

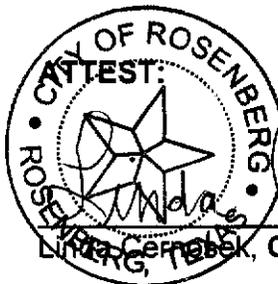
**WHEREAS**, the City currently has a surplus allocation of surface water available from the Brazos River Authority for years 2012, 2013, and 2014;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

Section 1. The City Manager is hereby authorized to execute an Agreement regarding Temporary Assignment of Rights and Obligations under Water Supply Contract, by and between the City of Rosenberg, Texas, and Gulf Coast Water Authority.

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 7<sup>th</sup> day of June 2011.

 *[Signature]*  
CITY SECRETARY

**APPROVED:**  
*[Signature]*  
Vincent Morales, **MAYOR**

## **Agreement Relating to the Temporary Assignment of Rights and Obligations under Water Supply Contract**

This (Agreement) Agreement Relating to Temporarily Assign Certain Rights and Obligations under Water Supply Contract is entered into effective as of the 1st day of May 2011, (Effective Date), between the City of Rosenberg, Texas (City), a Texas Home Rule City located in Ft. Bend County, Texas, and the Gulf Coast Water Authority (GCWA), a Texas conservation and reclamation district located in Galveston County, Texas.

### **RECITALS**

City has entered into a water supply agreement with the Brazos River Authority (the "BRA Contract"), a true and correct copy of which has been delivered to GCWA and by reference is incorporated into this Agreement for all intents and purposes.

City is in the process of planning and financing the construction of the facilities in order to use all of the water and City has determined that, at least until the facilities are completed, portions of the water supply under the BRA Contract is currently in excess of the City's water supply needs.

GCWA is willing to use and pay for the water available to City under the BRA Contract that is temporarily in excess of the City's needs.

### **AGREEMENT**

The City and GCWA agree as follows:

1. This agreement is subject to:
  - a. The City and GCWA obtaining and maintaining any and all required consents and approvals from the Brazos River Authority, including but not limited to, that initial consent for the year 2011 (which consent has already been obtained) and each annual consent required thereafter for 2012, 2013, and 2014. City and GCWA agree to cooperate with the other in obtaining such consents and approvals, but GCWA shall have the primary burden of obtaining and maintaining such consents. If such consents and approvals for 2012, 2013, and 2014 are not obtained by July 1 of the appropriate year, either party may partially cancel this Agreement as to such year by written notice of intent to partially cancel delivered at least thirty (30) days before the intended partial cancellation date.
  - b. GCWA obtaining any other federal and state regulatory approvals required for GCWA to divert and use the water made available to GCWA under this Agreement.
2. During the term of this Agreement, City assigns to GCWA the City's right to receive water from BRA under the BRA Contract up to the following amounts:
  - a. From the Effective Date through December 31, 2011: 4,450 acre-feet;

- b. From January 1, 2012, to December 31, 2014: 4,380 acre-feet.
3. During the term of this Agreement, GCWA assumes City's obligations under the BRA Contract proportionate to the volume of water that GCWA is allowed to use under this Agreement.
4. GCWA will make the following payments under this Agreement for years in which BRA consents to assignment as provided by Section 1.a. above:
  - a. Pay, or reimburse City, as appropriate, amounts due to the BRA under the BRA Contract for the volume of water that GCWA is allowed to use under this Agreement and such payments shall be made to the City for payment to the BRA.
  - b. Pay City a \$350 lump sum annual payment upon execution of the contract for contract period effective May 1, 2011, through December 31, 2011, as consideration for the right to get water under this Agreement, such payment being due without demand or invoice.
  - c. Pay City a \$600 lump sum annual payment in the first month of the contract period for contract period effective January 1, 2012, through December 31, 2012, as consideration for the right to get water under this Agreement, such payment being due without demand or invoice.
  - d. Pay City a \$600 lump sum annual payment in the first month of the contract period for contract period effective January 1, 2013, through December 31, 2013, as consideration for the right to get water under this Agreement, such payment being due without demand or invoice.
  - e. Pay City a \$600 lump sum annual payment in the first month of the contract period for contract period effective January 1, 2014, through December 31, 2014, as consideration for the right to get water under this Agreement, such payment being due without demand or invoice.
  - f. Pay City, within thirty (30) calendar days of demand, any expenses incurred by City in obtaining the consents required by BRA, filing water use reports with BRA for water used by GCWA under this Agreement, and curing any breach of the BRA Contract relating in whole or in part to actions, or failure to act, of the GCWA under this Agreement.
5. City represents that it is currently not in default under the BRA Contract and has not received any notice of default under the BRA Contract. City and GCWA agree to immediately transmit to each other any notice of default received from BRA relating to the BRA Contract. Subject to Section 7 below, if City or GCWA receives a notice of default that is based, in whole or in part, relating to an alleged breach of the BRA Contract based upon the actions, or failure to act, of either party, the non-defaulting party may terminate this Agreement upon thirty (30) days written notice to the defaulting party.
6. This Agreement shall terminate and expire at midnight on December 31, 2014. To the extent GCWA has incurred any obligation to BRA or to City under this Agreement that is not fully satisfied as of the date of termination, the applicable portions of this Agreement shall survive such termination until GCWA satisfies the obligation.

7. If City or GCWA asserts that either has breached this Agreement, or the BRA Contract, the party asserting the breach shall give notice of the alleged breach to the other party and the other party has ten (10) business days to cure the alleged breach, if any.

8. General Provisions:

8.1. Force Majeure. If either party is rendered unable, by Force Majeure, to carry out any of its obligations under this Agreement, it is agreed that upon that party's giving written notice of the Force Majeure to the other party as soon as possible after the occurrence of the Force Majeure, the obligations of the party giving the notice, to the extent it is affected by Force Majeure and to the extent that due diligence is being used to resume performance, will be suspended for the duration of the Force Majeure. The term "Force Majeure" as used in this Agreement includes, but is not limited to, acts of God, acts of the public enemy, epidemics, explosions, breakage or damage to machinery, pipelines, and any other incapacities of either party not within the control of the party claiming the inability, which by exercise of due diligence and care the party could not have avoided.

8.2. Assignability. Neither party may assign this Agreement without the prior written consent of the other party.

8.3. Notice. All notices required under this Agreement must be in writing and sent by United States mail, private mail or courier service, by facsimile, or be delivered in person. All notices must be sent or delivered to the following addresses, or as the City or the GCWA may hereafter designate by written notice:

If to the City:

City of Rosenberg  
P.O. Box 32  
2110 Fourth Street  
Rosenberg, Texas 77471  
Attn: City Manager

If to the GCWA:

Gulf Coast Water Authority  
Attn: General Manager  
3630 Highway 1765  
Texas City, Texas 77591  
409-935-2438  
FAX 409-935-4156

8.4 Waiver. The failure of a party to insist upon strict performance of any provision of this Agreement will not constitute a waiver of or estoppel against the party asserting the right to require that performance in the

future, nor will a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a future breach.

- 8.5. Parties in interest. This Agreement is for the sole and exclusive benefit of the City and the GCWA and will not be construed to confer any benefit or right upon any other person.
- 8.6. Severability. If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the parties.
- 8.7. Law Governing and Venue. Texas law governs this Agreement and any lawsuit on this Agreement must be filed in a court that has jurisdiction in Fort Bend County, Texas.
- 8.8. Mandatory Mediation. Prior to either party filing suit, the parties will submit to non-binding mediation in Fort Bend County, Texas. The complaining party will notify the non-complaining party of its demand hereunder and notice will be delivered by certified mail, return receipt requested, or receipted delivery to the address set forth above. If the mediation is not conducted and completed within thirty (30) business days of the non-complaining party's actual receipt of such notice, this Section is deemed void and is of no force or effect. The parties agree (1) to work in good faith to select a mutually agreeable mediator, date, time, and place, and (2) to conduct the mediation negotiations in good faith. Unless agreed to the contrary in a writing signed by both, the parties agree to share equally in the cost of any mediation or mediator's fees, but otherwise bear their own respective mediation expenses, including legal fees. Notwithstanding the foregoing, if it is necessary for a party to seek emergency relief of an extraordinary nature, pre-suit mediation need not be conducted.
- 8.9 Entire Agreement. This Agreement represents the entire agreement between the City and the GCWA and supersedes all prior negotiations, representations, or contracts, either written or oral. This Agreement may be amended only by written instrument signed by both parties.
- 8.10 Counterpart Originals. This Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. Signatures provided by a confirmed telecopy shall be accepted as originals.

CITY OF ROSENBERG, TEXAS:

By: \_\_\_\_\_  
Jack Hamlett, City Manager

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Linda Cernosek, City Secretary

GULF COAST WATER AUTHORITY:

By: \_\_\_\_\_  
David A. Sauer, Interim General Manager

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Bob Webb, Business Administrator

RESOLUTION NO. R-1311

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS REQUIRED TO ASSIGN A PORTION OF THE CITY'S 2011 ALLOCATION OF BRAZOS RIVER AUTHORITY WATER SUPPLY TO THE GULF COAST WATER AUTHORITY AT THE SAME RATE PAID TO THE BRAZOS RIVER AUTHORITY.

\* \* \* \* \*

**WHEREAS**, the City has received a request for the assignment of certain Brazos River Authority water allocations for 2011; and,

**WHEREAS**, said request came from the Gulf Coast Water Authority due to additional needs; and,

**WHEREAS**, the City currently has a surplus allocation of surface water available from the Brazos River Authority;

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

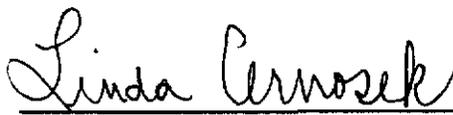
Section 1. The City Manager is hereby authorized to execute all documents necessary to facilitate the assignment of a portion of the City's 2011 allocation of Brazos River Authority Water Supply to the Gulf Coast Water Authority at the same rate paid for said water to the Brazos River Authority.

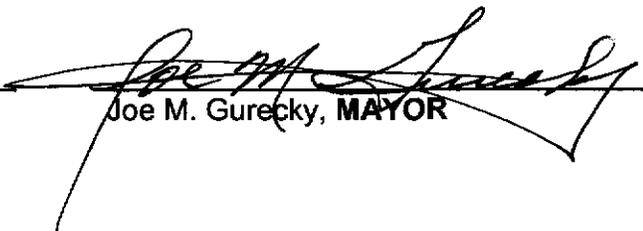
Section 2. Upon approval of Resolution No. R-1311, said documents will be prepared for execution by the Brazos River Authority.

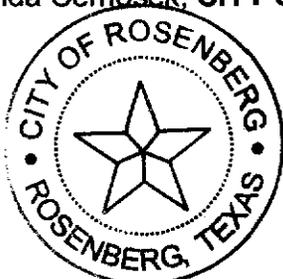
**PASSED, APPROVED, AND RESOLVED** this 19<sup>th</sup> day of April 2011.

**ATTEST:**

**APPROVED:**

  
Linda Cernosek, CITY SECRETARY

  
Joe M. Gurecky, MAYOR



**Action:** Councilor Benton made a motion, seconded by Councilor McConathy to approve Resolution No. R-1945, a Resolution awarding Bid No. 2015-08 for Tree Trimming Services; and authorizing the City Manager to negotiate and execute, for and on behalf of the City, a General Services Contract related thereto and/or all necessary documentation regarding same. The motion carried by a unanimous vote.

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

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

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

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

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

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

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

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

**Executive Summary:** On December 02, 2014, City Council authorized the Mayor to execute a Water Supply Agreement (Agreement) with the Brazosport Water Authority (BWA) as required by the amended Groundwater Reduction Plan (GRP). The Agreement provides a mechanism allowing for compliance with the Fort Bend Subsidence District unfunded mandate to reduce groundwater withdrawals by 30% beginning October 01, 2016, by constructing a pipeline supplying treated surface water to the City. Subsequently on February 03, 2015, City Council

Rosenberg of that decision. Thus, I emailed them when I got home after the meeting. Within 24 hours I received an email from both assuring me that they never recanted their vote or opinion on the resolution via email. They went on to state at the Planning Commission Meeting of January 22, 2014, in the announcement section that not only did they not recant they would vote for the resolution again.

- Do I think, and I will be kind, that the "misrepresentation of fact" would have changed the Council's mind? Absolutely not. My opinion is that the original decision was in favor and benefit of two of the "current Council's Coalition", without regard for the majority of members of the Park Committee or other Committees, Commissions or Task Forces, and therefor would be ignored and upheld. However; you define "misrepresentation of fact", which the Planning Commission has seen twice this year by members of Council, it is a matter of trust.
- I would suggest that the Councilman who clearly "misrepresented fact" apologize to his fellow Council Members, the Planning Commission, the staff and those citizens of Rosenberg, whom were in the audience on January 21, 2014. I apologized to my fellow Planning Commissioners, to whom I sent my outraged email, on the first opportunity to see them, which was the Planning Commission Meeting on January 22. I am fully aware that this type of conversation may well limit my tenure on the Planning Commission. But, if it results in honesty within the Council Chamber it will be a fitting end to an individual who will have served for eleven years attempting to envision what Rosenberg needs to do to be viable and an attracting area for businesses and people 25 years in the future. It is an on-going project I assure you, while we watch Fort Bend County grow exponentially toward our City. Thank you.

### CONSENT AGENDA

#### 1. REVIEW OF CONSENT AGENDA.

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

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

#### B. CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1749, A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY, A CONSENT TO ASSIGNMENT AGREEMENT RELATING TO THE TEMPORARY ASSIGNMENT OF WATER UNDER THE BRAZOS RIVER AUTHORITY SYSTEM WATER AVAILABILITY AGREEMENT, BY AND AMONG THE CITY, BRAZOS RIVER AUTHORITY, AND GULF COAST WATER AUTHORITY.

**Executive Summary:** On June 07, 2011, City Council approved Resolution No. R-1326, authorizing the City Manager to execute an Agreement to assign a portion of the City's 2011, 2012, 2013, and 2014 allocations of Brazos River Authority (BRA) surface water supply to the Gulf Coast Water Authority (GCWA) at the same rate paid to the BRA. The assignment is subject to BRA consent on an annual basis. The Temporary Consent to Assignment Agreement has been approved for each of the prior years of 2011 - 2013.

The City's annual allocation of BRA surface water is four thousand five hundred (4,500) acre feet. The Agreement under consideration provides the BRA consent to assign four thousand three hundred eighty (4,380) acre feet for the time period from January 01, 2014, to December 31, 2014.

The GCWA is required to reimburse the City for the assigned water at the same rate charged by the BRA. For FY2014, the BRA rate is \$65.65/acre foot for a total of \$295,425.00. By assigning the surface water allocation to GCWA, the City will be able to recoup approximately \$287,547.00. These dollars will be used to help fund the alternative water supply projects currently under consideration to comply with the Fort Bend Subsidence District mandate to reduce groundwater withdrawals by thirty percent (30%) in 2016.

Staff recommends approval of Resolution No. R-1749, with the Agreement attached as Exhibit "A", as presented.

#### C. CONSIDERATION OF AND ACTION ON ORDINANCE NO. 2014-05, AN ORDINANCE AMENDING THE CODE OF ORDINANCES BY DELETING ALL OF SECTION 28-41 (B) AND

(D), STOP SIGNS DESIGNATED, OF ARTICLE II, DIVISION 2 OF CHAPTER 28, STOP STREETS, AND SUBSTITUTING THEREFOR A NEW SECTION 28-41 (B) AND (D) OF ARTICLE II, DIVISION 2 OF CHAPTER 28 THEREOF; PROVIDING A PENALTY IN AN AMOUNT OF NOT LESS THAN \$1.00 OR MORE THAN \$200.00 FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; AND, PROVIDING FOR SEVERABILITY.

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

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

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

**D. CONSIDERATION OF AND ACTION ON A FINAL PLAT OF BONBROOK PLANTATION NORTH SECTION NINE, A SUBDIVISION OF 15.118 ACRES OF LAND SITUATED IN THE WILEY MARTIN LEAGUE, ABSTRACT 56, CITY OF ROSENBERG (PARTIAL), FORT BEND COUNTY, TEXAS; 66 LOTS, 0 RESERVES, 4 BLOCKS.**

**Executive Summary:** The Final Plat of Bonbrook Plantation North Section Nine is a proposed subdivision consisting of 15.1 acres and sixty-six (66) single-family residential lots. The location of the Plat is off of Conchola Lane, in the northwest corner of Bonbrook Plantation. The proposed Plat is located largely within the Extraterritorial Jurisdiction (ETJ) and is fully within Fort Bend County Municipal Utility District No. 155 (MUD No. 155). Part of Block 2 (see Lots 4-10) is located within the City Limits.

The Plat is not in conflict with the approved Land Plan for Bonbrook Plantation (see attached), which indicates a typical lot size of fifty-five feet (55') for this area of the development. The majority of the proposed lots are fifty-five-foot (55') lots. Eighteen (18) of the lots are sixty feet (60') or greater in width as noted in the Lot Area Summary. Six (6) of the lots are cul-de-sac or "knuckle" lots that are approximately fifty-five feet (55') as measured at the front building line, but only forty feet (40') at the right-of-way, indicating they are fifty-feet or greater (50'+) lots.

All subdivisions platted so far in Bonbrook Plantation have been in compliance with the approved Land Plan. According to the Land Plan, at build-out, the development will contain 216 (18%) fifty-foot lots, 489 (40%) fifty-five-foot lots, and 515 (42%) sixty-five-foot lots, and a total of 1,220 lots. It appears that 835 lots—or 68 percent of the total 1,220 lots—have been platted at this time.

The proposed Final Plat is consistent with the Preliminary Plat, which was approved by the Planning Commission on October 23, 2013. It is not in conflict with the Development Agreement for MUD No. 155 or with the "Subdivision" Ordinance. The Planning Commission recommended approval to City Council of the Final Plat on November 20, 2013. Staff recommends approval of the Final Plat of Bonbrook Plantation North Section Nine.

**E. CONSIDERATION OF AND ACTION ON ORDINANCE NO. 2014-07, AN ORDINANCE AMENDING THE CODE OF ORDINANCES BY DELETING SECTION 16-171 OF ARTICLE IV OF CHAPTER 16 THEREOF AND SUBSTITUTING THEREFOR A NEW SECTION 16-171, PROVIDING FOR DEFINITIONS; BY ADDING NEW SECTIONS 16-184 AND 16-186, ESTABLISHING GUIDELINES FOR AGGRESSIVE SOLICITATION AND PROVIDING A PENALTY; AND BY RENUMBERING SECTIONS 16-185 AND 16-187.**

**Executive Summary:** During the January 28, 2014 meeting, City Council discussed proposed changes to Code of Ordinances Chapter 16, Art. IV—Itinerant Vendors, Solicitors and Peddlers.

At that meeting, City Council indicated that they had no changes to the proposed Ordinance revisions. Staff has prepared an Ordinance that adds a definition of aggressive solicitation and creates a violation that carries a penalty of a fine up to \$500.

Staff recommends approval of Ordinance No. 2014-07 as presented.

Councilor Grigar requested to move Item C to the Regular Agenda. Mayor Morales moved the item to the Regular Agenda as Item 2A.

Councilor Benton requested to move Item E to the Regular Agenda. Mayor Morales moved the item to the Regular Agenda as Item 2B.

**Action:** Councilor Benton made a motion, seconded by Councilor McConathy to approve Items A, B, and D on the Consent Agenda. The motion carried by a unanimous vote.

## REGULAR AGENDA

2A. *This item was formerly Item C.*

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

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

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

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

### **Key discussion points:**

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

- Cities in Regulatory Area A that were subject to the 2013 30% surface water conversion requirements were granted a one year extension to 2014.
- The Richmond-Rosenberg Subarea A that was subject to the 2015 30% surface water conversion requirements was granted a one-year extension to 2016.
- The 2030 deadline for use of early conversion credits was removed. The credits can now be used in perpetuity.

The District requested both the Cities of Richmond and Rosenberg timely submit any proposed amendments to the respective GRP's to reflect the revised groundwater reduction deadlines. Correspondence from City Engineer Charles Kalkomey that provides an overview of the proposed GRP amendment and the updated City of Rosenberg/RRLGC Surface Water Implementation Schedule was included in the agenda packet. Secondly, the District is working to complete a comprehensive study of the groundwater pumpage data, effects of subsidence, and future growth projections which will be used to update the Regulatory Plan in late 2012 or early 2013. At that time, staff anticipates a comprehensive amendment to the GRP that will incorporate revisions made to the District's Regulatory Plan.

Staff recommends approval of Resolution No. R-1482 which will amend the City's GRP to include certain amended dates regarding conversion to an alternate water source and to provide for an updated Richmond-Rosenberg Surface Water Implementation Schedule.

**F. CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1479, A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY, AN AGREEMENT RELATING TO THE TEMPORARY AMENDMENT TO THE SYSTEM WATER AVAILABILITY AGREEMENT, BY AND BETWEEN THE CITY AND BRAZOS RIVER AUTHORITY.**

**Executive Summary:** On June 07, 2011, City Council approved Resolution No. R-1326, authorizing the City Manager to execute an Agreement to assign a portion of the City's 2011, 2012, 2013, and 2014 allocations of Brazos River Authority (BRA) surface water supply to the Gulf Coast Water Authority (GCWA) at the same rate paid to the BRA. The assignment is subject to BRA consent on an annual basis.

The City's annual allocation of BRA surface water is four thousand five hundred (4,500) acre feet. The Agreement under consideration provides the BRA consent to assign four thousand three hundred eighty (4,380) acre feet for the year 2012. The retained water is being used by the City for the surface water treatment plant pilot plant study that is currently underway in association with the Richmond/Rosenberg Local Government Corporation (RRLGC) West Fort Bend County Regional Water Treatment Facility Project.

The GCWA is required to reimburse the City for the assigned water at the same rate charged by the BRA. For FY2012, the BRA rate was \$62.50/acre foot for a total of \$281,250.00. By assigning the surface water allocation to GCWA, the City will be able to recoup approximately \$273,750.00. These dollars will be used to help fund the City of Rosenberg share of the Surface Water Treatment Plant Project.

Staff recommends approval of Resolution No. R-1479, with Exhibit A, which is the Agreement.

**G. CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1483, A RESOLUTION TO RESCIND RESOLUTION NO. R-1471, APPROVED ON APRIL 03, 2012, WHICH DESIGNATED THE ENTRANCE ROAD TO SEABOURNE CREEK NATURE PARK AS S. L. KUCHERKA DRIVE; AND, PROVIDING FOR A REVISED DESIGNATION OF THE ENTRANCE ROAD TO SEABOURNE CREEK NATURE PARK AS STANLEY KUCHERKA DRIVE.**

**Executive Summary:** On April 03, 2012, City Council approved Resolution No. R-1471 designating the entrance road to Seabourne Creek Nature Park as S. L. Kucherka Drive. Since that time, it has been determined that the road should more fittingly be named "Stanley Kucherka Drive".

Therefore, staff has prepared a Resolution that will rescind Resolution No. R-1471 and allow for the renaming of the road to Stanley Kucherka Drive. Staff has determined that the renaming is more in keeping with the dedication and longstanding service that Mr. Kucherka has provided to the City of Rosenberg, and thus will be more appropriate.

Staff recommends approval of Resolution No. R-1483.

**H. CONSIDERATION OF AND ACTION ON THE SHORT FORM FINAL PLAT OF RACEWAY NO. 133, A SUBDIVISION OF 1.7889 ACRES OF LAND, BEING A REPLAT OF RESERVE "C-1" AND A PORTION OF RESERVE "K", REPLAT OF DEEDCO SUBDIVISION NO. 5 (SLIDE NO. 1273A; F.B.C.P.R.) IN THE G.M. STONE 1/3 LEAGUE, ABSTRACT NO. 312, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS, CONTAINING 1 RESERVE IN 1 BLOCK.**

**Executive Summary:** The Short Form Final Plat of Raceway No. 133 is a subdivision of 1.7889 acres. It is located within the corporate limits of the City of Rosenberg, and is located at the southeast corner of State Highway 36 and Rice Street. The subject property is a commercial reserve and the owner plans to construct a convenience store/gas station on the subject property. Access to the site will be provided from the drive approach located across from Callender Street, and from another drive approach located on Rice Street.

A previous Short Form Final Plat for Raceway No. 133 came before the Planning Commission on November 16, 2011, and was subsequently approved by the City Council on January 17, 2012. After the applicant submitted a building permit application, it was determined that additional right-of-way would be needed on Rice Street to accommodate a right-turn lane into the site. The right-turn lane would serve the Raceway site as an entrance only, and would not allow vehicles to exit through this drive approach to Rice Street.

In accordance with Chapter 212 of the Texas Local Government Code and Chapter 25 of the Rosenberg Code of Ordinances, a public hearing was held prior to the consideration of this replat. Following the public hearing, the Planning Commission considered the Short Form Final Plat of Raceway No. 133 at the April 25, 2012, meeting and has recommended approval.

The Short Form Final Plat is in accordance with the "Subdivision" Ordinance. Staff recommends City Council approve the Short Form Final Plat for Raceway No. 133.

**Action:** Councilor Segura made a motion, seconded by Councilor McConathy to approve the Consent Agenda Items A-H.

**Comments:**

- Councilor Benton stated that in the future a brief description of each Consent Agenda item should be read for the benefit of the audience.
- The general consensus of Council was that the full agenda packet is available on the City website for public viewing.

**Upon voting the motion carried by a unanimous vote.**

**REGULAR AGENDA**

**2. REVIEW AND DISCUSS A PROPOSED ORDINANCE FOR SANITARY SEWER DISCHARGE PRETREATMENT PROGRAM AS MANDATED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ), AND TAKE ACTION AS NECESSARY.**

**Executive Summary:** On May 18, 2011, the Texas Commission on Environmental Quality issued a directive requiring the City of Rosenberg Publicly Owned Treatment Works (POTW) comply with the industrial pretreatment requirements. The TCEQ directive includes a Schedule of Compliance for Pretreatment Program Development (Program). TRC Engineering was selected to provide the City staff with professional assistance in developing the Program. Scheduled Activity No. 6 requires the City submit a draft Ordinance and Enforcement Response Plan that will be relied on by the POTW to administer the Program. The draft Ordinance and Enforcement Response Plan will be subject to TCEQ review and comment before they can be adopted.

This item is being presented to City Council for an overview and discussion prior to the Ordinance and Enforcement Response Plan being submitted to TCEQ. Following this agenda item will be a Resolution reflecting the endorsement of City Council as the governing body responsible for the supervision and funding of the Program.

**Key discussion points:**

- John Maresh, Utilities Director, read the Executive Summary regarding the proposed Ordinance for

5. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1326, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, AN AGREEMENT RELATING TO THE TEMPORARY ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER WATER SUPPLY CONTRACT, BY AND BETWEEN THE CITY AND GULF COAST WATER AUTHORITY.**

**Executive Summary:** On April 19, 2011, City Council approved Resolution No. R-1311, authorizing the City Manager to execute an Agreement to assign a portion of the City's 2011 allocation of Brazos River Authority (BRA) water supply to the Gulf Coast Water Authority (GCWA) at the same rate paid to the BRA. Since that time, the GCWA has been in contact with the Cities of Richmond and Rosenberg requesting the assignment be extended for additional years. The proposed contract now includes assignment of a portion of the City's 2011, 2012, 2013, and 2014 allocation of BRA water supply. The assignment is subject to BRA consent on an annual basis.

The City's annual allocation of BRA water is four thousand five hundred (4,500) acre feet. Staff has reviewed the request and recommends the assignment of up to four thousand four hundred fifty (4,450) acre feet for 2011 and four thousand three hundred eighty (4,380) acre feet for years 2012, 2013, and 2014. The retained water will be used by the City for the surface water pilot plant study that is scheduled to begin this summer in association with the Richmond/Rosenberg Local Government Corporation (RRLGC), West Fort Bend County Regional Water Treatment Facility Project and any subsequent testing that may be required for this project.

The GCWA would be required to reimburse the City annually for the assigned water at the same rate charged by the BRA. For FY2011, the BRA rate was \$62.50/acre foot, for a total amount due of \$281,250.00. By assigning the water allocation to GCWA, the City would recoup approximately \$273,750.00 each year, based on the current rate. These dollars will be used to help fund the Rosenberg share of the Surface Water Treatment Plant Project. The current Fort Bend Subsidence District Regulatory Plan requires the 30% groundwater reduction in year 2015. Therefore, the contract assignment does not extend beyond 2014. It is anticipated Phase 1 of the RRLGC Project would not be completed until early 2015 at the very soonest. The amount of time required to complete the pilot study, preliminary and final engineering design, obtain TCEQ approvals, bidding and bid award process, and actual construction time make it highly unlikely for the City to be in a position to use the "take or pay" water prior to 2015.

Staff recommends approval of Resolution No. R-1326 with the Agreement as Exhibit "A" as presented.

**Key discussion points:**

- John Maresh, Assistant City Manager, read the Executive Summary regarding Resolution No. R-1326.

• **Brazos River Authority Surface Water Contract - Rate Projections**

<i>Year</i>	<i>Rate/Acre Foot</i>	<i>Total (4,500 Acre Feet)</i>	<i>GCWA- Assignment (Acre Feet)</i>	<i>GCWA - Payment</i>
FY 2011	\$62.50	\$281,250.00	4,450	\$278,125.00
FY 2012*	\$63.50	\$285,750.00	4,380	\$278,130.00
FY 2013*	\$67.00	\$301,500.00	4,380	\$293,460.00
FY 2014*	\$70.25	\$316,125.00	4,380	\$307,695.00
	<b>TOTAL</b>	<b>\$1,184,625.00</b>	<b>TOTAL</b>	<b>\$1,157,410.00</b>
		<\$27,215.00>		

\*Rates for 2012-2014 based upon BRA Five-Year Financial Forecast 04/18/11.

- With the cost of this project we think this would be a good opportunity for the City to be able to recoup some of these monies since it is a take or pay contract and we do not anticipate any use for that water until 2015, based on the current Fort Bend Subsidence District regulations. Staff recommends approval of Resolution R-1326.
- Councilor Grigar stated the rate per acre foot is currently \$62.50. If in 2012 it goes to \$64.50 then it would follow that. It is not spelled out. John Maresh stated it would be whatever the rates are and that is subject to BRA's Board. This is the information they presented to us in April and this is their forecast. When they present the actual rates in July that proposed \$63.50 for 2012 may be a different number.
- Councilor Grigar stated the acre feet that we are "loaning" was \$44.50 and then went down to \$43.80. Is that what we will need for the pilot program? John Marsh stated based on the project engineers for the Local Government Corporation, those are the numbers they have provided to us we need to try to reserve for any testing activities needed during those periods.
- Councilor Grigar referenced Item No. 4, Page 2, we have the following payments and a \$350.00 lump sum for 2011; \$600.00 – that's not included. Is this for administrative fees? John Maresh stated in Item A, they will reimburse the City the amount of the water that we allocate to them. Items B, C and D is an

administrative fee. This is an additional cost they will pay us annually for the monthly reports that have to be submitted to BRA. This is an attempt for staff to recoup some of that administrative cost.

- Councilor Grigar stated the City will put the reports together. John Maresh stated we will be provided information by the Gulf Coast Water Authority but the City will have to submit it to BRA.
- Councilor Grigar stated he does not see that it spells out it is \$62.50 per acre foot and then that it would go up per their rate schedule. Jack Hamlet stated since it is subject to change we did not want to put it in the agreement.
- Councilor Suter referenced Page 2, at the top, should “annually” be added. It is just a clarification. In the executive summary we talk about doing it annually. John Maresh stated we had it in there and the attorney that drew up the contract took it out.
- Councilor Suter stated that at the last workshop Mayor Gurecky made it very clear, it is a use it or lose it. We can watch the water go into the Gulf or we can sell it and get credits back and he thinks it is a good idea.
- George Hyde stated as the attorney for the City reviewing this record, the concern would be because the terms of this agreement are beyond annual, it could create confusion and that is why it was omitted. The context of the agreement would allow it to be considered an annual payment.
- Councilor Suter referenced Page 4 of Contract #8 past due payments – it is understood that if GCWA does not make payments, is the contract such that if they do not make that payment that they make the interest payment as well. Jack Hamlett stated our contract is with BRA and it would be up to us to retain those water rights to pay that. If we are delinquent we are subject to the interest to BRA whether we sold it or not. The contract is in the name of the City of Rosenberg. Because we are retaining a small portion of it we have to make that payment every September 1<sup>st</sup> to BRA. We want to keep the water in our name.
- Councilor Salazar asked if the 2015 deadline is the beginning or the end of the year. Jack Hamlett stated September.

**Action:** Councilor Euton made a motion, seconded by Councilor McConathy to approve Resolution No. R-1326, a Resolution authorizing the City Manager to execute, for and on behalf of the City, an Agreement Relating to the Temporary Assignment of Rights and Obligations under Water Supply Contract, by and between the City and Gulf Coast Water Authority. The motion carried by a unanimous vote.

6. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1324, A RESOLUTION CALLING A PUBLIC HEARING TO BE HELD ON TUESDAY, JULY 19, 2011, AT 7:00 P.M., IN THE ROSENBERG CITY HALL COUNCIL CHAMBER LOCATED AT 2110 4<sup>TH</sup> STREET, ROSENBERG, TEXAS, TO RECEIVE COMMENTS FROM THE PUBLIC CONCERNING THE PROPOSED AMENDMENT OF THE CITY’S WATER AND WASTEWATER IMPACT FEE ORDINANCE (ARTICLE VI OF CHAPTER 29 OF THE CITY’S CODE OF ORDINANCES); STATING THE PROPOSED AMENDMENT; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.**

**Executive Summary:** At the City Council Workshop on April 26, 2011, staff presented a request from NewQuest Properties to amend the “Water/Wastewater Impact Fee” Ordinance to exempt landscape irrigation systems within the public right-of-way as an incentive to install and maintain landscaping. From that discussion, staff presented the request to the Water/Wastewater Impact Fee Advisory Task Force (Task Force) on May 16, 2011. The Task Force took action requesting staff prepare an Amendment to the “Water/Wastewater Impact Fee” Ordinance that would exempt landscape irrigation systems installed completely within public rights-of-way from the impact fees.

As the first step in the process, it will be necessary to set a Public Hearing date to receive comments regarding the proposed Amendment to the “Water/Wastewater Impact Fee” Ordinance. Pursuant to the attached Resolution No. R-1324, staff recommends the Public Hearing be held during the Regular City Council Meeting set for Tuesday, July 19, 2011, at 7:00 p.m., and further recommends that Resolution No. R-1324 be approved as presented. A copy of the proposed Amendment is included with Resolution No. R-1324 as Exhibit “A”.

**Key discussion points:**

- John Maresh read the Executive Summary regarding Resolution No. R-1324 and explained the item.

**Action:** Councilor Segura made a motion, seconded by Councilor Grigar to approve Resolution No. R-1324, a Resolution calling a Public Hearing to be held on Tuesday, July 19, 2011, at 7:00 p.m., in the Rosenberg City Hall Council Chamber located at 2110 4<sup>th</sup> Street, Rosenberg, Texas, to receive comments from the public concerning the proposed amendment of the City’s Water and Wastewater Impact Fee

This item was presented at the March 01, 2011 City Council meeting and was deferred to a future agenda. Staff recommends approval of the Street Overlay and Reconstruction Project List as presented.

**Key discussion points:**

- John Maresh, Assistant City Manager, read and explained the Executive Summary regarding City of Rosenberg Street Overlay and Reconstruction Project List.
- Councilor Segura stated on some of the street overlays we had a problem with Southgate. Has that been rectified? John Marsh stated yes, that was some level up work and it was extremely thin. Our plan is to do a full overlay.
- Councilor Salazar asked what the order of streets will be and the timeframe. John Maresh stated if this is approved the next step is to submit a letter to the County and request to be placed on their list. We will have to wait and see how it will be scheduled in with Fort Bend County. At this point we do not know.

**Action:** Councilor Segura made a motion, seconded by Councilor Grigar to approve the City of Rosenberg Street Overlay and Reconstruction Project List. The motion carried by a unanimous vote.

5. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1311, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS REQUIRED TO ASSIGN A PORTION OF THE CITY'S 2011 ALLOCATION OF BRAZOS RIVER AUTHORITY WATER SUPPLY TO THE GULF COAST WATER AUTHORITY AT THE SAME RATE PAID TO THE BRAZOS RIVER AUTHORITY.**

**Executive Summary:** Staff was recently contacted by Robert Istre, General Manager for the Gulf Coast Water Authority (GCWA) and Cathy Dominguez of the Brazos River Authority (BRA) regarding a request to assign the City's 2011 BRA water allotment to the Gulf Coast Water Authority.

Staff has reviewed the request and recommends the assignment of up to four thousand four hundred ninety (4,490) acre feet of the four thousand five hundred (4,500) acre feet available to the City. The remaining ten (10) acre feet will be retained by the City for use during the surface water pilot plant study that is scheduled to begin this summer in association with the West Fort Bend County Regional Water Treatment Facility Project. The City would be reimbursed for the allotment at the same rate the City paid to BRA. Upon approval of this Resolution, the Brazos River Authority will prepare the necessary documents to assign the water. To that end, staff recommends approval of Resolution No. R-1311 as presented.

**Key discussion points:**

- John Maresh, Assistant City Manager, read the Executive Summary regarding Resolution No. R-1311. They are also working with the City of Richmond so our intent is to craft the same agreement that would be used by both Richmond and Rosenberg for this.
- Councilor Grigar asked whose fiscal year, Gulf Coast Water Authority or Brazos River Authority (BRA). John Maresh stated our contract is setup on BRA's fiscal year that ends August 31<sup>st</sup>.
- Councilor Grigar asked what the reason is for the allocation to Gulf Coast Water Authority. Once you give it away it is hard to get it back. John Maresh stated they have some on-going concerns with availability of water, especially with the drought conditions. BRA does not have any more water for sale at this point. They are looking at entities that have water and are not using it to secure it for their use.
- Councilor Grigar asked how this is metered to insure we will still have our ten acre fee. John Maresh stated this allocation is only for this fiscal year of August 31<sup>st</sup>. There may be a subsequent agreement into the next year. The water is monitored and we report it monthly to BRA. The Gulf Coast Water Authority takes water out of the river now so those mechanisms are in place. We will not be using this water this year and it is a take or pay contract so it would give us the ability to recoup some of those funds we are spending and not getting benefit of that water at this time.
- Councilor Suter stated he has the same concerns as Councilor Grigar. Is this only a one year deal and what is our expected revenue? John Marsh stated yes only short term. We don't have the final numbers worked out, but we paid \$62.50 per acre foot. It could be near \$280,000 if we got the full 4,490 feet and used it depending on how the agreement is structured and how much water they actually use. This is just the first step to negotiate that agreement with BRA and the Gulf Coast Water Authority.
- Councilor Suter asked if it will be paid monthly or a lump sum and where do we intend to put it? John Maresh stated that is something we will have to negotiate in the agreement with the Gulf

Coast Water Authority and BRA. This would be reimbursed into the Subsidence Fund which is being used to fund our portion of the surface water project.

- Councilor Salazar stated the System Water Availability Agreement has the System Rate at \$54.50 how did we get to \$62.50? John Maresh stated the agreement was entered into in 2007 and that was the rate. They do an increase annually and the current rate is \$62.50.
- Mayor Gurecky stated we are take or pay and we will pay the \$62.50 for 5,000 acres and this makes sense. Instead of letting the water run into the gulf, this allows someone else to take the water and we will get paid for this water.
- Councilor Grigar stated he is trying to understand why they came to us and Richmond and what are they going to do after August 31<sup>st</sup>. John Maresh stated since we do not have to do the conversion until 2015 hopefully they will come back and ask us for more. We could recoup some of that cost since this is a take or pay contract.
- Councilor Grigar asked if the agreement would come back to Council to approve or does this Resolution authorize you to negotiate and execute everything. John Maresh stated it would authorize the City Manager to negotiate and enter into those contracts. The Gulf Coast Water Authority is under some time constraints trying to fulfill their requirements.
- Councilor Salazar asked if the agreement would be from May through August 31, 2011 or through August 31, 2012. John Maresh stated initially it would be from this point until August 31, 2011. The potential is there to extend it beyond that period of time.
- Councilor Suter asked if the recommendation is to extend one year at a time. He does not want it to continue on and then we are in need of it. John Maresh stated by 2015 we have to meet that 30% conversion to meet the Subsidence District requirements we certainly would not go beyond that point.
- Councilor Grigar stated he feels that he needs more information. Jack Hamlett stated we don't have the time. This is an opportunity to reimburse ourselves. We have already paid it and it will flow down the river.

**Action:** Councilor Suter made a motion, seconded by Councilor Salazar to approve Resolution No. R-1311, a Resolution authorizing the City Manager to execute all documents required to assign a portion of the City's 2011 allocation of Brazos River Authority water supply to the Gulf Coast Water Authority at the same rate paid to the Brazos River Authority. The motion carried by a unanimous vote.

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

**Action:** Councilor Grigar made a motion, seconded by Councilor Segura to adjourn for Executive Session at 7:50 p.m. The motion carried by a unanimous vote.

7. **HOLD EXECUTIVE SESSION TO CONSULT WITH THE CITY ATTORNEY TO RECEIVE LEGAL ADVICE ON LEGAL MATTERS PURSUANT TO TEXAS LOCAL GOVERNMENT CODE SECTION 551.071.**

An Executive Session was held to consult with the City Attorney to receive legal advice on legal matters pursuant to Texas local government code Section 551.071.

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

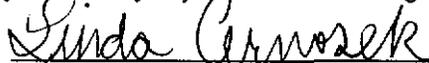
Mayor Gurecky adjourned the Executive Session and reconvened into Regular Session at 8:17 p.m.

9. **ANNOUNCEMENTS.**

There were no announcements.

10. **ADJOURNMENT.**

There being no further business Mayor Gurecky adjourned the meeting at 8:18 p.m.

  
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Linda Cernosek, TRMC, City Secretary



# CITY COUNCIL COMMUNICATION

May 19, 2015

ITEM #	ITEM TITLE
C	<b>Resolution No. R-1967 – Temporary Amendment to System Water Availability Agreement</b>
<b>ITEM/MOTION</b>	
Consideration of and action on Resolution No. R-1967, a Resolution authorizing the City Manager to negotiate and execute, for and on behalf of the City, a Temporary Amendment to the System Water Availability Agreement by and between the City and Brazos River Authority.	
<b>FINANCIAL SUMMARY</b>	
<b>ELECTION DISTRICT</b>	

**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-1967
2. \*Dominguez Correspondence – 04-29-15
3. \*System Water Availability Agreement – 10-18-07
4. \*Resolution No. R-1946 – 04-07-15
5. \*City Council Meeting Minute Excerpt – 04-07-15

**MUD #:** N/A

*\*please see previous Agenda item for all indicated supporting documentation*

**APPROVALS**

**Submitted by:**

John Maresh  
Assistant City Manager of  
Public Services

**Reviewed by:**

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

**Approved for Submittal to City Council:**

Robert Gracia  
City Manager

**EXECUTIVE SUMMARY**

On April 07, 2015, City Council approved Resolution No. R-1946, authorizing the City Manager to execute an Amended and Restated Agreement related to the assignment of the City's Brazos River Authority (BRA) surface water supply to the Gulf Coast Water Authority (GCWA). Said Agreement would allow the GCWA to use the water for both municipal and industrial uses, subject to annual approval by BRA. Section 4 of the System Water Availability Agreement entered into by the City and BRA (dated 10-08-07) provides that all water made available shall be used solely for municipal purposes.

The Temporary Amendment to the System Water Availability Agreement Between Brazos River Authority and City of Rosenberg would allow GCWA to use the water supply for industrial purposes during the current, annual term ending December 31, 2015.

Staff recommends approval of Resolution No. R-1967, with the Agreement attached as Exhibit "A", as presented.

**RESOLUTION NO. R-1967**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A TEMPORARY AMENDMENT TO THE SYSTEM WATER AVAILABILITY AGREEMENT BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND BRAZOS RIVER AUTHORITY.**

\* \* \* \* \*

**WHEREAS**, the City has entered into a System Water Availability Agreement with the Brazos River Authority for municipal purposes; and,

**WHEREAS**, the City approved an Amended and Restated Agreement Relating to the Temporary Assignment of Rights and Obligations under Water Supply Agreement by and between the City and Gulf Coast Water Authority with the passage of Resolution No. R-1946 on April 07, 2015; and,

**WHEREAS**, the City has received a request from the Gulf Coast Water Authority for the assignment of certain Brazos River Authority water allocations for municipal and industrial use due to additional needs; and,

**WHEREAS**, the City currently has a surplus allocation of surface water available from the Brazos River Authority for the year 2015; now, therefore,

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

Section 1. The City Manager is hereby authorized to negotiate and execute a Temporary Amendment to the System Water Availability Agreement (Amendment) by and between the City and Brazos River Authority.

Section 2. A copy of said Amendment 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**

**TEMPORARY AMENDMENT TO THE SYSTEM WATER AVAILABILITY AGREEMENT  
BETWEEN BRAZOS RIVER AUTHORITY AND CITY OF ROSENBERG**

This Temporary Amendment to the System Water Availability Agreement between Brazos River Authority and the City of Rosenberg ("Amendment") is entered into this \_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date"), by and between the Brazos River Authority, a river authority of the State of Texas ("BRA"), and the City of Rosenberg ("Purchaser").

**RECITALS**

**WHEREAS**, BRA and Purchaser entered into a System Water Availability Agreement ("Agreement") with an effective date of October 1, 2007, whereby BRA agreed to supply and Purchaser agreed to purchase 4,500 acre-feet of raw water per year, subject to the terms and conditions contained therein; and

**WHEREAS**, Purchaser requested and BRA has consented to the temporary assignment of 4,500 acre-feet of raw water by the Purchaser to Gulf Coast Water Authority ("GCWA") as of the Effective Date of this Amendment; and

**WHEREAS**, Purchaser's Agreement only allows for the 4,500 acre-feet of raw water to be used for municipal purposes, and GCWA desires to use the water for municipal and industrial purposes.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, BRA and Purchaser agree to amend the Agreement as follows:

**CONTRACT AMENDMENTS**

1. **Water Use Purposes.** The 4,500 acre-feet of water Purchaser assigns to GCWA may be utilized for industrial purposes. Purchaser must report this water use and the type of use as specified in the Agreement.

2. **Term.** This Amendment and all terms set forth herein shall terminate on December 31, 2015.

**This Amendment shall be deemed a part of the Agreement and shall be binding on the parties. Except as amended herein, the terms and conditions of the Agreement and all previous amendments, if any, remain in full force and effect.**

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be duly executed, and effective upon the receipt of the last signature.

**BRAZOS RIVER AUTHORITY**

**CITY OF ROSENBERG**

By: \_\_\_\_\_

By: \_\_\_\_\_

**PHIL FORD**

Title: **GENERAL MANAGER/CEO**

Title:

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_



# CITY COUNCIL COMMUNICATION

May 19, 2015

<b>ITEM #</b>	<b>ITEM TITLE</b>
<b>D</b>	<b>MUD No. 144 Refunding Bond Sale - \$6,600,000</b>
<b>ITEM/MOTION</b>	
Consideration of and action on approval of the issuance of Fort Bend County Municipal Utility District No. 144 (Summer Lakes and Summer Park) Refunding Tax Bonds, Series 2015, in an amount not to exceed \$6,600,000.	
<b>FINANCIAL SUMMARY</b>	<b>ELECTION DISTRICT</b>

<b>Annualized Dollars:</b>	<b>Budgeted:</b>	<input type="checkbox"/> District 1
<input type="checkbox"/> One-time	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<input type="checkbox"/> District 2
<input type="checkbox"/> Recurring	<b>Source of Funds:</b> N/A	<input type="checkbox"/> District 3
<input checked="" type="checkbox"/> N/A		<input type="checkbox"/> District 4
		<input type="checkbox"/> City-wide
		<input checked="" type="checkbox"/> ETJ/City

**SUPPORTING DOCUMENTS:**

1. Page Correspondence – 04-17-15
2. Site Map

**MUD #:** 144 (Summer Lakes and Summer Park)

**APPROVALS**

<b>Submitted by:</b>	<b>Reviewed by:</b>	<b>Approved for Submittal to City Council:</b>
<i>Jeanne H. McDonald</i> <sub>ks</sub>	<input checked="" type="checkbox"/> Exec. Dir. of Administrative Services 	
Jeanne H. McDonald Attorney	<input type="checkbox"/> Asst. City Manager for Public Services <input type="checkbox"/> City Attorney <input type="checkbox"/> City Engineer <input type="checkbox"/> (Other)	Robert Gracia City Manager

**EXECUTIVE SUMMARY**

Fort Bend County Municipal Utility District No. 144 (MUD No. 144) is a development generally identified as Summer Lakes (residential) and Summer Park (residential, commercial, and mixed-use). The District is located south of Reading Road and east of FM Highway 2977.

MUD No. 144 has the opportunity to “refund” or “refinance” portions of existing bonds by issuing new bonds at a lower rate of interest than the existing bonds, thus ensuring significant reduction in interest expense for the issuer. Staff has reviewed the request and associated documentation and finds that the refunding to be advantageous to MUD No. 144 and its taxpayers.

On May 06, 2003, Starwood Development, LLC, submitted a petition to the City to create a Municipal Utility District that included approximately 358.48 acres located primarily within the Corporate Limits of the City, with approximately 35.46 acres lying outside the City and outside the Extraterritorial Jurisdiction of the City of Rosenberg, to be known as Fort Bend County Municipal Utility District No. 144. Accordingly, the Petition for Consent and associated Ordinance No. 2003-21 were approved by City Council at that time. Subsequently, City Council approved Ordinance No. 2005-32 on December 13, 2005, expanding the District’s territory by 173.34 acres; approved Ordinance No. 2006-10, expanding the District’s territory by 17.788 acres; approved Ordinance No. 2006-18 on July 18, 2006, expanding the District’s territory by an additional 1.5369 acres; and, approved Ordinance No. 2010-14 on June 01, 2010, again expanding the District’s territory by an additional 6.00 acres.

Following is a list of Unlimited Tax Bond Sales and Bond Anticipation Notes (BAN) that have been previously approved by City Council:

- Ordinance No. 2006-39 - City Council approved the District’s first bond sale in the amount of \$2,815,000 on December 05, 2006.
- Ordinance No. 2007-48 - City Council approved the District’s BAN in the amount of \$1,650,000 on

## EXECUTIVE SUMMARY

October 16, 2007. The BAN was subsequently repaid out of the bond sale authorized under Ordinance No. 2008-21.

- Ordinance No. 2008-21 - City Council approved the District's second bond sale in the amount of \$3,030,000 on October 07, 2008.
- Ordinance No. 2012-38 - City Council approved the District's BAN in the amount of \$1,301,500 on November 06, 2012. The BAN approved by City Council under Ordinance No. 2012-38 was subsequently repaid out of the Series 2013 bond sale under Ordinance No. 2013-24.
- Ordinance No. 2013-24 – City Council approved the District's third bond sale in the amount of \$2,695,000 on May 07, 2013.
- Ordinance No, 2014-27 – City Council approved the District's BAN in the amount of \$2,000,000 on June 17, 2014. The BAN approved by City Council under Ordinance No. 2014-27 was subsequently repaid out of the Series 2015 bond sale under Ordinance No. 2015-06.
- Ordinance No. 2015-06 – City Council approved the District's 4<sup>th</sup> bond sale in the amount of \$3,400,000 on February 17, 2015.

Staff is recommends approval of the issuance of Fort Bend County Municipal Utility District No.144 Refunding Tax Bonds, Series 2015, in an amount not to exceed \$6,600,000.

SCHWARTZ, PAGE & HARDING, L.L.P.

ATTORNEYS AT LAW

1300 POST OAK BOULEVARD

SUITE 1400

HOUSTON, TEXAS 77056

WWW.SPHELLP.COM

TELEPHONE (713) 623-4531  
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JOSEPH M. SCHWARTZ  
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PETER T. HARDING  
ABRAHAM I. RUBINSKY  
MARTHA T. BERSCH  
HOWARD M. COHEN  
SPENCER W. CREED  
CHRISTOPHER T. SKINNER  
DANIEL S. RINGOLD  
MITCHELL G. PAGE  
BRYAN T. YEATES

CHRISTINA J. COLE  
MATTHEW R. REED  
E. BENJAMIN MORSE  
WILLIAM D. STAFFORD  
TRAVIS M. HEDGPETH  
GINA M. VON STERNBERG

April 27, 2015

VIA E-MAIL

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

Re: Fort Bend County Municipal Utility District No. 144 (the "District") - Proposed Unlimited Tax Refunding Bonds, Series 2015 (the "Refunding Bonds")

Dear Ms. Supak:

With respect to the City of Rosenberg's review of the District's proposed issuance of the Refunding Bonds, the District has proposed to sell the Refunding Bonds in accordance with the following parameters:

1. Par amount of the Refunding Bonds not to exceed \$6,600,000;
2. Net present value debt service savings of at least six percent (6%) of the principal amount of the bonds to be refunded;
3. Net effective interest rate not to exceed two percent (2%) above the highest average interest rate reported in the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of sale of the Refunding Bonds is given; and
4. The date of the latest scheduled maturity of the Refunding Bonds is not later than the date of the latest scheduled maturity of the bonds to be refunded.

The other items required to be provided to the City of Rosenberg in connection with the issuance of the Refunding Bonds will be provided under separate cover by the District's financial advisor, Ms. Debbie Shelton of First Southwest Company.

If you require further information or documentation, please do not hesitate to contact the undersigned or Ms. Debbie Shelton (713-654-8625).

Ms. Kaye Supak  
April 27, 2015  
Page 2

Yours very truly,

SCHWARTZ, PAGE & HARDING, LLP

By:   
\_\_\_\_\_  
Mitchell G. Page  
Attorneys for the District

cc: Jeanne H. McDonald (via e-mail)  
Jeanne H. McDonald PC

Ms. Debbie Shelton (via e-mail)  
First Southwest Company

373526.1

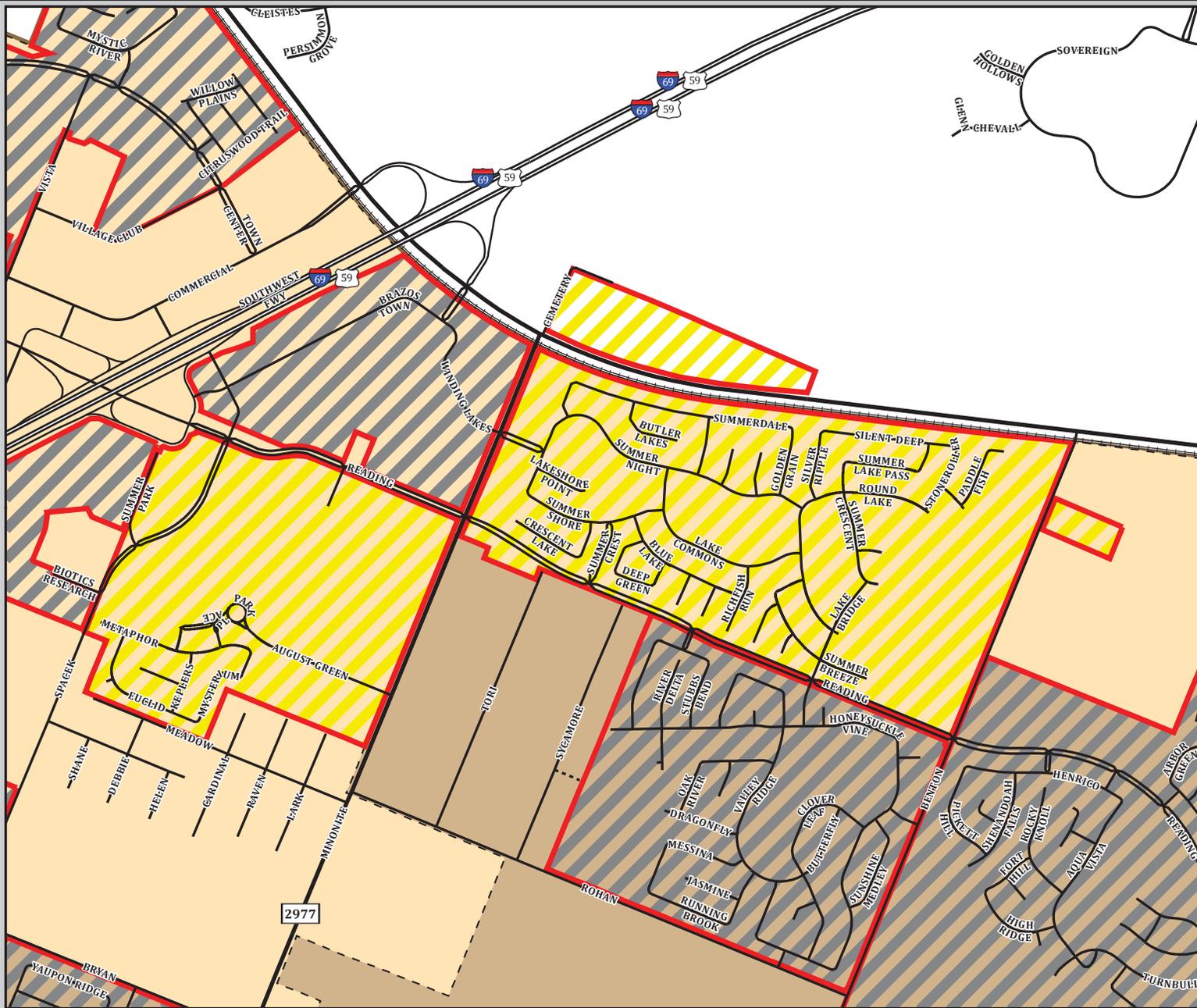
# Summer Lakes, Summer Park, and Waterford Park Municipal Utility District (MUD) 144 April 2015

City of Rosenberg, Texas

- |  |               |  |                       |
|--|---------------|--|-----------------------|
|  | Interstate    |  | MUD 144               |
|  | US Highway    |  | Other Active MUDs     |
|  | State Highway |  | Rosenberg City Limits |
|  | Public Road   |  | Rosenberg ETJ         |
|  | Private Road  |  | Other Jurisdictions   |
|  | Railroad      |  |                       |



Scale:  
1:12,000  
or  
1 Inch = 1,000 Feet



Created by: City of Rosenberg GIS - Paul M. Jones  
Date Created: April 28, 2015  
Original Size: 11" x 17"  
K:\GIS\MAPS\GIS\2015\MUD\_Maps\_for\_Internet\_Indiv.mxd

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





# CITY COUNCIL COMMUNICATION

May 19, 2015

ITEM #	ITEM TITLE
E	<b>Resolution No. R-1957 – Drainage Channel Conveyance by Special Warranty Deed</b>

### ITEM/MOTION

Consideration of and action on Resolution No. R-1957, a Resolution authorizing the Mayor to execute and accept, for and on behalf of the City, a Special Warranty Deed being 12.12 acres of land, between the City of Rosenberg and Rosenberg Business Park, Ltd.

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

**Annualized Dollars:**

- One-time
- Recurring
- N/A

**Budgeted:**

- Yes  No  N/A

**Source of Funds:**

N/A

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

**SUPPORTING DOCUMENTS:**

MUD #: N/A

1. Resolution No. R-1957
2. Rosenberg Business Park Development Agreement – 03-01-13

### APPROVALS

**Submitted by:**

*Travis Tanner*

Travis Tanner, AICP  
Executive Director of  
Community Development

**Reviewed by:**

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

**Approved for Submittal to City Council:**

*Robert Gracia*

Robert Gracia  
City Manager

### EXECUTIVE SUMMARY

As part of the Rosenberg Business Park Development Agreement, Rosenberg Business Park, LTD., is required to convey a 12.12-acre drainage channel to the City of Rosenberg and to forego any rights to reimbursement. Staff has received a Special Warranty Deed for the 12.12-acre drainage channel. Resolution No. R-1957 has been included to allow City Council to accept the conveyance of said drainage channel.

Staff recommends approval of Resolution No. R-1957 as presented.

**RESOLUTION NO. R-1957**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, A SPECIAL WARRANTY DEED BEING 12.12 ACRES OF LAND, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND ROSENBERG BUSINESS PARK, LTD.**

\* \* \* \* \*

**WHEREAS**, the City Council authorizes a Special Warranty Deed, being 12.12 acres of land, between the City of Rosenberg and Rosenberg Business Park, LTD., particularly described as that certain Drainage Channel Conveyance attached hereto as Exhibit "A"; and,

**WHEREAS**, the Rosenberg Business Park Development Agreement, executed on March 01, 2013, requires conveyance of said drainage channel to the City of Rosenberg; and,

**WHEREAS**, staff was directed to prepare and facilitate any and all documentation necessary to acquire that certain real property; and,

**WHEREAS**, the City Council hereby acknowledges and accepts conveyance of said drainage channel; now, therefore,

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

Section 1. That the City Council of the City of Rosenberg acknowledges the acquisition of a drainage channel by Special Warranty Deed for certain real property more particularly described as a 12.12 acres of land, in the S.B. Pentecost Survey, A-378 and the S.B. Pentecost Survey, A-362, Fort Bend County, Texas, and being a portion of the 158.5 acre tract described in the Deed from 2218 Rosenberg, L.P., to Windmeadows Investors, Ltd., recorded under File No. 2005-095386, in the Official Public Records of Fort Bend County, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes.

Section 2. That the City Council hereby acknowledges and authorizes the Mayor to execute and accept, for and on behalf of the City of Rosenberg, Texas, the

foregoing Special Warranty Deed regarding conveyance of the 12.12 acre drainage channel.

**PASSED, APPROVED AND RESOLVED** this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, **City Secretary**

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

**SPECIAL WARRANTY DEED**  
**(DRAINAGE CHANNEL)**

**THE STATE OF TEXAS**

**KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF FORT BEND**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

THAT **ROSENBERG BUSINESS PARK, LTD.**, a Texas limited partnership, (hereinafter designated "**Grantor**") for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration cash in hand paid by **THE CITY OF ROSENBERG TEXAS**, a municipal corporation, whose address is P.O. Box 32, 2110 4<sup>th</sup> Street, Rosenberg, Texas 77471 (hereinafter designated "**Grantee**"), the receipt of which is hereby acknowledged, has **GRANTED, SOLD and CONVEYED** and by these presents does hereby **GRANT, SELL and CONVEY**, all of the real property in Fort Bend County, Texas, described in **Exhibit "A"** attached hereto.

The Deed and conveyance is expressly made subject to all liens, encumbrances, conditions, easements and other exceptions appearing of record in the office of the County Clerk of Fort Bend County, Texas, and applicable to such property.

TO HAVE AND TO HOLD the above-described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging, unto the Grantee, its successors and assigns, forever; and Grantor does hereby bind itself and its successors, to Warrant and Forever Defend all and singular the premises unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

EXECUTED as of the 8 day of April, 2015.

GRANTOR:

ROSENBERG BUSINESS PARK, LTD., a  
Texas limited partnership

By: ROSENBERG BUSINESS PARK GP, LLC, a  
Texas limited liability company, its General Partner

By: *William G. Smith Jr.*  
Name: William G. Smith Jr.  
Title: President

STATE OF TEXAS

COUNTY OF FORT BEND

This instrument was acknowledged before me, on the 8th day of April, 2015, by William G. Smith Jr. as President of Rosenberg Business Park GP, LLC, a Texas limited liability company, in its capacity as General Partner of ROSENBERG BUSINESS PARK, LTD., a Texas limited partnership, on behalf of said limited partnership.

[SEAL]



My Commission Expires:

1/23/2019

*Laura Flores*  
Notary Public, State of Texas

Laura Flores  
Printed Name of Notary Public

Exhibit "A"

Page 1 of 3  
12.12 ACRES  
JOB NO. 1880-001-00-531

**METES AND BOUNDS DESCRIPTION OF 12.12 ACRES OF LAND  
IN THE S.B. PENTECOST SURVEY, A-378 AND THE S.B. PENTECOST SURVEY, A-362  
FORT BEND COUNTY, TEXAS**

BEING 12.12 acres of land, in the S.B. Pentecost Survey, A-378 and the S.B. Pentecost Survey, A-362, Fort Bend County, Texas, and being a portion of the 158.5 acre tract described in the deed from 2218 Rosenberg, L.P. to Windmeadows Investors, Ltd., recorded under File No. 2005-095386, in the Official Public Records of Fort Bend County, Texas, the 7.2649 acre tract and the 7.2717 acre tract described as Tract II, the 28.06 acre tract described as Tract III, the 35.95 acre tract described as Tract I, in the deed from Rio Mortgage Company to Windmeadows Investors, Ltd., recorded under File No. 2009-000812, in the Official Public Records of Real Property of Fort Bend County, Texas, and the 11.37 acre tract described in the deed from WM Commercial, L.P. to Windmeadows Investors, Ltd., recorded under File No. 2008-108814, in the Official Public Records of Real Property of Fort Bend County, Texas, and more particularly described by metes and bounds as follows with bearings based on the east right-of-way line of F.M. 2218 bearing North 44° 43' 46" East, as monumented:

**COMMENCING** at a 5/8 inch iron rod found for the north corner of said 11.37 acre tract, in the southeast right-of-way line of F.M. 2218 (100' R.O.W.);

**THENCE** South 44° 43' 46" West – 292.95 feet, along said southeast right-of-way line, to a 5/8 inch iron rod with cap stamped "IDS" set for the northwest corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE** North 89° 27' 18" East – 410.90 feet to a 5/8 inch iron rod with cap stamped "IDS" set for an angle corner of the herein described tract, in the northeast line of said 11.37 acre tract;

**THENCE** South 45° 04' 10" East – 50.59 feet, with the northeast line of said 11.37 acre tract, and the northeast line of said 28.06 acre tract, to an angle corner of the herein described tract, in the northeast line of said 28.06 acre tract, common to the west corner of said 7.2649 acre tract, from which a found 1 inch iron pipe, bears North 38° 47' 40" East – 0.40 feet;

**THENCE** North 44° 33' 55" East – 40.00 feet, with the southeast line of the 3.879 acre tract described in the deed from Peggy Geiselman Rice, et al. to PEGMO, L.L.C., recorded under File No. 2003-107704, in the Official Public Records of Real Property of Fort Bend County, Texas, to a 5/8 inch iron rod with cap stamped "IDS" set for a northeast corner of the herein described tract;

**THENCE** South 45° 04' 10" East – 733.67 feet to a 5/8 inch iron rod with cap stamped "IDS" set for a northeast corner of the herein described tract, in the southeast line of said 7.2717 acre tract;

**THENCE** South 25° 47' 19" West – 42.34 feet, with the southeast line of said 7.2717 acre tract, to the south corner of said 7.2717 acre tract, common to an angle corner of the herein described tract, in the northeast line of said 28.06 acre tract, from which a found 1 inch iron pipe, bears North 33° 04' 20" East – 0.30 feet;

**THENCE** South 45° 04' 10" East – 2745.83 feet, with the northeast line of said 28.06 acre tract, the northeast line of said 35.95 acre tract, and the northeast line of said 158.5 acre tract, to a 5/8 inch iron rod with cap stamped "IDS" set for the east corner of the herein described tract;

**THENCE** South 46° 08' 18" West – 120.03 feet to a 5/8 inch iron rod with cap stamped "IDS" set for the south corner of the herein described tract;

**THENCE** North 45° 04' 10" West – 3532.97 feet to a 5/8 inch iron rod with cap stamped "IDS" set for an angle corner of the herein described tract;

**THENCE** South 89° 27' 18" West – 259.30 feet to a 5/8 inch iron rod with cap stamped "IDS" set for the Point of Curvature of a curve to the left;

**THENCE** in a westerly direction, along said curve to the left, having a central angle of 44° 43' 32", a chord bearing and distance of South 67° 05' 32" West – 38.05 feet, a radius of 50.00 feet, and an arc distance of 39.03 feet, to a 5/8 inch iron rod with cap stamped "IDS" set for the end of curve;

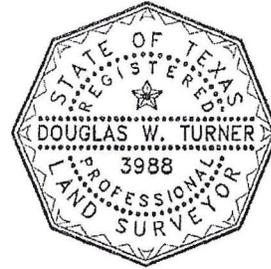
**THENCE** South 44° 43' 46" West – 389.73 feet to a 5/8 inch iron rod with cap stamped "IDS" set for an angle corner of the herein described tract;

**THENCE** North 45° 16' 14" West – 100.00 feet to a 5/8 inch iron rod with cap stamped "IDS" set for the west corner of the herein described tract, in the in the southeast right-of-way line of said F.M. 2218;

**THENCE** North 44° 43' 46" East - 437.23 feet, along the southeast line of said F.M. 2218, to the **POINT OF BEGINNING** of the herein described tract and containing 12.12 acres of land.

Page 3 of 3  
12.12 ACRES  
JOB NO. 1880-001-00-531

Prepared by:  
IDS Engineering Group  
Job No. 1880-001-00-531  
June 21, 2013



*Douglas W. Turner*

---

Douglas W. Turner  
Registered Professional Land Surveyor  
Texas Registration Number 3988

This description has been prepared as a result of a survey completed on June 19, 2013 and is submitted in connection with a survey drawing prepared by IDS Engineering Group dated June 19, 2013, Job No. 1880-001-00-531.



## ROSENBERG BUSINESS PARK DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** by and among THE CITY OF ROSENBERG, TEXAS, a Texas home-rule municipal corporation ("City"), the ROSENBERG DEVELOPMENT CORPORATION, a Type B economic development corporation (the "RDC"); and ROSENBERG BUSINESS PARK, LTD., a Texas limited partnership (referred to as the "Developer"), entered into on this 1 day of March, 2013 for the purpose of developing the Rosenberg Business Park, an industrial and distribution business park.

**WHEREAS**, Developer is the owner of approximately 184 acres of land in the corporate limits of the City of Rosenberg, Texas, more fully described by legal instrument marked as Exhibit "A," attached hereto and incorporated herein for all purposes ("Property");

**WHEREAS**, in accordance with Article III, Section 52-a, Texas Constitution, and Chapter 380, Texas Local Gov't Code, the City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality;

**WHEREAS**, the City has agreed to construct certain drainage, utilities, and roads and cause the installation of natural gas and electrical service for the Property to encourage and promote the development of an industrial and distribution business park on the Property, thereby enhancing and stimulating business and commercial activity in the City;

**WHEREAS**, pursuant to the Development Corporation Act, Chapters 501 and 505, Texas Local Gov't Code, the City has created the RDC in order to assist with the development or operation of an economic development program;

**WHEREAS**, the RDC has agreed to provide financial assistance for certain infrastructure improvements including streets and roads, water and sewer utilities, drainage, and related public improvements on the Property, necessary to promote or develop new or expanded business enterprises, all in accordance with Section 501.103, Texas Local Gov't Code;

**WHEREAS**, the Developer has agreed, in exchange and as consideration for funding of the construction of certain infrastructure improvements to satisfy and comply with certain terms and conditions; and

**WHEREAS**, the City, the RDC, and the Developer agree that the provisions of this Agreement substantially advance a legitimate interest of the City and the RDC by expanding the tax base of the City, increasing employment and promoting economic development.

**NOW, THEREFORE**, for and in consideration of the promises and the mutual agreements set forth herein, the City, the RDC, and Developer hereby agree as follows:

1. **Dissolution of District.** The Property is currently located wholly within the boundaries of Fort Bend County Municipal Utility District No. 150 (the "District"). The parties agree that the District is no longer beneficial to the Property or necessary in order to provide utilities to the Property. The Developer will submit to the City for approval by July 1, 2013, a plan to settle all reimbursements and other financial obligations owed by the District so that the District will no longer have outstanding debts or liabilities at the time of dissolution of the District by the City. The dissolution plan may include exclusion of land from the District, annexation of land into another district, and/or releases of claims for payment from the District. As part of the dissolution plan, the Developer will (i) pay any administrative costs associated with such dissolution, including the District's outstanding legal fees, (ii) convey to the City for its ownership, operation and maintenance a drainage ditch on the northern boundary of the District as shown on the survey attached as **Exhibit "D"** (the "Ditch") free and clear of all liens and encumbrances. The dissolution plan shall not require the City to incur any costs. The City agrees to assist and cooperate with the Developer in the dissolution of the District upon approval of the dissolution plan, including all actions necessary to annex any District land, not including the Property, into another special district in the City. However, the City will not dissolve the District if dissolution would result in the assumption of any outstanding debts or liabilities of the District by the City. If the Developer and City are unable to agree upon a dissolution plan of the District, the Developer may terminate this Development Agreement without penalty and with no further obligations hereunder.
2. **The Project; Deed Restrictions.** The Developer intends to construct (or cause to be constructed) an industrial and distribution business park to be known as the Rosenberg Business Park (the "Project"). Developer will submit to the City for approval draft deed restrictions for the Property. Among other issues, the deed restrictions will restrict the 184 acres to an industrial and distribution business park, along with retail sales associated with industrial and distribution uses and will provide

other standards that address the quality of development in the business park. No residential or other retail uses will be allowed in the business park. The McCombs property (approximately 15.07 acres located on FM 2218) will not be included in the Project. The Developer agrees to create a mandatory property owners association ("POA") to maintain the common areas and enforce the restrictions. The City's approval and the subsequent recordation of the deed restrictions is a condition precedent to the City's construction of any Public Improvements, as described herein. The City must approve in writing any changes to the deed restrictions that affect the land uses allowed on the Property prior to recordation for such changes to be effective. The Developer is not liable to the City for any subsequent changes in deed restrictions that are made after the Developer no longer owns a majority interest in the Property.

3. **Public Improvements.** The City agrees to fund, design and construct the Public Improvements in accordance with this Agreement, which include the water distribution, sanitary sewer, storm water drainage, and paving improvements set forth in **Exhibit "A"** attached hereto as well as the installation natural gas lines and electrical service in the sizes and volts as set out on **Exhibit "E"** attached hereto. The Public Improvements do not include any private internal facilities to serve specific tracts within the Property. Costs of the Public Improvements to be funded by the City include the costs of design and construction of the Public Improvements as well as all costs incurred in connection with obtaining governmental approvals, certificates, and permits required in connection with the construction of the Public Improvements. The installation of natural gas and electrical service to the end users will occur contemporaneously with the construction of each phase of the Public Improvements as described herein. The Public Improvements depicted in purple on **Exhibit "B"** estimated in the amount of approximately \$3,478,300 are referred to herein as the "Phase I Improvements." The Public Improvements depicted in blue estimated in the approximate amount of \$1.7 million are referred to herein as the "Future Improvements."
  - a. **Phase I Improvements.** The City will commence design of the Phase I Improvements when all the following have been accomplished:
    - i. The Developer has recorded approved deed restrictions (described in Section 2 above) as a covenant running with the land that binds all future owners of the Property;
    - ii. The Developer provides the City with a recorded plat for the portion of the Property to be served by the Phase I Improvements that includes all right-of-way needed for the Phase I Improvements;
    - iii. The Ditch has been conveyed to the City; and

- iv. The District has been dissolved.

The City agrees use its best efforts to complete the construction of the Phase I Improvements within eighteen (18) months of commencement of the design of the Phase I Improvements. The parties acknowledge that completion may be affected by construction delays beyond the control of the City or by events of force majeure.

- b. City Construction of Future Improvements. The City will be obligated to design and construct the Future Improvements in accordance with this Section. The City will be obligated to begin design of the Future Improvements when either (i) the Developer has sold or entered into a long-term lease with an end user or builder/developer (not investor) of at least fifty percent (50%) of the Property served by the Phase I Improvements or (ii) the Developer has sold or entered into a long-term lease with an end user or builder/developer (not investor) for at least fifty percent (50%) of the Property which requires the Future Improvements ("Property Sale Threshold"). The purpose of the Property Sale Threshold is to assure that the City is not obligated to undertake Future Improvements until they are needed to serve an end user or builder/developer so that they will not be constructed but then remain unused for a significant period of time. Future Improvements will be constructed as needed and may be constructed in phases. The Developer must notify the City in writing of the Property Sale Threshold to trigger the City's obligation to construct any Future Improvements. If the Developer does not meet the Property Sale Threshold and the City is not required to construct the Future Improvements pursuant to this Section within ten years of the completion of the construction of the Phase I Improvements, the City will have the right to terminate this Development Agreement and have no further obligation to construct the Future Improvements.
- c. Funding of Public Improvements. The City will construct the Public Improvements in accordance with all regulatory requirements. The City and the RDC will each fund fifty percent (50%) of the design, testing, and construction of the Project Improvements (the "Project Costs") from legally available funds. The RDC agrees to advance its share of the costs of the Public Improvements as the phases are designed and constructed. The City may make one or more requests for funds per phase, and the RDC agrees to advance such funds to the City within sixty (60) days of receipt of request.
- d. Developer Construction of Future Phases. Prior to meeting the Property Sale Threshold described in subsection (b)(i) and (ii) above, the Developer has the right to fund and construct the Future

Improvements as more particularly described in **Exhibit "B"**. Once the Developer meets the Property Sale Threshold and provides the City with an accounting of the actual costs of the Future Improvements, the City and the RDC will reimburse the Developer the Project Costs for the Future Improvements within 60 days of submittal from the Developer. The RDC agrees to pay its share of such costs to the City within sixty (60) days of request by the City to allow the City to reimburse the Developer.

4. **Water, Wastewater and Drainage Service for the Project.**

- a. **General.** Upon completion of the infrastructure for water and wastewater service to the Project by the City, the City shall provide water and wastewater service to the Project and major outfall drainage service for the Project. Equivalent single family connection or ESFC means the daily measure of water and wastewater that is attributed to one single-family home as determined by the City. The City will provide up to 693 ESFC of water and wastewater service to the Property. Such water, wastewater and drainage service shall be provided by the City in accordance with the same policies and ordinances for similarly classified City water and wastewater customers, as may be amended from time to time.
- b. **Impact Fees.** The City will charge impact fees to the new development for the Project pursuant to its impact fee ordinances as amended from time to time, provided that no impact fees will be charged to the Property for the costs of the Public Improvements.

5. **Conveyance of Easements for Utilities and Public Roads.** The Developer shall timely convey and donate to the City all easements for the construction of the Public Improvements. Such easements shall be in form and content reasonably acceptable to the City and shall either (i) be reflected on a plat filed with the City, or (ii) evidenced by separate instrument from the Developer to the City. Additionally, the Developer agrees to convey and donate to the City the land described on the attached **Exhibit "C"** for the realignment of Bryan Road and the widening of FM 2218 within 180 days of receipt of written notice from the City.

6. **Additional Developer Obligations.**

- a. **Promotion of Business Park.** In order to promote the Project, the Developer agrees to erect a sign promoting the business park on FM 2218. In order to maintain an attractive appearance to the Project, the Developer agrees to landscape the entrance to the Project and cause

the POA to maintain the entrance to the Project, the highway right of way on FM 2218 adjacent to the Project, and common areas in the Project.

- b. Performance Requirements. The parties agree that this Section 6(b) constitutes the requirements of a performance agreement under Section 501.158, Texas Local Government Code. In consideration of an expenditure made on behalf of the RDC, the Developer will:
- i. commence construction of a building of a minimum of 25,000 square feet in the Project within twenty-four (24) months of completion of the Phase I Improvements;
  - ii. Assure the creation of at least five (5) new jobs in the Project and provide to the City access to any documentation to allow the City to determine compliance with this Section 6.B.;
  - iii. convey the Ditch to the City and forego any rights to reimbursement; and
  - iv. convey right of way necessary for emergency access to the Property as described in Section 6 (c) below; and

If performance requirements of this Development Agreement are not met in accordance with Section 501.158(b)(2), Texas Local Government Code, the Developer shall reimburse all amounts advanced by the City and the RDC for the Public Improvements ( the "Reimbursement Amount"). The City agrees to credit against the Reimbursement Amount the costs of the Ditch and the value of the right of way donated to the City; and the City agrees that the value of the Ditch and right of way is greater than or equal to the City's portion of the Reimbursement Amount and no further funds shall be due the City. Payment of the RDC's portion of the Reimbursement Amount shall be effected as follows. The Developer shall immediately remove any special appraisals of the Property applied for under Chapter 23 of the Texas Tax Code and going forward make payments of taxes on the land at market value. The City shall pay to the RDC all tax revenues attributable to the removal of the special appraisal until the full amount of the RDC's participation is repaid. The City and the RDC shall also have the right to terminate the Development Agreement and shall have no obligation to build the Future Improvements.

- c. Alternate Emergency Access. The Developer agrees to donate and convey to the City its Property for right-of-way for alternate emergency access to the Property. Once the City has determined a

viable route for such alternate emergency access into the Project, the Developer agrees to dedicate necessary right of way on Property owned by the Developer within sixty days of written notification from the City. The Developer shall have no obligation to provide right-of-way on land outside the Property for such access. If the Developer fails to provide the right of way for the alternate emergency access from Property owned by the Developer within one hundred eighty (180) days of receipt of written request by the City, the City's sole remedy is to not construct the Public Improvements and to terminate the Agreement.

d. Removal of Special Appraisal. The Developer agrees to remove from the Property all special appraisals for agricultural use, open space, or any other special appraisals applied for under Chapter 23 the Texas Tax Code within five years of the completion of the construction of the Phase I Improvements. If after such time, the Developer is still claiming any agricultural, open space, or other special appraisal under Chapter 23 of the Texas Tax Code on any of the 184 acres of the Property, the Developer agrees to pay the City annually a payment in lieu of taxes in the amount of taxes that would have been paid to the City as if the land subject to the special appraisal had been taxed at market value. Such payment shall be due and payable to the City at the same time as City property taxes are due, and delinquencies shall accrue penalty and interest at the same rate and in the same manner as delinquent City property taxes. Payment shall be made by the Developer without the need for an invoice from the City and shall provide appropriate verifiable documentation from the Fort Bend Appraisal District as to the market value.

7. Default of this Agreement. An "Event of Default" under this Agreement shall occur upon the failure of either party hereto to timely and fully perform or comply with any of the terms and conditions of this Agreement. However, with respect to any breach of this Agreement, which may be cured by the payment of money, an Event of Default shall not occur (a) until the defaulting party has received written notice of such default and has not completely and fully cured such default within ten (10) working days after receipt of such written notice from any source, and (b) with respect to any other breach of this Agreement, an Event of Default shall not occur until the defaulting party has received written notice of such default and has not cured such default within thirty (30) calendar days (or, if such default is not susceptible of being cured within such thirty (30) day period, such additional period of time as may be reasonable to cure such default, provided that the defaulting party initiates the cure of such default in such thirty (30) calendar day

period and thereafter continuously and diligently, by using its commercially reasonable efforts, prosecutes the cure of such default to completion). If an Event of Default occurs, the non-defaulting party shall be entitled to pursue any and all remedies available at law or in equity, which remedies shall be cumulative and not exclusive. Failure to meet Property Thresholds under Section 3(b) or the failure to meet additional Developer obligations under Sections 6(b) (c) and (d) do not constitute an Event of Default, and the City's sole remedies under Section 3(b), and Sections 6(b), (c) and (d) being the remedies specified in each respective section.

8. **Separate Status.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

9. **Construction and Interpretation.**

a. Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific terms, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

b. The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

c. This Agreement may be executed in several counterparts; each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

10. **INDEMNIFICATION AND HOLD HARMLESS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, DEVELOPER OBLIGATES ITSELF**

TO THE CITY AND THE RDC TO FULLY AND UNCONDITIONALLY PROTECT, INDEMNIFY AND DEFEND THE CITY OF ROSENBERG AND THE ROSENBERG DEVELOPMENT CORPORATION, THEIR OFFICERS, AGENTS AND EMPLOYEES, AND HOLD THEM HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITY FOR INJURIES TO PROPERTY, INJURIES TO PERSONS (INCLUDING DEVELOPER'S EMPLOYEES), INCLUDING DEATH, AND FROM ANY OTHER COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITIES OF ANY AND EVERY NATURE WHATSOEVER ARISING IN ANY MANNER, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF THE CITY, THE RDC OR THEIR OFFICERS, AGENTS OR EMPLOYEES. THIS INDEMNIFICATION AND SAVE HARMLESS SHALL APPLY TO ANY IMPUTED OR ACTUAL JOINT ENTERPRISE LIABILITY.

11. **Insurance.** The City agrees to require any contractor who constructs any phase of the Project Improvements to maintain insurance policies, with the minimum limits of insurance coverage, consistent with the City's general requirements for construction activities of comparable value to the particular phase of the Project Improvements that may be under construction. All insurance policies carried by such contractors shall name the Developer as additional insured (with respect to liability arising out of work performed by the contractors or subcontractors, as applicable) and shall contain a waiver of subrogation in favor of the Developer.
12. **Miscellaneous Provisions.**
  - a. **Actions Performable.** The City, the RDC, and the Developer agree that all actions to be performed under this Agreement are performable solely in Fort Bend County, Texas.
  - b. **Assignability.** Performance by Developer under the terms and conditions of this agreement are deemed personal and, as such, any attempt to convey, assign or transfer those duties and obligations without the prior written approval and consent by City are void; provided, however, Developer shall be authorized to assign or transfer its rights, duties and obligations under this Agreement to an affiliate of Developer under common ownership and control. Developer may assign its right to receive any payments under this Agreement, but not its duties or obligations, to Developer's financial

lenders of this Project without the consent of the City and the City agrees to execute estoppel certificates (in a form reasonably acceptable to the City) reasonably required by such financial lenders regarding the status of this Agreement.

- c. Severability. If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.
- d. Complete Agreement. This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all parties hereto or permitted or approved assignees.
- e. Exhibits. All exhibits attached to this Agreement are incorporated herein reference and expressly made part of this Agreement as if copied verbatim.
- f. Notice. Any notice or demand which either the City, the RDC, or the Developer is required to or may desire to serve upon the other, must be in writing, and shall be sufficiently served if (i) personally delivered, (ii) sent by facsimile, (iii) sent by registered or certified mail, postage prepaid, or (iv) sent by commercial overnight carrier, and addressed to:

If to the City:

City of Rosenberg, Texas  
P.O. Box 32  
2110 Fourth Street  
Rosenberg, Texas 77471  
Attention: City Manager  
Telephone: (832) 595-3400  
Fax: (832) 595-3333

or any other address or addresses which the Developer may be notified of in writing by the City;

If to the RDC:

Rosenberg Development Corporation  
2110 Fourth Street

Rosenberg, Texas 77471  
Attention: Matt Fielder  
Telephone: (832) 595-3400  
Fax: (832) 595-3333

or any other address or addresses which the City or the Developer may be notified of in writing by the RDC;

If to the Developer:

Rosenberg Business Park, Ltd.  
1800 Augusta, 4<sup>th</sup> Floor  
Houston, Texas 77056  
Telephone: (713) 850-8400  
Fax: (713) 850-8405

Attn: William G. Smith, Jr.

or such other address or addresses which the City or RDC may be notified in writing by the Developer.

Such notice shall be deemed to have been served (a) four (4) business days after the date such notice is deposited and stamped by the U. S. Postal Service, except when lost, destroyed, improperly addressed or delayed by the U.S. Postal Service, or (b) upon receipt in the event of personal service or (c) the first business day after the date of deposit with an overnight courier, except when lost, destroyed, improperly addressed or delayed by the courier, or (d) the date of receipt by facsimile (as reflected by electronic confirmation); provided, however, that should such notice pertain to the change of address to either of the parties hereto, such notice shall be deemed to have been served upon receipt thereof by the party to whom such notice is given.

- g. Force Majeure. Any delay or failure in the performance by a party under this Agreement shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure means acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction,

blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity. Any party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other parties were timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

- h. **Forum Selection.** This Agreement and the relationship between the City, the RDC, and Developer shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Venue for any suit arising out of any relationship between the City, the RDC, and Developer shall exclusively be the appropriate court in Fort Bend County, Texas. Developer specifically consents to and waives any objections to, in personam jurisdiction in Fort Bend County, Texas.
  - i. **Appointment of Representatives.** To further the commitment of the parties to cooperate in the implementation of this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representative for the City (the "City Representative") shall be Matt Fielder or his designee; the initial representative for the RDC shall be Matt Fielder; and the initial representative for Developer shall be William G. Smith, Jr. (the "Developer Representative"). The representatives shall be available at all reasonable times and places to discuss and review the performance of the parties to this Agreement and the development of the Property.
13. **Preamble.** The findings of fact, recitations and provisions set forth in the preamble to this Development Agreement are true and are adopted and made a part of the body of this agreement, binding the parties hereto, as if the same were fully set forth herein.
14. **Representation of Authority.** The City represents and warrants to the Developer that the City is duly authorized and empowered to enter into this Agreement and has the legal authority to reimburse the Developer as provided in this Agreement. The RDC represents and warrants to the Developer and the City that the RDC is duly authorized and empowered to enter into this Agreement and has the legal authority to reimburse the Developer as provided in this Agreement. The Developer represents and warrants to the City and the RDC that it has the requisite authority to enter into this Agreement and is a proper party to this Agreement.

15. **Signature Warranty Clause.** The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the City, the RDC and Developer, respectively.
16. **Performance Agreement.** This Agreement constitutes a performance agreement under Section 501.158, Texas Local Gov't Code. The RDC finds that the creation and/or retainage of jobs and the capital investment made by the Developer, the conveyance of the drainage ditch and right of way for access to the Project are sufficient consideration for the expenditures made by the Corporation under this Agreement.
17. **Economic Incentives Constitute a Program.** This Agreement constitutes an economic development program to promote state or local economic development and to stimulate business and commercial activity in the City pursuant to Article III, Sec. 52-a, Texas Constitution, and Chapter 380, Texas Local Gov't Code.
18. **Employment of Undocumented Workers.** During the term of this Agreement the Developer agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a(1), the Developer shall repay any other funds received by the Developer from the City or the RDC under this Agreement, plus interest at the annual interest rate of 6% from the date of violation until paid. The Developer shall have the right to appeal any such violation through all available legal recourses and will repay any funds only when all appeals have been exhausted. The Developer is not liable for a violation of this section by a subsidiary, affiliate, or franchise of the Developer or by a person with whom the Developer contracts.
19. **Good Faith Representations.** The parties agree that they have entered into this Agreement in good faith, intend to deal with each other in good faith, and intend for this Development Agreement to be enforceable as to its terms under Texas law.
20. **Term.** This Agreement will remain in force and effect for a term of twenty-five (25) years or until earlier terminated by the City pursuant to Sections 3(b), 6(b) and/or 6(c) of this Agreement, or terminated by the Developer pursuant to Section 1 of this Agreement.

**List of Exhibits**

**Exhibit "A": Description of Property**

**Exhibit "B": Description of the Public Improvements**

**Exhibit "C": Description of Land Dedication for Widening of Bryan Rd. and FM 2218**

**Exhibit "D": Survey of Property depicting Drainage Ditch**

**Exhibit "E": Natural Gas and Electric Service**

CITY:

**CITY OF ROSENBERG**, a Texas  
home-rule municipal corporation

By: Jack S. Hamlett  
Name: JACK S. HAMLETT  
Title: CITY MANAGER

Attested:

Linda Cernosek  
City Secretary

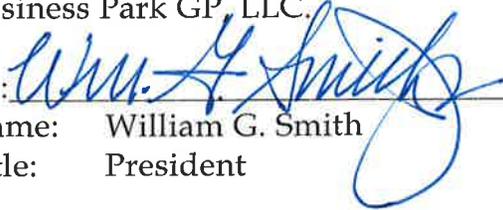
Date: February 5, 2013



DEVELOPER:

ROSENBERG BUSINESS PARK, LTD.

By its general partner, Rosenberg  
Business Park GP, LLC.

By:   
Name: William G. Smith  
Title: President

ROSENBERG DEVELOPMENT  
CORPORATION

By: Jack S. Hamlett  
Name: JACK S. HAMLITT  
Title: EXECUTIVE DIRECTOR

Exhibit "A"

**METES AND BOUNDS DESCRIPTION  
OF 183.7 ACRES OF LAND  
IN THE S.B. PENTECOST SURVEY, A-378  
AND THE S.B. PENTECOST SURVEY, A-362  
FORT BEND COUNTY, TEXAS**

All that certain 184.4 acres of land, being a portion of the 158.5 acre tract described in the deed from 2218 Rosenberg, L.P. to Windmeadows Investors, Ltd., recorded under File No. 2005-095386, in the Official Public Records of Fort Bend County, Texas, the 7.2649 acre tract and the 7.2717 acre tract described as Tract II, the 28.06 acre tract described as Tract III, and 35.95 acre tract described as Tract I, in the deed from Rio Mortgage Company to Windmeadows Investors, Ltd., recorded under File No. 2009-00812, in the Official Public Records of Real Property of Fort Bend County, Texas, and the 11.37 acre tract described in the deed from WM Commercial, L.P. to Windmeadows Investors, Ltd., recorded under File No. 2008-108814, in the Official Public Records of Real Property of Fort Bend County, Texas, in the S.B. Pentecost Survey, A-378 and the S.B. Pentecost Survey, A-362, Fort Bend County, Texas, and more particularly described by metes and bounds as follows: (All bearings based on the record bearings of the east line of said 158.5 acre tract, as monumented.)

**BEGINNING** at a 5/8 inch iron rod found for the east corner of said 158.5 acre tract, common to the south corner of the 17.0 acre tract described in the deed from William Arnold Bryan to Betty Bryan Cruikchank, recorded under File No. 2000-079844, in the Official Public Records of Fort Bend County, Texas, common to the most southerly east corner of the herein described tract, in the northwest line of the 335.34 acre tract described in the deed from Amtex Properties to Amtex Properties, Ltd., recorded under File No. 2002-100334, in the Official Public Records of Real Property of Fort Bend County, Texas;

**THENCE** South 45° 00' 00" West - 1533.19 feet, along the southeast line of said 158.5 acre tract, common to the northwest line of said 335.34 acre tract, to a 1/2 inch iron rod found for the east corner of the 7.802 acre tract described in the deed from Colletta Ray McMillian, et al. to Lane Aviation, Inc., recorded under File No. 97-09631, in the Official Public Records of Real Property of Fort Bend County, Texas, common to the south corner of said 158.5 acre tract;

**THENCE** North 45° 03' 23" West - 4823.44 feet, along the northeast line of said 7.802 acre tract, common to the southwest line of said 158.5 acre tract, the southwest line of aforesaid 35.95 acre tract, the southwest line of aforesaid 28.06 acre tract, and the southwest line of aforesaid 11.37 acre tract, to a 5/8 inch iron rod found for the west corner of said 11.37 acre tract, common to the north corner of said 7.802 acre tract, and the west corner of the herein described tract, in the southeast right-of-way line of F.M. 2218 (100' R.O.W.);

**THENCE** North 44° 43' 46" East - 1532.10 feet, along the northwest line of said 11.37 acre tract, common to said southeast right-of-way line, to a 5/8 inch iron rod found for the north corner of

**PAGE 2 – 183.7 ACRES**

said 11.37 acre tract, common to an angle corner of the herein described tract;

**THENCE** South 45° 04' 10" East – 339.74 feet, along the northeast line of said 11.37 acre tract, to an angle corner of the herein described tract, in the northeast line of aforesaid 28.06 acre tract, common to the west corner of aforesaid 7.2649 acre tract, from which a found 1 inch Iron pipe, bears North 38° 47' 40" East – 0.40 feet;

**THENCE** North 44° 33' 55" East - 1083.82 feet, along the southeast line of the 3.879 acre tract described in the deed from Peggy Geiselman Rice, et al. to PEGMO, L.L.C., recorded under File No. 2003-107704, in the Official Public Records of Real Property of Fort Bend County, Texas, the southeast line of RSC SUBDIVISION, according to the plat thereof recorded under Film Code No. 2007-0058, in the Plat Records of Fort Bend County, Texas, and the southeast line of the 1.9442 acre tract described in the deed from Elnora Barcak to SAAF Real Estate, LLC., recorded under File No. 2006-081965, in the Official Public Records of Real Property of Fort Bend County, Texas (at 1053.82 feet passing a 1 inch iron rod found for the east corner of said 1.9442 acre tract, in the southwest right-of-way line of Bryan Road (60' R.O.W.)) to the north corner of the herein described tract;

**THENCE** South 65° 26' 05" East - 357.20 feet, with said Bryan Road, to the east corner of aforesaid 7.2717 acre tract, common to the most northerly east corner of the herein described tract;

**THENCE** South 25° 47' 19" West - 1278.81 feet, along the southeast line of said 7.2717 acre tract, (at 28.20' passing a found 5/8 inch iron rod in the southwest right-of-way line of said Bryan Road) to the south corner of aforesaid 7.2717 acre tract, common to an angle corner of the herein described tract, in the northeast line of aforesaid 28.06 acre tract, from which a found 1 inch iron pipe, bears North 33° 04' 20" East – 0.30 feet;

**THENCE** South 45° 04' 10" East - 3743.63 feet along the northeast line of said 28.06 acre tract, the northeast line of aforesaid 35.95 acre tract, and the northeast line of aforesaid 158.5 acre tract, to the **POINT OF BEGINNING** of the herein described tract and containing 184.4 acres of land.

**SAVE AND EXCEPT - "DIRECTOR'S LOTS 1-5" - 0.7310 ACRE**

All that certain 0.7310 acre of land, known as Fort Bend County Municipal Utility District No. 150 Director's Lots, 1 thru 5, recorded respectively under File Nos. 2006-124336, 2009-110293, 2009-110294, 2010-055401, and 2010-055402, in the Official Public Records of Fort Bend County, Texas, the S.B. Pentecost Survey, A-378, Fort Bend County, Texas, and more particularly described by metes and bounds as follows: (All bearings based on the record bearings of the east line of said 158.5 acre tract, as monumented.)

**PAGE 3 – 183.7 ACRES**

**COMMENCING** at a 1/2 inch iron rod found for the south corner of said 158.5 acre tract, common to the east corner of said 7.802 acre tract;

**THENCE** North 45° 03' 23" West – 215.17 feet, along the northeast line of said 7.802 acre tract, common to the southwest line of said 158.5 acre tract, to the south corner of said Director's Lot 5, common to the **POINT OF BEGINNING** of the herein described tract;

**THENCE** North 45° 03' 23" West – 265.35 feet, to the west corner of said Director's Lot 1;

**THENCE** North 44° 56' 37" East – 120.00 feet, along the northwest line of said Director's Lot 1, to the north corner of aforesaid Director's Lot 1;

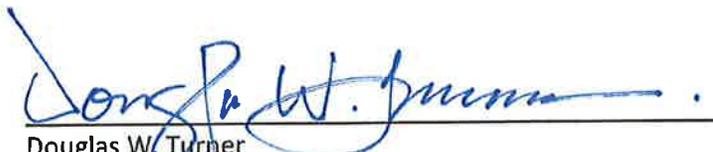
**THENCE** South 45° 03' 23" East – 265.35 feet, to the east corner of said Director's Lot 5;

**THENCE** South 44° 56' 37" West – 120.00 feet, along the southeast line of said Director's Lot 5, to the **POINT OF BEGINNING** of the herein described tract and containing 0.7310 acre of land.

**184.4 Acres (GROSS), SAVE AND EXCEPT 0.7310 ACRE  
FOR A NET AREA OF 183.7 ACRES**

Prepared by:  
IDS Engineering Group  
Job No. 1880-001-00-530

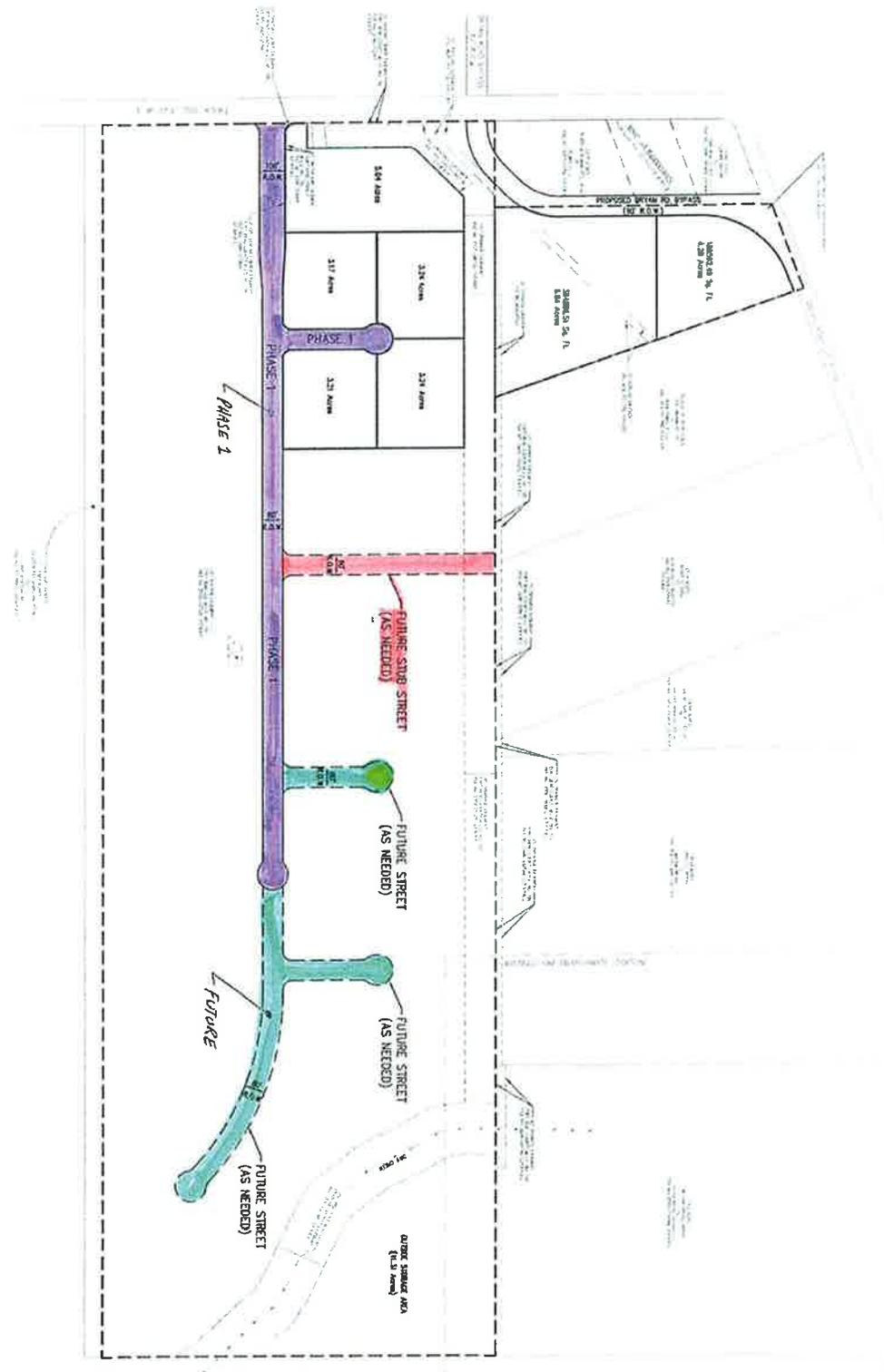
Certified: August 22, 2012  
Issued: October 16, 2012

  
\_\_\_\_\_  
Douglas W. Turner  
Registered Professional Land Surveyor  
Texas Registration Number 3988



THIS LEGAL DESCRIPTION IS ISSUED AS "PART TWO", IN CONJUNCTION WITH THE LAND TITLE SURVEY BY IDS ENGINEERING GROUP LAST CERTIFIED AUGUST 22, 2012. REFERENCE IS HEREBY MADE TO THE SURVEY AS "PART ONE".

**Exhibit "B"**



**PATE & ENGINEERS**  
 FULLER REALTY PARTNERS, L.L.C.  
 ROSSMORE BUSINESS PARK  
 (194.4 ACRES)  
 Scale: 1" = 200'  
 Date: 05/04/12

# PATE ENGINEERS

TBPE F-002726

## ROSENBERG BUSINESS PARK (184.4 ACRES) PHASE 1 INFRASTRUCTURE

### SUMMARY OF CONCEPTUAL CONSTRUCTION COST ESTIMATE FOR WATER DISTRIBUTION, SANITARY SEWER, DRAINAGE AND PAVING FACILITIES

April 23, 2012

	Phase 1 Total Cost	
Water Distribution System	\$181,400	
Sanitary Sewer Collection System	\$170,700	
Sanitary Sewer Lift Station & Force Main	\$550,900	
Storm Sewer System	\$1,036,100	
Stormwater Drainage & Detention (See Note 5)	\$0	
Paving	\$775,500	
SWPPP, Erosion Control, and Pollution Prevention	\$35,000	
<b>SUBTOTAL CONSTRUCTION ITEMS</b>	<b>\$2,749,600</b>	
<b>CONTINGENCIES</b>	<b>10%</b>	<b>\$275,000</b>
<b>ENGINEERING, SURVEYING, TESTING, ETC.</b>	<b>15%</b>	<b>\$453,700</b>
<b>TOTAL ESTIMATED CONSTRUCTION COSTS</b>	<b>\$3,478,300</b>	

**Notes:**

- (1) Cost estimates were prepared on the basis of experience and judgment, utilizing historical bid costs for similar work if available. Actual bids and ultimate construction costs may vary based on market conditions, inflation, and unforeseen field conditions. The final determination of construction cost is made through the bidding process with contractor(s).
- (2) This estimate is based on conceptual land plan dated April 11, 2012, prepared by Pate Engineers, Inc.
- (3) This estimate assumes all excess dirt will be placed onsite with no hauling of excess dirt to offsite location.
- (4) This estimate includes only site grading costs associated with grading of the Right-of-Way
- (5) This estimate does not include any costs for stormwater detention facilities. Detention capacity is assumed to be provided in the existing basin at the site or in a regional detention basin located offsite.
- (6) This estimate assumes a single drainage outfall for the site, based on the current land plan and phasing.
- (7) This estimate does not include any costs related to the Bryan Road Bypass project

# PATE ENGINEERS

TBPE F-002726

## ROSENBERG BUSINESS PARK (184.4 ACRES) PHASE 1 INFRASTRUCTURE

### CONCEPTUAL CONSTRUCTION COST ESTIMATE FOR WATER DISTRIBUTION, SANITARY SEWER, DRAINAGE AND PAVING FACILITIES

April 23, 2012

Item:	Quantity	Unit	Unit Cost	Total
<b><u>Water Distribution System</u></b>				
12-inch PVC Water Line	3,000	LF	\$32	\$96,000
12-inch PVC Water Line, Steel Cased under FM 2218	100	LF	\$125	\$12,500
Fire Hydrant	13	EA	\$3,000	\$39,000
8-inch Gate Valve	1	EA	\$1,100	\$1,100
12-inch Gate Valve	3	EA	\$1,900	\$5,700
12-inch x 12-inch Tapping Sleeve and Valve	1	EA	\$5,000	\$5,000
Appurtenances, Staking, Bonds, etc.	15%			\$22,125
<b><i>Water Distribution Total</i></b>				<b><i>\$181,400</i></b>
<b><u>Sanitary Sewer Collection System</u></b>				
8-Inch PVC Sanitary Sewer, All Depths	1,400	LF	\$27	\$37,800
10-Inch PVC Sanitary Sewer, All Depths	2,100	LF	\$33	\$69,300
Sanitary Sewer Manholes	8	EA	\$2,600	\$20,800
Service Leads	300	LF	\$35	\$10,500
Allowance for Wet Sand	1	LS	\$10,000	\$10,000
Appurtenances, Staking, Bonds, etc.	15%			\$22,260
<b><i>Sanitary Sewer Collection System Total</i></b>				<b><i>\$170,700</i></b>
<b><u>Sanitary Sewer Lift Station &amp; Force Main</u></b>				
Lift Station	1	LS	\$375,000	\$375,000
8-Inch PVC Force Main	2,800	LF	\$30	\$84,000
8-Inch PVC Force Main, Steel Cased under FM 2218	100	LF	\$100	\$10,000
Air Release Manhole	2	EA	\$5,000	\$10,000
Appurtenances, Staking, Bonds, etc.	15%			\$71,850
<b><i>Sanitary Sewer Lift Station &amp; Force Main Total</i></b>				<b><i>\$550,900</i></b>

# PATE ENGINEERS

TBPE F-002726

## ROSENBERG BUSINESS PARK (184.4 ACRES) PHASE 1 INFRASTRUCTURE

### CONCEPTUAL CONSTRUCTION COST ESTIMATE FOR WATER DISTRIBUTION, SANITARY SEWER, DRAINAGE AND PAVING FACILITIES

April 23, 2012

Item:	Quantity	Unit	Unit Cost	Total
<b>Storm Sewer System</b>				
24-Inch RCP Leads	400	LF	\$50	\$20,000
36-Inch RCP Storm Sewer	600	LF	\$85	\$51,000
60-inch RCP Storm Sewer	400	LF	\$205	\$82,000
66-inch RCP Storm Sewer	400	LF	\$235	\$94,000
72-inch RCP Storm Sewer	400	LF	\$250	\$100,000
6-foot x 6-foot RCB Storm Sewer	400	LF	\$260	\$104,000
7-foot x 7-foot RCB Storm Sewer	400	LF	\$270	\$108,000
8-foot x 8-foot RCB Storm Sewer	800	LF	\$280	\$224,000
120-inch Polymer-Coated CMP Storm Sewer	100	LF	\$350	\$35,000
Inlets	18	EA	\$1,500	\$27,000
Storm Sewer Manholes, 24"-42"	2	EA	\$1,500	\$3,000
Storm Sewer Manholes, 48"-72"	3	EA	\$2,100	\$6,300
Storm Sewer Manholes, on RCB	5	EA	\$1,800	\$9,000
Storm Sewer Junction Box	1	EA	\$6,000	\$6,000
Sheet Flow Swale Paving	500	SY	\$45	\$22,500
Slope Paving	140	SY	\$65	\$9,100
Appurtenances, Staking, Bonds, etc.	15%			\$135,135
<b>Storm Sewer System Total</b>				<b>\$1,036,100</b>
<b>Paving</b>				
7-Inch Conc. Pavement, Subgrade, Curbs, etc. (40' B-B)	16,300	SY	\$45	\$733,500
Site Grading	1	LS	\$5,000	\$5,000
Appurtenances, Staking, Bonds, etc.	5%			\$36,925
<b>Paving Total</b>				<b>\$775,500</b>
<b>SWPPP, Erosion Control, and Pollution Prevention</b>				
SWPPP, Erosion Control, and Pollution Prevention	1	LS	\$35,000	\$35,000
<b>SWPPP, Erosion Control, and Pollution Prevention Total</b>				<b>\$35,000</b>

# PATE ENGINEERS

TBPE F-002726

## ROSENBERG BUSINESS PARK (184.4 ACRES) FUTURE INFRASTRUCTURE (AS NEEDED)

### SUMMARY OF CONCEPTUAL CONSTRUCTION COST ESTIMATE FOR WATER DISTRIBUTION, SANITARY SEWER, DRAINAGE AND PAVING FACILITIES

April 23, 2012

	Future Total Cost	
Water Distribution System	\$144,000	
Sanitary Sewer Collection System	\$140,300	
Storm Sewer System	\$371,100	
Stormwater Drainage & Detention (See Note 5)	\$0	
Paving	\$657,300	
SWPPP, Erosion Control, and Pollution Prevention	\$35,000	
<b>SUBTOTAL CONSTRUCTION ITEMS</b>	<b>\$1,347,700</b>	
<b>CONTINGENCIES</b>	<b>10%</b>	<b>\$134,800</b>
<b>ENGINEERING, SURVEYING, TESTING, ETC.</b>	<b>15%</b>	<b>\$222,400</b>
<b>TOTAL ESTIMATED CONSTRUCTION COSTS</b>	<b>\$1,704,900</b>	

**Notes:**

- (1) Cost estimates were prepared on the basis of experience and judgment, utilizing historical bid costs for similar work if available. Actual bids and ultimate construction costs may vary based on market conditions, inflation, and unforeseen field conditions. The final determination of construction cost is made through the bidding process with contractor(s).
- (2) This estimate is based on conceptual land plan dated April 11, 2012, prepared by Pate Engineers, Inc.
- (3) This estimate assumes all excess dirt will be placed onsite with no hauling of excess dirt to offsite location.
- (4) This estimate includes only site grading costs associated with grading of the Right-of-Way
- (5) This estimate does not include any costs for stormwater detention facilities. Detention capacity is assumed to be provided in the existing basin at the site or in a regional detention basin located offsite.
- (6) This estimate assumes a single drainage outfall for the site, based on the current land plan and phasing.
- (7) This estimate does not include any costs related to the Bryan Road Bypass project

# PATE ENGINEERS

TBPE F-002726

## ROSENBERG BUSINESS PARK (184.4 ACRES) FUTURE INFRASTRUCTURE (AS NEEDED)

### CONCEPTUAL CONSTRUCTION COST ESTIMATE FOR WATER DISTRIBUTION, SANITARY SEWER, DRAINAGE AND PAVING FACILITIES

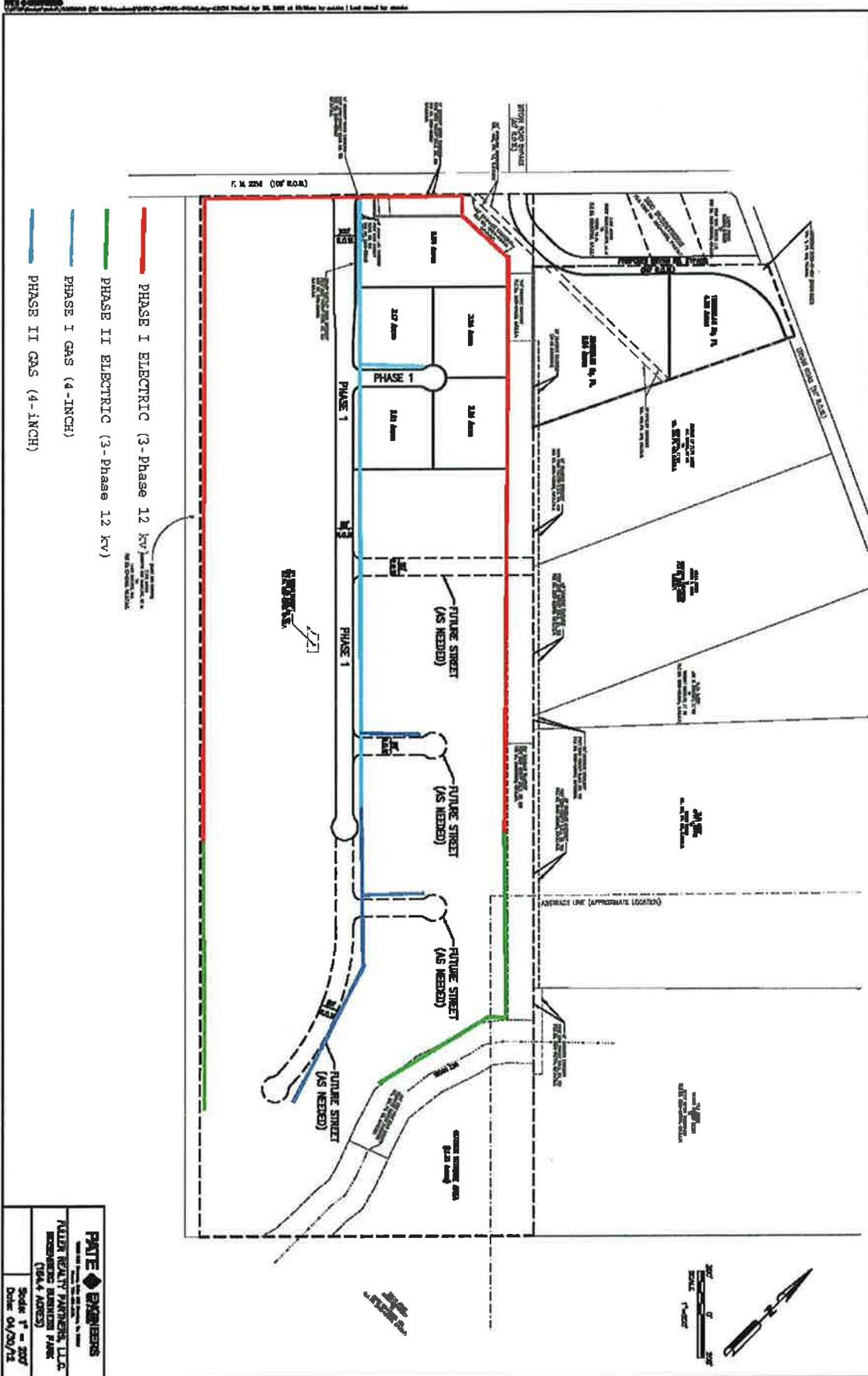
April 23, 2012

Item:	Quantity	Unit	Unit Cost	Total
<b><u>Water Distribution System</u></b>				
8-inch PVC Water Line	2,800	LF	\$22	\$61,600
12-inch PVC Water Line	500	LF	\$32	\$16,000
Fire Hydrant	10	EA	\$3,000	\$30,000
8-inch Gate Valve	3	EA	\$1,100	\$3,300
12-inch Gate Valve	2	EA	\$1,900	\$3,800
12-inch x 8-inch Tapping Sleeve and Valve	3	EA	\$3,500	\$10,500
Appurtenances, Staking, Bonds, etc.	15%			\$18,780
<b><i>Water Distribution Total</i></b>				<b><i>\$144,000</i></b>
<b><u>Sanitary Sewer Collection System</u></b>				
8-Inch PVC Sanitary Sewer, All Depths	2,500	LF	\$27	\$67,500
10-Inch PVC Sanitary Sewer, All Depths	400	LF	\$33	\$13,200
Sanitary Sewer Manholes	8	EA	\$2,600	\$20,800
Service Leads	300	LF	\$35	\$10,500
Allowance for Wet Sand	1	LS	\$10,000	\$10,000
Appurtenances, Staking, Bonds, etc.	15%			\$18,300
<b><i>Sanitary Sewer Collection System Total</i></b>				<b><i>\$140,300</i></b>
<b><u>Storm Sewer System</u></b>				
24-Inch RCP Leads	500	LF	\$50	\$25,000
30-Inch RCP Storm Sewer	1,300	LF	\$60	\$78,000
36-Inch RCP Storm Sewer	400	LF	\$85	\$34,000
42-inch RCP Storm Sewer	500	LF	\$105	\$52,500
54-inch RCP Storm Sewer	500	LF	\$180	\$90,000
Inlets	12	EA	\$1,500	\$18,000
Storm Sewer Manholes, 24"-42"	5	EA	\$1,500	\$7,500
Storm Sewer Manholes, 48"-72"	2	EA	\$2,100	\$4,200
Appurtenances, Staking, Bonds, etc.	20%			\$61,840
<b><i>Storm Sewer System Total</i></b>				<b><i>\$371,100</i></b>
<b><u>Paving</u></b>				
7-Inch Conc. Pavement, Subgrade, Curbs, etc. (40' B-B)	13,800	SY	\$45	\$621,000
Site Grading	1	LS	\$5,000	\$5,000
Appurtenances, Staking, Bonds, etc.	5%			\$31,300
<b><i>Paving Total</i></b>				<b><i>\$657,300</i></b>
<b><u>SWPPP, Erosion Control, and Pollution Prevention</u></b>				
SWPPP, Erosion Control, and Pollution Prevention	1	LS	\$35,000	\$35,000
<b><i>SWPPP, Erosion Control, and Pollution Prevention Total</i></b>				<b><i>\$35,000</i></b>





Exhibit "E"





# CITY COUNCIL COMMUNICATION

May 19, 2015

ITEM #	ITEM TITLE
2	<b>Ordinance 2015-14 - Canvassing the Returns and Declaring the Results of the May 9, 2015 Municipal Election</b>

## ITEM/MOTION

Consideration of and action on Ordinance No. 2015-14, an Ordinance canvassing the returns and declaring the results of the General Municipal Election held on May 9, 2015, within the City for the purpose of electing a Mayor and six (6) Council Members; and containing other provisions relating to the subject.

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

**Annualized Dollars:**

- One-time
- Recurring
- N/A

**Budgeted:**

- Yes  No  N/A

**Source of Funds:** N/A

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

**SUPPORTING DOCUMENTS:**

**MUD #:** N/A

1. Ordinance No. 2015-14
2. Office of Election Administration, Fort Bend County, Texas, Canvass Report – to be distributed at meeting

## APPROVALS

**Submitted by:**

  
Linda Cernosek, TRMC  
City Secretary

**Reviewed by:**

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

**Approved for Submittal to City Council:**

  
Robert Gracia  
City Manager

## EXECUTIVE SUMMARY

As Presiding Officer of the May 9, 2015 Municipal Election, the Mayor is required to hold a canvass of the election ballots, and he and the City Council must declare the election results. The proposed Ordinance would confirm that the election for City officers was held, the proper procedures were followed as mandated by law, the results have been filed with the City Council, the number of votes each candidate received, and declaration of the winning candidates.

A copy of the proposed Ordinance No. 2015-14 is included as a supporting document for City Council's approval. The canvass report from the Office of Elections Administration, Fort Bend County, Texas, was not yet available at print time for this Agenda packet. The canvass report will be distributed at the City Council meeting.

**ORDINANCE NO. 2015-14**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, CANVASSING THE RETURNS AND DECLARING THE RESULTS OF THE GENERAL MUNICIPAL ELECTION HELD ON MAY 9, 2015, WITHIN THE CITY FOR THE PURPOSE OF ELECTING A MAYOR AND SIX (6) COUNCIL MEMBERS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.**

**WHEREAS**, a General Municipal Election was duly held in the City of Rosenberg on May 9, 2015, in accordance with the requirements of law and the Texas Election Code; and,

**WHEREAS**, said Election was duly and legally held in conformity with the election laws of the State of Texas, and the results of said Election have been verified and returned by the proper judges and clerk; and,

**WHEREAS**, it appears that a total of **1,947** votes were cast in said Election.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

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

Section 2. The official canvass of the returns of the General Election held on May 9, 2015, reflects that the following named persons received the number of votes set opposite their names in the respective positions to be filled:

**Mayor (2 year term)**

<b><u>Candidate</u></b>	<b><u>Votes Received</u></b>
Cynthia McConathy	1,079
Dwayne Grigar	822

**Council, At Large, Position One (2 year term)**

<b><u>Candidate</u></b>	<b><u>Votes Received</u></b>
George A. Zepeda, Sr.	554
William T. Benton	1,317

**Council, At Large, Position Two (2 year term)**

<b><u>Candidate</u></b>	<b><u>Votes Received</u></b>
Amanda J. Barta	1,066
Alicia Casias	815

**Council, District 1 (1 year term)**

<b><u>Candidate</u></b>	<b><u>Votes Received</u></b>
Juan Salazar	125
Jimmie J. Pena	152

**Council, District 2 (1 year term)**

<b><u>Candidate</u></b>	<b><u>Votes Received</u></b>
Joe G. Segura	188
Susan Kroll Euton	244

**Council, District 3 (1 year term)**

<b><u>Candidate</u></b>	<b><u>Votes Received</u></b>
Sergio J. Villagomez (withdrew)	86
Lisa M. Wallingford	285 (RUNOFF)
Joe Vera	213 (RUNOFF)

**Council, District 4 (1 year term)**

<b><u>Candidate</u></b>	<b><u>Votes Received</u></b>
Lynn Moses	351
Brent Redding	246

Section 3. The official canvass of the returns of the General Municipal Election held on May 9, 2015, reflects that the following persons were duly elected to the respective positions:

<b>Mayor:</b>	<b>Cynthia McConathy (2 year term)</b>
<b>Council, At Large, Position One:</b>	<b>William T. Benton (2 year term)</b>
<b>Council, At Large, Position Two:</b>	<b>Amanda J. Barta (2 year term)</b>
<b>Council, District 1:</b>	<b>Jimmie J. Pena (1 year term)</b>
<b>Council, District 2:</b>	<b>Susan Kroll Euton (1 year term)</b>
<b>Council, District 4:</b>	<b>Lynn Moses (1 year term)</b>

**PASSED AND APPROVED** by a vote of \_\_\_\_\_ "ayes" in favor and of \_\_\_\_\_ "noes" against on this first and final reading in full compliance with Section 3.10 of the City Charter of the City of Rosenberg, Texas, on this the 19th day of May 2015.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, **City Secretary**

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

**APPROVED AS TO FORM:**

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



# CITY COUNCIL COMMUNICATION

May 19, 2015

ITEM #	ITEM TITLE
3	<b>Ordinance 2015-15 - Canvassing the Returns and Declaring the Results of the May 9, 2015 Special Election</b>

## ITEM/MOTION

Consideration of and action on Ordinance No. 2015-15, an Ordinance canvassing the returns and declaring the results of a Special Election held on May 9, 2015, in the City for the purpose of submitting to the duly qualified resident electors of the City consideration of one (1) Charter proposition, and declaring that said Ordinance shall be effective immediately upon its adoption.

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

- Ordinance No. 2015-15
- Office of Election Administration, Fort Bend County, Texas Canvass Report – to be distributed at meeting

## APPROVALS

**Submitted by:**

  
 Linda Cernosek, TRMC  
 City Secretary

**Reviewed by:**

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

**Approved for Submittal to City Council:**

  
 Robert Gracia  
 City Manager

## EXECUTIVE SUMMARY

As Presiding Officer of the May 9, 2015 Special Election, the Mayor is required to hold a canvass of the election ballots, and he and the City Council must declare the election results. The proposed Ordinance would confirm that the election for proposed Charter proposition was held, the proper procedures were followed as mandated by law, the results have been filed with the City Council, the number of votes each proposition received, and declaration of the winning proposition.

A copy of the proposed Ordinance No. 2015-15 is included as a supporting document for City Council's approval. The canvass report from the Office of Elections Administration, Fort Bend County, Texas, was not yet available at print time for the Agenda packet. The canvass report will be distributed at the meeting.

**ORDINANCE NO. 2015-15**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, CANVASSING THE RETURNS AND DECLARING THE RESULTS OF A SPECIAL ELECTION HELD ON MAY 9, 2015, IN THE CITY OF ROSENBERG, TEXAS, FOR THE PURPOSE OF SUBMITTING TO THE DULY QUALIFIED RESIDENT ELECTORS OF THE CITY CONSIDERATION OF ONE (1) CHARTER PROPOSITION, AND DECLARING THAT SAID ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON ITS ADOPTION.**

**WHEREAS**, heretofore previously, Ordinance No. 2015-07, an Ordinance passed and approved by the City Council of the City of Rosenberg, Texas (the "City"), ordered the Special Election on the 17th day of February 2015; and,

**WHEREAS**, a Special Election was duly held in the City of Rosenberg on Saturday, the 9<sup>th</sup> day of May 2015, in accordance with the requirements of law and the Texas Election Code; and,

**WHEREAS**, one (1) Charter amendment (proposition) was considered by the duly qualified electors of the City of Rosenberg in said Special Election.

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

Section 1. That the City Council of the City of Rosenberg finds and determines that a Special Election was duly held in the City of Rosenberg in accordance with the provisions of the Texas Election Code on Saturday, the 9th day of May 2015, at which election a proposition was considered, to-wit, Proposition No. 1; that notice thereof was given in accordance with law; the due returns of said election have been made by the proper officers and canvassed by the City Council of the City of Rosenberg; that said election in all things complies with the Texas Election Code; and that at said election, the following votes were cast:

**PROPOSITION NO. 1**

The amendment of the City Charter providing for a term limit of three consecutive terms of office.

**VOTES CAST FOR (YES) SAID PROPOSITION: 1509**

**VOTES CAST AGAINST (NO) SAID PROPOSITION: 364**

Section 2. That Proposition No. 1 having received a majority of votes cast for said proposition is hereby declared and ordered to be officially and finally passed and approved.

**PASSED AND APPROVED** by a vote of \_\_\_\_\_"ayes" in favor and of \_\_\_\_\_ "noes" against on this first and final reading in full compliance with Section 3.10 of the City Charter of the City of Rosenberg, Texas, on this the 19th day of May 2015.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, **City Secretary**

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

**APPROVED AS TO FORM:**

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



# CITY COUNCIL COMMUNICATION

May 19, 2015

ITEM #	ITEM TITLE
4	Ordinance No. 2015-16 – Calling the Runoff Election for June 13, 2015

## ITEM/MOTION

Consideration of and action on Ordinance No. 2015-16, an Ordinance calling a Runoff Election on Saturday, June 13, 2015, for the purpose of electing Council Member District 3; providing for early voting and for Notice of the Election; and providing for other matters relating to the Election.

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

**Annualized Dollars:**

- One-time
- Recurring
- N/A

**Budgeted:**

- Yes  No  N/A

**Source of Funds:**

N/A

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

**SUPPORTING DOCUMENTS:**

MUD #: N/A

1. Ordinance No. 2015-16

## APPROVALS

**Submitted by:**

  
Linda Cernosek, TRMC  
City Secretary

**Reviewed by:**

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

**Approved for Submittal to City Council:**

  
Robert Gracia  
City Manager

## EXECUTIVE SUMMARY

The canvass of the May 19, 2015, General Election reflected that for Council District 3, no single candidate received more than fifty percent (50%) of the votes to be elected by a majority vote; therefore, a Runoff Election is required for the candidates who received the highest and second highest number of votes. The City Council must order the Runoff Election no later than the fifth (5<sup>th</sup>) day after the date the final canvass of the main election is completed. This election must be held not earlier than the twentieth (20<sup>th</sup>) or later than the forty-fifth (45<sup>th</sup>) day after the date the final canvass of the main election is completed, per Texas Election Code, Section 2.025.

The Mayor has certified to the City Secretary that for Council District 3, candidates Lisa M. Wallingford and Joe Vera should be placed on the ballot for the Runoff Election. The proposed Ordinance No. 2015-16 calls the Runoff Election for June 13, 2015, to elect one (1) Council Member to the Council District 3 position; to provide for early voting, and for Notice of the Election; and to provide for other matters relating to the election.

## ORDINANCE NO. 2015-16

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, CALLING A RUNOFF ELECTION ON SATURDAY, JUNE 13, 2015, FOR THE PURPOSE OF ELECTING COUNCIL MEMBER DISTRICT 3; PROVIDING FOR EARLY VOTING AND FOR NOTICE OF THE ELECTION; AND PROVIDING FOR OTHER MATTERS RELATING TO THE ELECTION.

**WHEREAS**, under State law, if a candidate does not receive enough votes to be elected in an election requiring a majority vote, a runoff election is required for the candidates who receive the highest and second highest number of votes (Texas Election Code §§ 2.021; 2.023); and,

**WHEREAS**, not later than the fifth day after the date the final canvass of the main election is completed, the city council must order the runoff election (Texas Election Code § 2.024); and,

**WHEREAS**, the runoff election must be held not earlier than the 20<sup>th</sup> or later than the 45<sup>th</sup> day after the date the final canvass of the main election is completed (Texas Election Code § 2.025); and,

**WHEREAS**, the Mayor has certified to the City Secretary that the Council District 3 candidates Lisa M. Wallingford and Joe Vera be placed on the ballot for the runoff election (Texas Election Code § 2.027).

#### **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

Section 1. In accordance with the Constitution and general laws of the State of Texas, a Municipal Runoff Election is hereby called and ordered for Saturday, June 13, 2015, at which election all qualified voters of the City may vote for the purpose of electing the following official of the City:

#### **Council Member, District 3**

Section 2. The candidates for such runoff election shall be Lisa M. Wallingford and Joe Vera, same being the candidates in the general election receiving the highest and the second highest number of votes for Council Member, District 3.

Section 3. The polling place for the voting precincts in the City of Rosenberg for the Election Day voting is the Rosenberg City Hall, Council Chamber, 2110 4th Street, Rosenberg, Texas.

Section 4. The Elections Administrator of Fort Bend County, Texas, shall act as Contracting Officer (the "Contracting Officer") and shall appoint election judges, alternate judges and clerks as

described in the Contract for Election Services between Fort Bend County and the City of Rosenberg, Texas.

Section 5. The Elections Administrator of Fort Bend County, Texas, shall receive applications by mail for a ballot to be voted by mail, until the close of business on June 04, 2015 at 5:00 p.m. Requests for applications should be mailed to: Mr. John Oldham, Fort Bend County Elections Administrator, Fort Bend County Elections Division, 4520 Reading Road, Suite A, Rosenberg, Texas 77471.

Section 6. The dates and times for early voting by personal appearance shall be as follows at the location below:

**June 13, 2015 Run Off Election  
Horario de Votación Temprana  
13 de Junio del 2015, Elección de Desempate  
City of Rosenberg**

**Schedule for:**

*Horario para:* Fort Bend County Rosenberg Annex – 4520 Reading Road, Rosenberg, Texas.

<u>Day(Dia)</u>	<u>Date(Fecha)</u>	<u>Hours(Horas)</u>
Monday – Friday (Lunes-Viernes)	June 1 – June 5, 2015 (Junio 1 – Junio 5, 2015)	8:00 a.m. to 5:00 p.m. (8:00 a.m. to 5:00 p.m.)
Saturday – Sunday (Sábado – Domingo)	June 6 – June 7, 2015 (Junio 6– Junio 7, 2015)	CLOSED (CERRADO)
Monday – Tuesday (Lunes-Martes)	June 8 – June 9, 2015 (Junio 8 – Junio 9, 2015)	7:00 a.m. to 7:00 p.m. (7:00 a.m. to 7:00 p.m.)

Section 7. Such election shall be held in accordance with the Texas Election Code and only resident, qualified voters of the City shall be eligible to vote.

Section 8. Notice of the election shall be given as provided by law.

Section 9. Voting at the election, including early voting, shall be by use of the County electronic voting system that has been duly approved by the Secretary of State.

Section 10. That pursuant to the provisions of Chapter 87 of the Texas Election Code, an Early Voting Ballot Board is created, which Board shall consist of a presiding judge and clerks as appointed by the Contracting Officer. The Early Voting Ballot Board shall perform such functions and shall have such duties as are provided for by the Texas Election Code. In addition, the counting station for all ballots cast in such election shall be operated by the Contracting Officer, and such clerks as shall be necessary to count the ballots and to prepare the election returns in accordance with the provisions of Chapter 65 of the Texas Election Code.

**PASSED AND APPROVED** by a vote of \_\_\_\_\_ “ayes” in favor and \_\_\_\_\_ “no’s” against on this first and final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on the 19th day of May 2015.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, **City Secretary**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Scott M. Tschirhart, **City Attorney**  
**DENTON, NAVARRO ROCHA, BERNAL, HYDE & ZECH, P. C.**



# CITY COUNCIL COMMUNICATION

May 19, 2015

ITEM #	ITEM TITLE
5	<b>Resolution No. R-1962 – Engineering Services Agreement for Bryan Road Project</b>

### ITEM/MOTION

Consideration of and action on Resolution No. R-1962, a Resolution authorizing the City Manager to negotiate and execute, for and on behalf of the City, an Engineering Services Agreement for the Bryan Road Reconstruction Project, by and between the City and Landtech Consultants, Inc., in an amount not to exceed \$978,565.

### FINANCIAL SUMMARY

### ELECTION DISTRICT

**Annualized Dollars:**

- One-time
- Recurring
- N/A

**Budgeted:**

- Yes  No  N/A

**Source of Funds:**

- 419-0000-550-7032
- 420-0000-550-7034
- CP1103

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

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

1. Resolution No. R-1962
2. Project Location Map
3. Resolution No. R-1801 – 06-17-14
4. City Council Meeting Minute Excerpt – 06-17-14
5. City Council Meeting Minute Excerpt – 10-24-12

### APPROVALS

**Submitted by:**

John Maresh  
Assistant City Manager of  
Public Services

**Reviewed by:**

- Exec. Dir. of Administrative Services
- Asst. City Manager of Public Services
- City Attorney *DNRBHZ/rl*
- City Engineer *OK*
- Project Director *mp*

**Approved for Submittal to City Council:**

Robert Gracia  
City Manager

### EXECUTIVE SUMMARY

Both the Bryan Road Reconstruction Project and Spacek Road Phase II Reconstruction Project (Project) are included in the FY2015 Capital Improvement Project (CIP) plan approved by City Council on June 17, 2014. The Project will consist of widening the existing two-lane undivided roadways to a four-lane curb and gutter boulevard on Bryan Road from FM 2218 to approximately 760 feet east of Spacek Road and Spacek Road from Bryan Road to the northern boundary of the Oaks of Rosenberg Subdivision. The Project also includes the realignment of Bryan Road at FM 2218, conversion of the Bryan Road/Spacek Road intersection from a T-intersection into a 4-way intersection for the future extension of Spacek Road, construction of new/replacement bridges over Dry Creek, installation of an underground storm drainage system, water reuse line, sidewalk on one side of the boulevard and replacement of water and sanitary sewer utility lines. The engineering firm will be responsible for all aspects of the Project design including tasks such as the preparation of a topographic survey and property surveys for the additional right-of-way that will have to be acquired, securing TxDOT permits for the realignment at FM 2218 and completion of a traffic signal warrant study if required by TxDOT.

The Project does have adequate funding available for the engineering design phase. The construction phase will be funded from multiple sources, all of which are not secured at this time. The 2007 Fort Bend County Mobility

Bonds (Bonds) allocated \$1.1 million and the 2013 Bonds allocated \$4.7 million for Bryan Road. The 2007 Bonds also allocated \$1.5 million for Spacek Road. The County bond funds are typically capped at 50% of the construction costs, so it is possible the City may not be able to fully utilize all of those funds on the Bryan Road portion of the Project. The City's current CIP has allocated approximately \$2.24 million for Bryan Road and \$656,000 for Spacek Road. A portion of these funds will be used for the engineering services. Therefore, the City will have to secure additional funds in FY2016 to fully fund the construction phase.

On October 12, 2012, City Council selected Landtech Consultants, Inc., to provide engineering services for the Bryan Road Reconstruction Project. Staff has negotiated the Engineering Services Agreement for the Bryan Road and Spacek Road, Phase II Reconstruction Project for your consideration. Said Agreement is attached to Resolution No. R-1962 as Exhibit "A".

Staff is recommending approval of Resolution No. R-1962. The Resolution will authorize the City Manager to negotiate and execute an Engineering Services Agreement for the Bryan Road Reconstruction Project, by and between the City and Landtech Consultants, Inc., in an amount not to exceed \$978,565.

**RESOLUTION NO. R-1962**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, AN ENGINEERING SERVICES AGREEMENT FOR THE BRYAN ROAD RECONSTRUCTION PROJECT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND LANDTECH CONSULTANTS, INC., IN AN AMOUNT NOT TO EXCEED \$978,565.**

\* \* \* \* \*

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

Section 1. The City Manager is hereby authorized to negotiate and execute an Engineering Services Agreement (Agreement) for the Bryan Road Reconstruction Project, by and between the City of Rosenberg, Texas, and Landtech Consultants, Inc., in an amount not to exceed \$978,565. A copy of such Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

**PASSED, APPROVED, AND RESOLVED** this \_\_\_\_ day of \_\_\_\_\_ 2015.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, **City Secretary**

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

**AGREEMENT FOR  
ENGINEERING DESIGN SERVICES  
Bryan Road Reconstruction**

**STATE OF TEXAS §**

**COUNTY OF FORT BEND §**

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

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

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

**SECTION 1  
SCOPE OF AGREEMENT**

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

**SECTION 2  
CHARACTER AND EXTENT OF WORK**

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

**SECTION 3  
TIME FOR PERFORMANCE**

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

SECTION 4  
**COMPLIANCE AND STANDARDS**

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

SECTION 5  
**CHANGES TO THE PROJECT; ADDITIONAL WORK**

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

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

SECTION 6  
**INDEMNIFICATION**

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

SECTION 7  
**FORCE MAJEURE**

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

SECTION 8  
**THE ENGINEER'S COMPENSATION**

For and in consideration of the services rendered by the ENGINEER pursuant to this Agreement, the CITY shall pay the ENGINEER the amount of \$749,761 for "Basic Services" and up to an additional \$228,804 for "Additional Services" which shall be considered as the total maximum fee in the amount not to exceed \$978,565.

The limit of appropriation is addressed in Section 13.

SECTION 9  
**TIME OF PAYMENT**

Payment by the CITY to the ENGINEER shall be made as follows:

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

Invoices shall be submitted to the following address:

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

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

amounts, are subject to Chapter 2251, Texas Government Code.

## SECTION 10 TIME OF COMPLETION

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

## SECTION 11 TERMINATION

This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Engineer and City;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
- (3) By the City, immediately upon notice in writing to the Engineer, as consequence of the failure of Engineer to perform the services contemplated by this Agreement in a timely or satisfactory manner;
- (4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Engineer.
- (5) If the City terminates this Agreement pursuant to Section 10 above, or subsection 11 (2) or (3), above, the Engineer shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Engineer considering the actual costs incurred by the Engineer in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another engineer to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination not the fault of the Engineer, the Engineer shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.

## SECTION 12 ADDRESS AND NOTICES AND COMMUNICATIONS

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

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

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

Landtech Consultants, Inc.  
Attention: Glenn D. Graham, PE  
Vice President  
2525 North Loop West, Suite 300  
Houston, TX 77008-1094  
Telephone:(713) 861-7068  
Email:ggraham@landtech-inc.com

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

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

### SECTION 13 LIMIT OF APPROPRIATION

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

### SECTION 14 SUCCESSORS AND ASSIGNS

The CITY and the ENGINEER bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the CITY nor the ENGINEER shall assign, sublet or transfer its or his interest in this Agreement without the written consent of the other, which consent will not be unreasonably withheld. Subcontractors shall comply with all provisions of this

Agreement and the applicable Scope of Work. The approval or acquiescence of the City in subletting of any work shall not relieve the Engineer of any responsibility for work done by such subcontractor. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto.

#### SECTION 15 **OWNERSHIP OF DOCUMENTS**

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

#### SECTION 16 **ENGINEER'S SEAL**

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

#### SECTION 17 **INDEPENDENT CONTRACTOR**

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

#### SECTION 18 **NON-COLLUSION**

Engineer represents and warrants that Engineer has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Engineer further agrees that Engineer shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Engineer under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Engineer, Engineer shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Engineer under or pursuant to this Agreement.

## SECTION 19 MEDIA

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

## SECTION 20 AUTHORITY OF CITY MANAGER

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

## SECTION 21 INSURANCE REQUIREMENTS

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

### A. POLICY REQUIREMENTS

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

### B. INSURANCE COVERAGE REQUIRED

Worker's Compensation -Statutory and Employers Liability with minimum limits of \$500,000 each accident and \$1,000,000 each employee; Commercial General (public) Liability insurance minimum limits of \$1,000,000 each occurrence including coverage Comprehensive Automobile Combined single limit for liability insurance, including bodily injury and property coverage of \$1,000,000 each accident.

#### C. ADDITIONAL POLICY ENDORSEMENTS

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

#### D. REQUIRED PROVISIONS

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

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

#### E. NOTICES

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

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

#### F. APPROVAL

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

SECTION 22  
**MODIFICATIONS**

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

SECTION 23  
**FISCAL FUNDING**

The CITY's fiscal year is October 1st through September 30th. If this contract extends beyond September 30, 2015, there shall be a fiscal funding out. If, for any reason, funds are not appropriated to continue the contract in the new fiscal year, said contract shall become null and void on the last day of the current appropriation of funds. Contract will then be terminated without penalty of any kind or form to the CITY.

SECTION 24  
**CHOICE OF LAW**

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

SECTION 25  
**SEVERABILITY**

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

SECTION 26  
**CUMULATIVE REMEDIES**

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

SECTION 27  
**WAIVER**

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

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

Authorized by the City of Rosenberg, Texas on the \_\_\_\_ day of \_\_\_\_\_ 2015,

**Landtech Consultants, INC.**

\_\_\_\_\_  
Glenn Graham, PE  
Vice President

\_\_\_\_\_  
Date

**CITY OF ROSENBERG**

\_\_\_\_\_  
Robert Gracia  
City Manager

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Linda Cernosek  
City Secretary



**LANDTECH CONSULTANTS, INC.**  
Civil Engineering • Land Surveying

May 14, 2015

Mr. John Maresh  
Assistant City Manager of Public Services  
City of Rosenberg  
2110 4<sup>th</sup> Street  
PO Box 32  
Rosenberg, Texas 77471-0032

**Re: Bryan Road Reconstruction**

From FM 2218 to approximately 760 feet east of Spacek Road &  
Spacek Road from Bryan Road to South of Herbie Drive

**PROJECT PROPOSAL**

Dear Mr. Maresh:

Landtech Consultants, Inc. is pleased to present this proposal for the PS&E design and construction phase engineering services for the above referenced project.

**1.0 PROJECT INFORMATION**

We understand the project involves the proposed widening from two lane undivided roadway to four lane boulevard of Bryan Road from FM 2218 to approximately 760 feet east of Spacek Road and Spacek Road from Bryan Road to South of Herbie Drive. The project includes realigned extension of Bryan Road at west end to intersect FM 2218 and align with existing Bryan Road west of FM 2218. The intersection at Bryan Road and Spacek Road is to be converted from a T-intersection into a four-legged intersection with northbound approach added. The project also includes replacement of existing single bridge over Dry Creek Bayou with twin bridges. The alignment length for Bryan Road is approximately 6,800 feet and for Spacek Road is approximately 1,600 feet. The total length of the project is approximately 8,400 feet.

**2.0 SCOPE OF SERVICES**

Project Management. This involves the coordination and meeting with the City staff on a regular basis to review project progress; development and maintaining project schedules, budgets, and monthly progress reports and invoices.

Topographic Survey. Establish horizontal and vertical survey control including TBMs every 1000 feet; survey 100 foot cross sections plus grade breaks; survey full width of existing or proposed ROW plus additional 25 feet both sides; include all visible structures, features, and utilities. Survey Dry Creek for

300 feet centered on Bryan Road at 50-ft intervals. 2D and 3D mapping. Utility mapping in plan and profile. Survey Control Map. Includes Right of Entry. Includes Utility Research.

ROW Survey and Mapping. An estimate of 40 parcels to be surveyed and mapped. Deliverables will be strip map showing all parcels along proposed route and metes and bounds description and parcel plat for each parcel taking.

Geotechnical Engineering Services. This includes field program, laboratory testing, and engineering report. Field program consists of drilling 6 test borings to depths of 25 feet and 12 borings to depths of 10 feet within pavement of the proposed roadway alignment and two test borings to depths of 80 feet within the area of the proposed bridge reconstruction. The total drilled footage is planned to be 430 feet.

Roadway and Drainage Design. Roadway design includes proposed horizontal and vertical alignments, typical sections, plan and profile sheets, pavement markings and signing, traffic control plans, storm water pollution prevention plans, cross-sections, details and standards, and quantities and cost estimates. Drainage design includes preparing overall drainage watershed map and calculations for the drainage area divides, preparing detailed drainage area maps, detailed hydraulic calculations, storm sewer design and plan and profile data.

Bridge Design. This includes reviewing soil boring data and geotechnical analysis report, preparing bridge layout plans, calculations and detail design of the twin bridges.

TxDOT Permits. Prepare, submit, and obtain TxDOT permit for FM 2218 connection. Prepare signal warrant study for traffic signal at FM 2218 intersection if determined to be necessary.

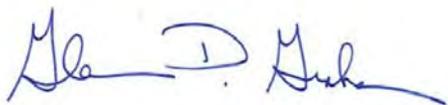
Bid Phase and Construction Phase Services. Assist the City in bidding process. Analysis and review bids, and provide recommendation of award letter. Review and approve submittals, shop drawings, RFIs. Prepare Change Order Requests. Prepare pay estimate. Conduct field visits, and attend monthly construction progress meetings.

### **3.0 COMPENSATION**

For the scope of services outlined in this letter, we submit a cost not to exceed \$978,565.00. Attachments A1, B, & C provide a scope of services, a breakdown of man-hours and budget requirements for individual tasks associated with the project, and project schedule. Attachment D contains the scope and fee proposals for the sub-consultants.

We appreciate the opportunity to submit this proposal for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glenn D. Graham".

Glenn Graham, P.E.  
Vice President

Attachments

A1 – Scope of Services

B – Fee Proposal

C – Project Schedule

D1 – Geotechnical Engineering Proposal

D2 – Urban Forestry Services Proposal

## Attachment A-1

### SCOPE OF SERVICES TO BE PROVIDED BY THE ENGINEER

#### Scope of Services to Perform Design and Prepare Plans, Specifications, and Estimate, and Provide Construction Phase Engineering Services

#### Bryan Road - From FM 2218 to Approximately 760 feet east of Spacek Road Spacek Road – from Bryan Road to south of Herbie Drive

##### General Scope of Project

The work to be performed by the Engineer under this contract consists of providing preliminary and final design services for the project, coordination with City and County, and preparation of construction documents containing plans, specifications and details pertaining to paving, grading, drainage, storm sewers, bridge design, sidewalk, storm water pollution prevention, pavement markings, demolition, utility relocations, sequence of construction and traffic control plans, construction cost estimate and time of construction estimate. Supplementary topographic survey and ROW documents will be provided by the Engineer.

The project involves the proposed widening from two lane undivided roadway to four lane boulevard of Bryan Road from FM 2218 to approximately 760 feet east of Spacek Road and Spacek Road from Bryan Road to South of Herbie Drive. The project includes realigned extension of Bryan Road at west end to intersect FM 2218 and align with existing Bryan Road west of FM 2218. The intersection at Bryan Road and Spacek Road is to be converted from a T-intersection into a four-legged intersection with northbound approach added. The project also includes replacement of existing single bridge over Dry Creek Bayou with twin bridges. The alignment length for Bryan Road is approximately 6,800 feet and for Spacek Road is approximately 1,600 feet. The total length is approximately 8,400 feet.

##### Types of Service

The engineering services to be performed by the Engineer are those services which are necessary for the preparation of designs, construction plans, specifications, and other items of work related thereto, all of which are hereinafter referred to as the "Design Phase Services." Engineering services to be performed also include Construction Phase Engineering Services. These services will include, but are not limited to the general type and classifications listed in the following:

##### I. Project Management

- A. Develop and Maintain
  - 1. Project Schedules
  - 2. Budgets
  - 3. Monthly Progress Reports and Invoices
- B. Meet with the City staff on a regular basis to review project progress.
- C. Coordinate and review the work produced to comply with the City and County policies and procedures, and to deliver that work on time. Comply with all applicable laws, ordinances and codes of the State and local governments.
- D. Field Reconnaissance. Travel to the project to inspect features along and adjacent to the roadway to assist in making decisions concerning roadway design, drainage design, sequence of construction, and ROW acquisition.

- E. Develop and implement Quality Control and Quality Assurance program.
- F. Coordinate identification of utility conflicts and monitor relocation status. Utilities include but are not limited to AT&T, Comcast, CPE Gas, CPE Power, Petroleum Pipeline Companies and Phonoscope.

## II. Roadway Design

- A. Prepare existing typical section of Bryan Road and Spacek Road.
- B. Prepare proposed typical sections of Bryan Road and Spacek Road that show lane configuration and pavement structure. Typical sections should include sidewalk on one side of the road.
- C. Prepare proposed typical sections of intersecting streets that show lane configuration and pavement structure at:
  - Oakland Valley Drive
  - Spacek Road (intersection at Bryan Road converted from T-intersection to four-legged intersection)
  - Reconnection to existing Bryan Road
  - Walnut Glen Lane
  - Pisces Street
  - FM 2218
- D. Prepare horizontal alignment data sheets for Bryan Road and Spacek Road and intersecting streets, including bench marks (1" = 50').
- E. Prepare project site map (1" = 100').
- F. Prepare roadway plan and profile sheets for Bryan Road and Spacek Road (1" = 20' H, 1" = 2' V) showing horizontal and vertical geometric designs, which will be based on the approved schematic. Refine the horizontal and vertical alignments as needed for the detailed PS&E phase design.
- G. Prepare intersection layout and grading sheets to include top of pavement elevations of the following intersecting streets (to go beyond ROW as needed to determine high/low points):
  - Oakland Valley Drive
  - Spacek Road (converted from T-intersection to four-legged intersection)
  - Reconnection to existing Bryan Road
  - Walnut Glen Lane
  - Pisces Street
  - FM 2218
- H. Prepare a table showing the quantities, station, radii, width, and grade for driveway reconstruction. Identify locations and limits for temporary construction easements
- I. Identify and modify as necessary standard roadway detail sheets for conformance with City of Rosenberg standard details.
- J. Show existing ROW with bearings and distances on plan and profile sheets for reference to insure all proposed improvements are fully located within ROW.

## III. Drainage Design

- A. Prepare overall drainage watershed map and calculations for the drainage area divides. All calculations and drainage area will be in conformance with the approved Hydrology/Hydraulic Study included as part of the project scope.
- B. Prepare detailed drainage area maps necessary to perform the design of storm sewer system and bridge.
- C. Prepare detailed hydraulic calculations necessary to perform the design of the storm sewer system and bridge.
- D. Include storm sewer plan and profile data on intersection plan and profile sheets, which will include plan and profile information for storm sewers, manholes, inlets, and existing utilities.
- E. Include intersection storm sewer plan and profile data on intersection plan and profile sheets, which will include plan and profile information for storm sewers, manholes, inlets and existing utilities.
- F. Prepare storm sewer lateral sheets (1" = 20').
- G. Prepare outfall typical sections (1" = 5').
- H. Prepare outfall plan and profile sheet (1" = 20') for storm drain and Dry Creek Crossing.
- I. Identify and modify as necessary standard drainage details sheets.
- J. Survey beyond ROW, as needed to determine high/low points for drainage.
- K. Prepare detailed Storm Design modeling and calculations necessary to determine the Bridge Hydraulic Capacity.
- L. Submit Bridge Hydraulic Calculations to Fort Bend County Drainage District for approval.

**IV. Bridge Design**

- A. Review soil boring data and geotechnical analysis report. Prepare Bridge Layout plans and elevations for both Eastbound Bridge and Westbound Bridge over Dry Creek (1" = 20'). All bridge layouts shall contain geotechnical boring locations.
- B. Prepare bridge typical section sheets (1" = 5'). Typical sections should include sidewalks.
- C. Prepare Final Design Calculations and Details. All bridge structures shall be designed for HL 93 loading.
- D. Prepare bridge framing plan (1"=20').
- E. Prepare bridge quantity sheets.

**V. Utilities**

- A. Include existing water line/sanitary sewer data on roadway plan and profile sheets.
- B. Using pipe sizing provided by the City design proposed water line and include on roadway plan and profile sheets.

- C. Using pipe sizing provided by the City design proposed sanitary sewer and include on roadway plan and profile sheets.
- D. Using pipe sizing provided by the City design proposed reuse water transmission/distribution line and include on roadway plan and profile sheets.
- E. Include proposed water line lines on P&P sheets (1" = 20').
- F. Include proposed sanitary sewer lines on P&P sheets (1" = 20').
- G. Include proposed reuse water lines on P&P sheets (1" = 20").
- H. Prepare water line detail sheets in conformance with City of Rosenberg standard details.
- I. Prepare sanitary sewer line detail sheets in conformance with the City of Rosenberg standard details.
- J. Prepare reuse water transmission/distribution line detail sheets in conformance with the City of Rosenberg standard details.
- K. Include Landscape Irrigation sleeves to connect grass medians.

**VI. Signing, Pavement Marking, and Signalization**

- A. Prepare proposed layouts showing signs and pavement markings (1" = 20' – double bank). Design of permanent signing and markings will be in accordance with the *2014 Texas Manual of Uniform Traffic Control Devices (MUTCD) for Streets and Highways* (latest revision).
- B. Prepare summary of small signs. Summary will include sign number, text, size, post, anchor and mounting information.
- C. Identify and modify as necessary standard and modified pavement marking detail sheets.
- D. Perform traffic signal warrant study for the intersection of FM 2218 at Bryan Road if determined to be necessary.

**VII. Traffic Control**

- A. Prepare advanced warning sign layout (1" = 1000').
- B. Prepare sequence of construction with general traffic control plan layout.
- C. Prepare traffic control plan for each stage (1" = 1000' double bank).
- D. Prepare construction sequencing and traffic control plan layouts for each stage (1" = 40').
- E. Prepare detour layout sheet to detour through traffic around construction.
- F. Identify and modify as necessary standard construction and barricade detail sheets.

**VIII. Miscellaneous Roadway**

- A. Prepare Title Sheet for project.

- B. Prepare Index Sheet. Index Sheet will include a listing of the required standards.
- C. Prepare General Notes sheet and include notes applicable for grading, paving, drainage, and utilities.
- D. Prepare storm water pollution prevention plans (SW3P) (1" = 40' double bank) showing temporary control measures during each phase of construction. Prepare NOI and SWMP forms/sheets.
- E. Include demolition plans for SW3P sheets, showing existing structures and pavement to be removed along the project corridor, which will require removal or relocation due to the proposed improvements.
- F. Earthwork Cross-Sections (1" = 40' H, 1" = 10' V) showing existing and proposed roadway sections will be prepared every 100' for the proposed roadway. The cross-sections will be generated from vertical topographic information
- G. Compute and tabulate construction quantities and prepare estimate. Estimates will be prepared and submitted with each review submittal at 30%, 60%, 90% and 100%.
- H. Develop a tree protection plan, if determined to be necessary.
- I. Provide for the preparation of a geotechnical analysis report of the proposed roadway and bridges.
- J. Coordinate and attend up to 3 public meetings for the project. One during the planning stage, one prior to commencement of construction and one as determined by the City.
- K. Attend City Council meetings and provide update reports at appropriate project design milestones to be determined by City Staff and the Engineer.
- L. Prepare and submit required construction documents to Texas Department of Licensing Regulation (TDLR) for review of sidewalk design.
- M. Prepare and submit permit documents to secure permit from Fort Bend County Drainage District.
- N. Prepare and submit traffic signal warrant study for intersection of FM 2218 at Bryan Road if determined to be necessary.

#### **IX. Bid Phase**

- A. Prepare construction bid package to include Notice to Bidders, Instruction and Information to Bidders, Bid Proposal Form, Standard Form of Agreement, Bond Forms, General Conditions, Special Conditions if any, Technical Specifications and Construction Plans, in accordance with City of Rosenberg standards.
- B. Provide electronic copy of all documents to local plan review rooms (4 minimum) and post on CivCast.
- C. Attend and coordinate pre-bid meeting.

- D. Answer Contractor questions and prepare any required addenda.
- E. Attend bid opening, tabulate, analyze and review bids for completeness and accuracy.
- F. Provide review on Contractors references.
- G. Provide bid tabulation and recommendation of award letter.

## **X. Construction Phase**

- A. Provide fifteen (15) hard copy sets and three (3) pdf CDs for construction drawings, project manual, and posted addenda for construction. (City to confirm # of ½ size and full size sets prior to printing.
- B. Conduct pre-construction conference and prepare copy of report/minutes.
- C. Attend and coordinate monthly construction progress meetings and prepare copies of reports/minutes. Post to FTP site if requested by City.
- D. Review and approve submittals, shop drawings, RFIs, prepare Change Order Requests (including revisions to plan sheets and specifications), and make recommendations to City.
- E. Make periodic visits to the site, no less than every thirty (30) days during the construction period, to observe the progress and quality of the work, and to determine in general if the work is proceeding in accordance with the Contract Documents.
- F. Reestablish horizontal and vertical controls as needed at commencement of Construction Phase.
- G. Prepare pay estimates based on quantities reviewed by City inspection staff, for signatures by contractor and engineer. Forward one executed copy to City for payment.
- H. Conduct interim, final, and one-year warranty inspections. Prepare master punch list developed in conjunction with City Staff.
- I. Request final TDLR inspection. Accompany TDLR compliance consultants on sidewalk inspection.
- J. Revise contract drawings to show the work as actually constructed (based on contractor mark ups), and furnish the City with three (3) sets of “record drawings” plans, two (2) pdf CDs, and GIS format.
- K. Prepare and provide final acceptance letter from engineer of record.

## ATTACHMENT B

### Fee Proposal Bryan Road Reconstruction Project

Client: City of Rosenberg

Project: Bryan Road

Description: Bryan Road from FM 2218 to 760 ft East of Spacek Rd and 1,600 ft of Spacek Road. Total LF of improved pavement is approx. 8,400 ft

Date: 05/14/2015

#### Basic Services

Classification	Hours	Billing Rate	Labor
Principal	8	\$262.50	\$2,100
Sr. Project Manager	281	\$225.00	\$63,225
Senior Engineer	996	\$191.58	\$190,814
Professional Engineer	874	\$165.00	\$144,210
Project Engineer	650	\$143.00	\$92,950
Engineering Technician	958	\$105.00	\$100,590
CADD Technician	1,472	\$85.00	\$125,120
Drafter	464	\$62.00	\$28,768
Clerical	32	\$62.00	\$1,984
Total Labor=	5,735		\$749,761

#### Additional Services and Direct Expenses

Topographic Surveying & ROW Mapping (Landtech)=	\$177,560
Geotechnical Investigations (Sub Terracon)=	\$25,800
Geotechnical Coordination=	\$2,580
Traffic Signal Warrant Study at FM 2218 and Bryan Road Realignment Intersection (if needed, Landtech)=	\$8,649
Tree Protection Plan (if needed, Sub Burditt)=	\$5,650
Tree Protection Coordination (if needed)=	\$565
Reproduction=	\$8,000
Total Additional Expenses=	\$228,804

**Total Fee (not to exceed) \$978,565**



May 8, 2015

Landtech Consultants, Inc.  
2525 North Loop West, Suite 300  
Houston, Texas 77008

Attn: Mr. Wade Zhao, Ph.D., P.E.  
Project Manager  
P: 713.861.7068  
E: [wzhao@LandTech-Inc.com](mailto:wzhao@LandTech-Inc.com)

Re: Cost Estimate for Geotechnical Engineering Services  
Bryan Road Improvements  
Bryan Road Between FM 2218 and Spacek Road  
Rosenberg, Texas  
Terracon Document No. P92130819.Revision3

Dear Mr. Zhao:

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

## 1.0 PROJECT INFORMATION

This project involves the proposed extension and widening from two lanes to four lanes of approximately 1.3 miles of Bryan Road between FM 2218 and approximately 760 feet east of Spacek Road and approximately 0.3 miles of Spacek Road between Bryan Road and approximately 550 feet north of Walter Glen Lane in Rosenberg, Texas. Additionally, we understand that a storm sewer is planned to be constructed along the alignment of the roadway improvements at a maximum depth of 20 feet below existing grade using open cut excavation methods. Furthermore, we understand that a bridge is planned to be reconstructed at the Dry Creek crossing. We anticipate this project is not required to be in accordance with TxDOT specifications.

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

## **2.0 SCOPE OF SERVICES**

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

Field Program. As requested, the field program is planned to consist of drilling 6 test borings to depths of 25 feet and 12 borings to depths of 10 feet within the proposed roadway alignment and two test borings to depths of 80 feet within the area of the proposed bridge reconstruction over Dry Creek. The total drilled footage is planned to be 430 feet.

The borings will be located in the field using hand measuring equipment and estimating angles and distances from existing site features. Therefore, the layout of the borings will be approximate. Boring depths will be measured from existing grade.

Based on the information provided to us and available aerial photographs, we understand that a portion the site for the proposed project is heavily wooded. Clearing of pathways will likely be required to access two boring locations. We assume that there are no conflicts with regard to clearing of pathways. If there are any restricted areas, trees, facilities, etc. on-site that are sensitive to clearing, Terracon should be notified in advance so that we can avoid these areas during our clearing activities.

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

We plan to use truck-mounted drilling equipment to access the boring locations to be drilled along the existing roadway. Once pathways have been cleared for the borings to be drilled along the alignment of the proposed roadway extension that crosses wooded areas, we plan to use all-terrain vehicle (ATV) mounted drilling equipment. This scope of services assumes that the site can be accessed during normal business hours and does not include services associated with surveying of boring locations, location of underground utilities, or use of equipment for soft or wet surface conditions. If such activities are required, Terracon should be notified so that we may adjust our scope of services and estimated fees, if necessary. We assume the client will provide right-of-entry, if necessary, to drill within private properties and along the existing roadway.

Terracon will notify Texas811, a free utility locating service, to help locate public utilities within dedicated public easements. If underground utilities are known to exist within the site, Terracon should be notified so that we may review utility plans to help avoid the existing lines. Terracon

## Cost Estimate for Geotechnical Engineering Services

Bryan Road Improvements ■ Rosenberg, Texas

May 8, 2015 ■ Terracon Document No. P92130819.Revision3

Page 3



cannot be responsible for damage to unmarked and/or unlocated utilities for which we are unaware or that are improperly located.

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

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

- Site and subgrade preparation;
- Groundwater control and excavations;
- Storm sewer construction considerations;
- Uplift and lateral earth pressures;
- Bridge foundation design and construction; and
- Pavement design guidelines.

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

### 3.0 COMPENSATION

For the scope of services outlined in this letter, which includes a total drilling footage of 430 feet, we estimate a cost of \$25,800. A breakdown of the estimated cost is presented below. This cost assumes the entire scope of services described in this letter is authorized at the same time. The cost of our services will not exceed this amount without approval from the client.

## Cost Estimate for Geotechnical Engineering Services

Bryan Road Improvements ■ Rosenberg, Texas

May 8, 2015 ■ Terracon Document No. P92130819.Revision3

Page 4



<b>Task</b>	<b>Cost Estimate</b>
Field Services	\$17,900
Laboratory Testing	\$3,400
Engineering Report	\$4,500
<b>Total Estimate</b>	<b>\$25,800</b>

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

### 4.0 AUTHORIZATION

Environmental Considerations. In an effort to reduce the potential for cross-contamination of subsurface media and exposure of site workers to contaminants that might be present at the site, Terracon requests that prior to mobilization to the site, the client inform Terracon of known or suspected environmental conditions at or adjacent to the site. If adverse environmental conditions are present, additional expenses may be necessary to properly protect site workers and abandon borings that penetrate affected groundwater-bearing units. If an environmental assessment has not been conducted at the site,

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

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

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

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



Brett A. Pope, P.E.  
Project Manager



FOR: Todd E. Swoboda, P.E.  
Office Manager

Attachments: Agreement for Services

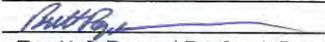
## AGREEMENT FOR SERVICES

This **AGREEMENT** is between Landtech Consultants, Inc. ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Bryan Road Improvements project ("Project"), as described in the Project Information section of Consultant's Proposal dated 5/8/2015 ("Proposal") unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

- 1. Scope of Services.** The scope of Consultant's services is described in the Scope of Services section of the Proposal ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. When Consultant subcontracts to other individuals or companies, then consultant will collect from Client on the Subcontractors' behalf. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the Proposal unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
- 5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties. For a limited time period not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with Client, however Client understands that such reliance will not be granted until those parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee.
- 6. LIMITATION OF LIABILITY.** CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$50,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.
- 7. Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of services on the project.
- 8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. **EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occ / \$2,000,000 agg); (iii) automobile liability insurance (\$1,000,000 B.I. and P.D. combined single

limit); and (iv) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

- 10. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.**
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client agrees to the level or amount of testing performed and the associated risk. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by services not performed due to a failure to request or schedule Consultant's services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Material unless specifically provided in the Services, and that Client is responsible for directing such disposition. In the event that test samples obtained during the performance of Services (i) contain substances hazardous to health, safety, or the environment, or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay Consultant the fair market value of this equipment and reasonable disposal costs. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site. Accordingly, Client waives any claim against Consultant and agrees to indemnify and save Consultant, its agents, employees, and related companies harmless from any claim, liability or defense cost, including attorney and expert fees, for injury or loss sustained by any party from such exposures allegedly arising out of Consultant's non-negligent performance of services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site.

Consultant: **Terracon Consultants, Inc.**  
 By:  Date: **5/8/2015**  
 Name/Title: **Brett A Pope / Project Geotechnical Engineer**  
 Address: **11555 Clay Road Suite 100**  
**Houston, TX 77043**  
 Phone: **(713) 690-8989** Fax: **(713) 690-8787**  
 Email: **bapope@terracon.com**

Client: **Landtech Consultants, Inc.**  
 By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name/Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

Reference Number: P92130819

May 13, 2015

SENT VIA EMAIL: [wzhao@LandTech-Inc.com](mailto:wzhao@LandTech-Inc.com)

Wade Zhao, PhD., P.E.  
Landtech Consultants, Inc.  
2525 North Loop West, Suite 300  
Houston, TX. 77008

RE: **Proposal for Urban Forestry Services**  
Bryan Road Reconstruction; Tree Protection Plan, Rosenberg Texas

Dear Dr. Zhao:

Per your request, please accept this letter as our proposal for Urban Forestry Consulting Services to provide Landtech Consultants, Inc. (Client) with Tree Protection Plan services. *Burditt* will provide all consulting, labor, and materials necessary to complete items detailed in our proposal. *Burditt* is prepared to provide Urban Forestry Services in a manner that is best suited to the needs of client and the City of Rosenberg requirements.

We understand the project involves the proposed widening from two lane undivided roadway to four lane boulevard of Bryan Road from FM 2218 to approximately 760 feet east of Spacek Road and Spacek Road from Bryan Road to South of Herbie Drive. The project includes realigned extension of Bryan Road at west end to intersect FM 2218 and align with existing Bryan Road west of FM 2218. The intersection at Bryan Road and Spacek Road is to be converted from a T-intersection into a four-legged intersection with northbound approach added. The project also includes replacement of existing single bridge over Dry Creek Bayou with twin bridges. The alignment length for Bryan Road is approximately 6,800 feet and for Spacek Road is approximately 1,600 feet. The total length of the project is approximately 8,400 feet.

If this meets with your approval, we are prepared to proceed upon completion of a mutually approved professional services agreement, written Notice to Proceed, and receipt of engineering documents. Certificates of Insurance will be sent to you directly from our Insurance Company. Thank you for the opportunity to provide this proposal. We look forward to continuing our services to you on this project.

Mail:  
P. O. Box 1424                      310 Longmire  
Conroe, Texas 77305              Conroe, Texas 77304

[www.burditt.com](http://www.burditt.com)

Houston 281-447-2111  
Conroe 936-756-3041  
Fax 936-539-3240

**FEES**

Fees for providing services, as described in attached Exhibit A and B and subject to the Terms and Conditions attached hereto, are:

**Tree Protection Plan ..... \$ 5,650.00**

Respectfully,



Wanda Collins  
Vice President

WC/psh

Enclosures: 3 – Exhibit A – Project Limits  
Exhibit B – Scope of Services  
Terms and Conditions

**APPROVED:**

**Urban Forestry**

Tree Protection Plan .....\$5,650.00

**LANDTECH CONSULTANTS, INC.**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

## **Exhibit A – Project Limits**

*We understand the project involves the proposed widening from two lane undivided roadway to four lane boulevard of Bryan Road from FM 2218 to approximately 760 feet east of Spacek Road and Spacek Road from Bryan Road to South of Herbie Drive. The project includes realigned extension of Bryan Road at west end to intersect FM 2218 and align with existing Bryan Road west of FM 2218. The intersection at Bryan Road and Spacek Road is to be converted from a T-intersection into a four-legged intersection with northbound approach added. The project also includes replacement of existing single bridge over Dry Creek Bayou with twin bridges. The alignment length for Bryan Road is approximately 6,800 feet and for Spacek Road is approximately 1,600 feet. The total length of the project is approximately 8,400 feet.*

## **Exhibit B – Scope of Services**

**Urban Forestry Scope of Services** – *Burditt* will provide the following necessary services to ensure both a successful project as well as the greatest opportunity for survival of the subject trees:

### **A. Site Assessment**

1. Tree Inventory– Evaluate the project site to assess general tree conditions, potential tree preservation problems, tree species and sizes determination of accurate tree canopies, bore pit placement, required equipment clearances and potential transplant trees.

### **B. Tree Protection Plan Development (CAD Format)**

1. Design Review – Review of construction documents to determine any areas of conflict between the design and tree preservation. Review will include the following potential impacts:
  - i. Demolition and reconstruction locations
  - ii. New construction locations
  - iii. Open pit or trench locations
  - iv. Construction document specifications
  - v. Methods of installation
  - vi. Excavation areas behind existing curbs
2. *Burditt* will develop a Tree Preservation Plan for inclusion in the construction documents. These CAD drawn documents will include all specification and detail drawings, an estimated budget for treatments, and a schedule of the treatments. Plans and specifications will be provided at 60%, 90% and 100% submittal levels.

**Deliverables: Tree Protection Plan (CAD Format)**  
**Tree Protection Treatments and Budget**  
**Tree Protection Specifications and Details**

### **C. Finalization of Documents**

*Burditt* will provide one (1) meeting with client to finalize and sign off on the preservation documents.

## **TERMS AND CONDITIONS**

### **ADDITIONAL SERVICES**

Any changes to the base data, or additional meetings or services relating to this matter will be provided with prior authorization from Client. Additional meetings and services beyond those provided in "Scope of Services" will require a request and approval for these services in writing and will be billed at Burditt's standard hourly rates.

### **PAYMENT OF FEES**

Invoices shall be forwarded monthly or upon completion of the various Project phases. Invoices are due and payable, in Conroe, Texas, within 7 days of Client's receipt of payment by City of Rosenberg.

### **REIMBURSABLE EXPENSES**

Necessary reimbursable expenses are included in the lump sum fee.

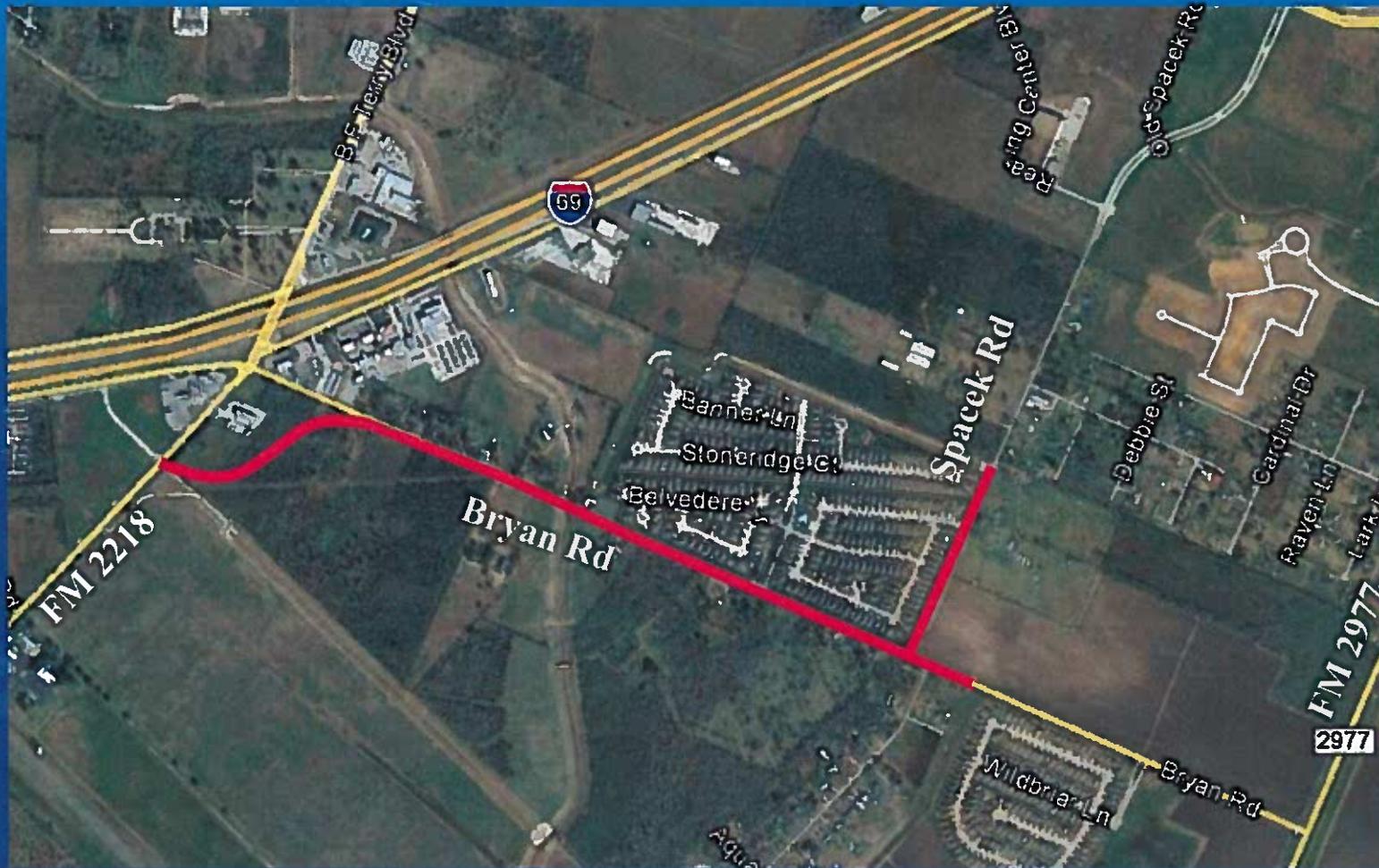
### **TO BE PROVIDED BY CLIENT**

1. Engineering base site plans (Autodesk DWG format)
2. Topo survey

### **INDEMNIFICATION**

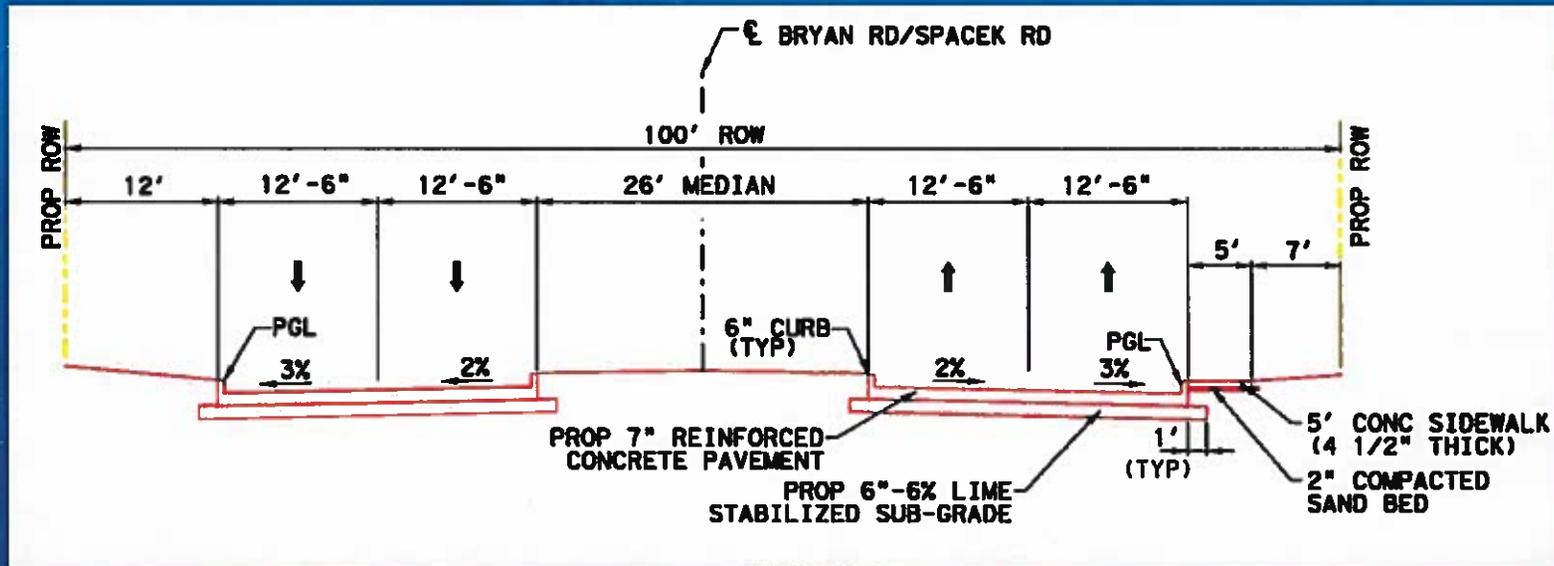
Client shall indemnify and hold harmless Burditt Consultants, LLC and all of its personnel from and against any and all claims, damages, losses and expenses (including reasonable attorney fees) arising out of or from the performance of services, provided that any such claims, damage, loss or expense is caused in whole or in part by the negligent act or omission and/or strict liability of the Client, anyone directly or indirectly employed by the Client (except Burditt) or anyone for whose acts any of them may be liable.

# PROJECT LOCATION



- FM 2218
- Bryan Road
- FM 2977

# TYPICAL SECTION



**RESOLUTION NO. R-1801**

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

\* \* \* \* \*

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

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

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

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

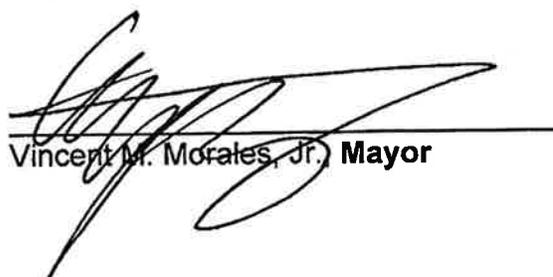
Section 1. City Council hereby approves the FY2015 Capital Improvements Plan for the City of Rosenberg which is attached hereto as Exhibit "A" and made a part hereof for all purposes.

**PASSED, APPROVED, AND RESOLVED** this 17<sup>th</sup> day of June 2014.

**ATTEST:**

  
Linda Cernosek, **City Secretary**

**APPROVED:**

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



## FY2015 CAPITAL IMPROVEMENT PROJECTS

### GENERAL/STREETS AND DRAINAGE PROJECTS

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

### WATER AND WASTEWATER PROJECTS

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

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

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

7. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1804, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, BUDGET AMENDMENT 14-15 IN THE AMOUNT OF \$15,079.00 FOR THE ADDITION OF AN INFORMATION TECHNOLOGY SPECIALIST.**

**Executive Summary:** In the previous Agenda item, Executive Director of Information Services, Angela Fritz, requested the addition of an Information Technology Specialist. If City Council authorizes the position, a Budget Amendment is needed to fund this position for the remainder of FY2014.

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

Budget Amendment 14-15 is included as Exhibit "A" to Resolution No. R-1804. In order to add this position in FY2014, staff recommends approval of Resolution No. R-1804 as presented.

**Key discussion points:**

- Joyce Vasut read the Executive Summary regarding Resolution No. R-1804.

**Action:** Councilor Grigar made a motion, seconded by Councilor Euton to approve Resolution No. R-1804, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 14-15 in the amount of \$15,079.00 for the addition of an Information Technology Specialist. The motion carried by a unanimous vote of those present.

8. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1801, A RESOLUTION APPROVING CAPITAL IMPROVEMENT PLAN PRIORITIES FOR FY2015.**

**Executive Summary:** During the FY2015 Budget process, staff reviewed the current Capital Improvement Plan (CIP) and is recommending that a total of twenty-five (25) projects be addressed in FY2015. Exhibit "A" to Resolution No. R-1801 lists the twenty-five (25) individual projects. The Planning Commission met on May 21, 2014, and also recommended approval of the projects proposed for the FY2015 CIP. These projects were also presented to City Council at the May 27, 2014 City Council Workshop.

Existing or proposed funding is available for all or a portion of twenty (20) of the Capital Projects that will be addressed in FY2015. There are two (2) projects for which funding needs have not been determined. The three (3) remaining Capital Projects are not completely funded. Funding for these projects may include the issuance of Certificates of Obligation or other funding sources. Funding for these projects will be addressed during FY2015.

Approval of Resolution No. R-1801 will establish the City's FY2015 Capital Improvements Plan and allow for the projects to be properly included in the proposed FY2015 Budget. Staff recommends approval of Resolution No. R-1801.

**Key discussion points:**

- Joyce Vasut gave an overview of the item regarding Resolution No. R-1801 and the City's FY 2015 Capital Improvements Plan.

**Questions:**

- Councilor Benton expressed concern with #11 – Traffic signal Reading Road at Town Center Boulevard and asked how urgent it is.
- John Maresh explained that is tied to a development agreement. The developer that is working on the project from Fire Station 2 will trigger when they have to put up fifty percent (50%) of the money for that traffic signal. There is a timeframe by which the City has to come up with the remaining fifty percent (50%). They are getting close to the triggering point.
- Councilor Grigar asked if the items are the twenty-five in each of the two areas that surfaced to the top.
- Joyce Vasut explained staff looked at the 2014 list and any projects that were not complete or not substantially complete by September 30<sup>th</sup> were left on the list. Staff then looked at 2015 in the five year plan and pulled those out that staff felt needed to rise to the top. A lot of these are projects that are started that we need to complete that we have County mobility funding. We need to move on that project so we do not lose the funding. #11 that was referred to is based on the development agreement

that we think will need action during FY2015. The developer will pay one-half and we have requested the other half from the RDC.

- Items 15, 16, and 17 are all GRP projects that are part of the Subsidence mandate we need to get done. At this time, all except three are funded in one way or another with available funds. The other three, which is Airport Road and Bryan Road that was discussed at the Workshop meeting. Airport Road and Bryan Road will need additional funding and we discussed certificates of obligation and Council felt they could agree to that. Staff will bring back those options along with the budget. The majority of these will be funded in the fiscal year.

**Action:** Councilor Grigar made a motion, seconded by Councilor Euton to approve Resolution No. R-1801, a Resolution approving Capital Improvement Plan Priorities for FY2015. The motion carried by a unanimous vote of those present.

9. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1802, A RESOLUTION APPROVING CAPITAL IMPROVEMENT PLAN PRIORITIES FOR FY2016 TO FY2019.**

**Executive Summary:** Pursuant to the City Charter which requires a five-year Capital Improvement Plan (CIP), staff has prepared a proposed schedule for Capital Projects in FY2016, FY2017, FY2018 and FY2019. The development of the CIP for FY2016 to FY2019 is based on several factors, including but not limited to:

- Deadline for compliance with the Fort Bend Subsidence District mandate,
- Availability of Fort Bend County Mobility Funds,
- Possibility of a City Bond Election in 2015,
- Results of the City Facilities Assessment, and
- Needs Identified in the Five Year Strategic Plan.

The proposed FY2016-FY2019 CIP was attached to Resolution No. R-1802 as Exhibit "A" and will allow City Council to approve the proposed FY2016-FY2019 Capital Improvement Plan for the City of Rosenberg. Staff recommends approval of Resolution No. R-1802.

**Key discussion points:**

- Joyce Vasut gave an overview of the item regarding Resolution No. R-1802. Exhibit A to Resolution No. R-1802 was included in the agenda packet.

**Questions:**

- Councilor Euton – FY2017 Streets and Drainage – 3<sup>rd</sup> Street at Intersection with Avenue E – what does that entail?
- John Maresh stated this is a carryover project that has been on the CIP for several years and has never been ranked high enough to be funded. It is at the intersection of 3<sup>rd</sup> Street where there is a rise in the street and a hump as you approach Avenue N. It would be to cutout that section of 3<sup>rd</sup> Street and reconstruct it.
- FY2018 – Brooks Avenue what is the plan?
- This is a long range future project that was placed on the list recently. That would be an improvement project to reconstruct that street with curb and gutter.
- FY 2019 – Klauke Road extension – is that still on our radar?
- It is long range for 2019. There have been discussions about addressing some connectivity and other ways.
- FY2018 – Brazos River Trail Project – Councilor Euton stated she objected to that project because some of the residents would be displaced in the north area of town.
- Darren McCarthy, Director of Parks and Recreation stated it has nothing to do with residential displacement. It is a paddle trail utilizing the resources of the Brazos River. Fort Bend Green at the direction of Judge Hebert just completed a three year master plan study of that. Councilor McConathy was part of the group in the Rosenberg segment. That will be coming to Council in a future Workshop after the budget is complete. Mayor Morales, Councilor McConathy and Robert Gracia have copies of that master plan. Staff plans to distribute to Council when it is brought to Council in a Workshop.
- Councilor Grigar – FY2018 – Streets and Drainage – Avenue C Extension; Avenue D Street Paving and Drainage – is that in connection to get an east/west connection because of railroad crossing closures?
- John Maresh stated that is specifically the crossing and east to Rawson Road and would connect there. That is the only access in and out over that grade crossing that would provide that connectivity.
- Avenue D – this is long range. We have been focusing with our CDBG funds to try to get the infrastructure of the sanitary sewer replaced. The application we have before the County now is for waterline replacements. We hope to complete that in the next 3 to 5 years and then we could do some street and sidewalk improvements.

# CITY OF ROSENBERG

## SPECIAL CITY COUNCIL MEETING MINUTES

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

### PRESENT

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

### STAFF PRESENT

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

### CALL TO ORDER

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

### AGENDA

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

#### ***Key discussion points:***

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

**Action:** No action taken.

#### **RECESS SPECIAL SESSION, RECONVENE SESSION.**

Council recessed the Special Session at 8:55 p.m. and reconvened the Session at 9:01 p.m.

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

#### ***Key discussion points:***

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

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

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

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

**3. ADJOURNMENT.**

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

  
\_\_\_\_\_  
Tiffany Ybarra, Administrative Assistant



# CITY COUNCIL COMMUNICATION

## May 19, 2015

ITEM #	ITEM TITLE
6	<b>Resolution No. R-1920 - Awarding Bid No. 2015-06 for Construction of FM 2977 Elevated Water Storage Tank</b>

### ITEM/MOTION

Consideration of and action on Resolution No. R-1920, a Resolution awarding Bid No. 2015-06 for construction of FM 2977 Elevated Water Storage Tank; and, authorizing the City Manager to negotiate and execute, for and on behalf of the City, appropriate documents and/or agreements regarding same.

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

**Annualized Dollars:**

- One-time
- Recurring
- N/A

**Budgeted:**

- Yes  No  N/A

**Source of Funds:**

523-0000-600-7031 (CP1504)

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

**SUPPORTING DOCUMENTS:**

1. Bid Summary Form
2. Proposal
3. Resolution No. R-1920
4. Kalkomey Correspondence – 05-08-15
5. Location Map
6. GRP Project Schedule
7. Resolution No. R-1801 – 06-17-14
8. City Council Meeting Minute Excerpt – 06-17-14

<b>MUD #:</b> N/A
-------------------

### APPROVALS

**Submitted by:**

John Maresh  
Assistant City Manager of  
Public Services

**Reviewed by:**

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

**Approved for Submittal to City Council:**

Robert Gracia  
City Manager

### EXECUTIVE SUMMARY

Bids were received on Wednesday, May 6, 2015, for Bid No. 2015-06 for construction of the FM 2977 (Minonite Road) Elevated Water Tank (Project). A total of three (3) bids were opened and tabulated as indicated on the attached bid summary form.

Staff recommends Bid No. 2015-06 be awarded to Landmark Structures, for the base bid in the amount of \$3,187,000.00 for construction of a 1.5 million gallon composite elevated tank. The composite tank structure will consist of concrete support walls with a welded steel tank. The attached correspondence from Charles Kalkomey, Project Engineer, recommends same. Should the bid be awarded as recommended, the proposal from Landmark Structures will be attached and serve as Exhibit "A" to Resolution No. R-1920. The contract time is 510 calendar days.

This Project is included in the FY2015 Capital Improvement Plan approved by City Council on June 17, 2014. The Project is also a part of the City's approved Groundwater Reduction Plan and will be an essential element necessary to receive, store and blend the alternative surface water source into the distribution system. The elevated tank will also help maintain water pressure and storage capacity necessary to comply with the Texas Commission on Environmental Quality (TCEQ) water system design criteria. The tank will be constructed on City-owned property located immediately behind Fire Station No. 3.

Staff recommends approval of Resolution No. R-1920 which will award Bid No. 2015-06 and provide authorization for the City Manager to negotiate and execute all required documents necessary to facilitate the Agreement.

**BASE BID SUMMARY**  
**Bid No. 2015-06**  
**FM 2977 Elevated Water Storage Tank**

<b>BID NO.</b>	<b>COMPANY</b>	<b>TOTAL BASE BID</b>	<b>CALENDAR DAYS</b>
1.	<b>Landmark Structures 1665 Harmon Road Fort Worth, Texas 76177</b>	<b>\$3,187,000.00</b>	<b>510</b>
2.	<b>Chicago Bridge &amp; Iron 2103 Research Forest Drive The Woodlands, Texas 77380</b>	<b>\$3,570,000.00</b>	<b>510</b>
3.	<b>Phoenix Fabricators &amp; Erectors, Inc. 182 South County Road 900 East Avon, Indiana 46123</b>	<b>\$3,581,400.00</b>	<b>510</b>

**\*Base Bid Summary includes only Base Bids, please see Bid Tabulation attached to Charles Kalkomey correspondence for Alternate Bids.**

BID FORM

Bidding Firm: Landmark Structures I, L.P.  
 Address: 1665 Harmon Road  
 City, State, Zip: Fort Worth, Texas 76177  
 Date: May 6, 2015  
 Telephone: (817) 439-8888

Owner: City of Rosenberg  
 Address: P.O. Box 32  
 2110 Fourth Street  
 Rosenberg, Texas 77471

Bid Location: City of Rosenberg, City Secretary's Office  
 2110 4<sup>th</sup> Street  
 Rosenberg, Texas 77471  
 Attention: Mr. John Maresh  
 Telephone: (832) 595-3310

**BID FOR CONSTRUCTION OF  
 1.5 MG ELEVATED STORAGE TANK No. 5**

Gentlemen:

Having received and examined the bidding documents and having examined the project site, I the undersigned bidder, submit this bid. The bidding documents I have examined include the project specifications and drawings for the subject project and addenda listed as follows:

1. Specifications and Contract Documents dated 04/17/2015.
2. Drawings including 19 sheets dated 04/17/2015.
3. Addenda as acknowledged below:

<u>No. 1</u>	<u>Date 04/30/2015</u>	<u>No. 2</u>	<u>Date 05/04/2015</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

In submitting this bid, I agree:

- (1) To hold my bid open until 60 calendar days following the bid date.
- (2) To accept the provisions of the instructions to bidders regarding the disposition of the bid security.
- (3) To enter into a contract with the Owner by executing an agreement on the basis of this bid and to furnish a performance bond, a payment bond, and a certificate of insurance as required by the condition of the contract, all within 14 days of contract award.

**ADDENDUM NO. 1**

- (4) To accomplish the work in accord with the contract documents by furnishing all materials, equipment, and labor for proper construction and completion of the work.
- (5) To substantially complete the work within 480 calendar days from date of Notice to Proceed and final completion of work within 510 calendar days from date of the Notice to Proceed.

The following items shall include all of the labor, equipment, and materials necessary for construction of the elevated storage tank as shown on the plans and described in the specifications for the project.

Item No.	Description of Item with Unit Bid Price in Written Words	Unit	Approx. Quantity	Unit Price	Total Amount
1.	Construct one (1) 1,500,000-gallon composite elevated storage tank including foundation and any structural items; plant piping; electrical equipment and controls, including service; protective coatings; site drainage; hydromulch; site restoration; concrete driveway; temporary construction driveway; and all additional items needed for a complete and operational system, complete as specified and as shown in the drawings  @ <u>Three million one hundred seventeen thousand dollars, zero cents</u> Per Lump Sum	L.S.	1	\$3,117,000.00	\$3,117,000.00
2.	Provide trench safety system for piping, drainage facilities, and foundation construction, complete as specified  @ <u>Two thousand dollars, zero cents</u> Per Lump Sum	L.S.	1	\$ 2,000.00	\$ 2,000.00
3.	Installation, maintenance, and record keeping of a Storm Water Pollution Prevention Plan, complete as specified  @ <u>One thousand five hundred dollars, zero cents</u> Per Lump Sum	L.S.	1	\$ 1,500.00	\$ 1,500.00
4.	Furnish, install, and maintain traffic control devices and appurtenances for elevated storage tank construction in accordance with Texas Manual on Uniform Traffic Control Devices (Latest Edition), including flagmen, if directed by the Engineer or Owner, complete as specified  @ <u>One thousand five hundred dollars zero cents</u> Per Lump Sum	L.S.	1	\$ 1,500.00	\$ 1,500.00
5.	Provide and Install Grid Powered Floating Circulation Equipment inside the elevated storage tank, including accessories and electrical items, complete as specified  @ <u>Fifty thousand one hundred eighty-eight dollars, zero cents</u> Per Lump Sum	L.S.	1	\$ 50,188.00	\$ 50,188.00

**ADDENDUM NO. 1**

Item No.	Description of Item with Unit Bid Price in Written Words	Unit	Approx. Quantity	Unit Price	Total Amount
6.	Allowance for Data Flow Systems to provide PLC Panel, modules, and accessories as described in proposal dated 4/13/2015 (See attached Quote No. 150413-2-HRH3 from Data Flow Systems).				
	Per Lump Sum	L.S.	1	\$14,812.00	\$14,812.00
<b>TOTAL BASE BID</b>				<b>\$ 3,187,000.00</b>	

**ALTERNATE BID ITEMS**

A1. Add or deduct to Base Bid Item No. 1 for construction of one (1) 1,250,000-gallon composite elevated storage tank including foundation and any structural items, complete as specified

@ Three hundred thousand dollars,

zero cents Amount in Words \$ (300,000.00)  
~~Add or~~ (Deduct)

A2. Add or deduct to Base Bid Item No. 1 for shop blasting and shop priming the interior and exterior of tank bowl, complete as specified

@ Thirty thousand dollars,

zero cents Amount in Words \$ (30,000.00)  
~~Add or~~ (Deduct)

A3. Add or deduct to Alternate Bid Item A1 for shop blasting and shop priming the interior and exterior of tank bowl, complete as specified

@ Twenty thousand dollars,

zero cents Amount in Words \$ (20,000.00)  
~~Add or~~ (Deduct)

**TOTAL BASE BID PLUS ALTERNATE No. A1** \$ 2,887,000.00

**TOTAL BASE BID PLUS ALTERNATE No. A2** \$ 3,157,000.00

**TOTAL BASE BID PLUS ALTERNATE Nos. A1 & A3** \$ 2,867,000.00

THE NUMBER OF CALENDAR DAYS TO SUBSTANTIALLY COMPLETE THE WORK IF ALTERNATE NO. A2 IS AWARDED 465 CALENDAR DAYS.

THE NUMBER OF CALENDAR DAYS TO SUBSTANTIALLY COMPLETE THE WORK IF ALTERNATE NOS. A1 & A3 IS AWARDED 465 CALENDAR DAYS.

**ADDENDUM NO. 1**

Item No.	Description of Item with Unit Bid Price in Written Words	Unit	Approx. Quantity	Unit Price	Total Amount
6.	Allowance for Data Flow Systems to provide PLC Panel, modules, and accessories as described in proposal dated 4/13/2015 (See attached Quote No. 150413-2-HRH3 from Data Flow Systems).				
	_____	L.S.	1	\$14,812.00	\$14,812.00
	Per Lump Sum				
<b>TOTAL BASE BID</b>				\$	_____

**ALTERNATE BID ITEMS**

A1. Add or deduct to Base Bid Item No. 1 for construction of one (1) 1,250,000-gallon composite elevated storage tank including foundation and any structural items, complete as specified

@ \_\_\_\_\_

\_\_\_\_\_ Amount in Words

\$ \_\_\_\_\_ Add or (Deduct)

A2. Add or deduct to Base Bid Item No. 1 for shop blasting and shop priming the interior and exterior of tank bowl, complete as specified

@ \_\_\_\_\_

\_\_\_\_\_ Amount in Words

\$ \_\_\_\_\_ Add or (Deduct)

A3. Add or deduct to Alternate Bid Item A1 for shop blasting and shop priming the interior and exterior of tank bowl, complete as specified

@ \_\_\_\_\_

\_\_\_\_\_ Amount in Words

\$ \_\_\_\_\_ Add or (Deduct)

**TOTAL BASE BID PLUS ALTERNATE No. A1** \$ \_\_\_\_\_

**TOTAL BASE BID PLUS ALTERNATE No. A2** \$ \_\_\_\_\_

**TOTAL BASE BID PLUS ALTERNATE Nos. A1 & A3** \$ \_\_\_\_\_

THE NUMBER OF CALENDAR DAYS TO SUBSTANTIALLY COMPLETE THE WORK IF ALTERNATE NO. A2 IS AWARDED \_\_\_\_\_ CALENDAR DAYS.

THE NUMBER OF CALENDAR DAYS TO SUBSTANTIALLY COMPLETE THE WORK IF ALTERNATE NOS. A1 & A3 IS AWARDED \_\_\_\_\_ CALENDAR DAYS.

**ADDENDUM NO. 1**

**MAJOR EQUIPMENT MANUFACTURERS**

**Base Bid.** Only the acceptable manufacturers listed shall be used in determining the BASE BID. The Contractor must include the name of a manufacturer from this list for each item in the tabulation or circle the manufacturer. Failure to do so may disqualify the Bid.

**Substitutions.** Any manufacturer not used in the base bid tabulation, including those not listed as an acceptable manufacturer, may be listed as a substitution. The cost of any modifications required to use the substituted equipment shall be included in the equipment cost on the page PB-5.

The Bidder understands that after a contract is awarded, the Owner may select items of any other manufacturer listed in the following tabulation. If awarded the contract, the Bidder agrees to furnish and install any substitutions listed for the price indicated. The BASE BID will then be adjusted accordingly.

If a contract includes items of equipment of any manufacturer which may require any modification or deviation from the plans, the undersigned agrees to prepare and submit detailed drawings to the Engineer showing all modifications in structures, piping, electrical and mechanical work, required to adapt the plans to the equipment selected. The Bidder further understands that the Engineer will review said detailed drawings of modifications and either approve them or indicate thereon changes necessary to comply with the project requirements. Detailed drawings which are not approved will be revised then resubmitted to the engineer. The prices listed in the following tabulation are "installed" prices and take into consideration any of the construction changes that may be required.

**LIST OF ACCEPTABLE BASE BID EQUIPMENT MANUFACTURERS**

<u>EQUIPMENT ITEM</u>	<u>MANUFACTURER</u>
ELEVATED STORAGE TANK (Composite)	Chicago Bridge & Iron <u>Landmark Structures, Inc.</u> Phoenix
GRID POWERED FLOATING CIRCULATION EQUIPMENT	<u>SolarBee</u>
AUTOMATIC CONTROLS	<u>Prime Controls</u> Mercer Controls Ace Controls BL Technology Welmer Manufacturing Industrial Control Manufacturing Industrial Electrical Services
PROTECTIVE COATING AND PAINTING	Carboline <u>Sherwin Williams</u> Tnemec

LIST OF BASE BID EQUIPMENT MANUFACTURERS  
AND SUBSTITUTIONS

<u>Equipment Item</u>	<u>Base Bid</u>	<u>Substitutions</u>	<u>Add (Deduct) from Base Bid</u>
	<u>Manufacturer</u>	<u>Manufacturer</u>	
ELEVATED STORAGE TANK (Composite)	Landmark Structures		
GRID POWERED FLOATING CIRCULATION EQUIPMENT	Solar Bee		
AUTOMATIC CONTROLS	Prime Controls		
PROTECTIVE COATING AND PAINTING	Sherwin Williams		

LIST OF SUBCONTRACTORS

MECHANICAL	Dwn Forces
ELECTRICAL	Alelco, Inc.
PAINTER	Dwn Forces

As bidder I acknowledge that:

1. The Owner reserves the right to reject any and all bids.
2. The award of the Contract may be made on the BASE BID only or any combination of the BASE BID, ALTERNATE BIDS and selected SUBSTITUTIONS.
3. The contract price may be increased or decreased, or the contract time reduced or extended to compensate for changes in the work as ordered by the Engineer and provided for in the Conditions of the Contract.

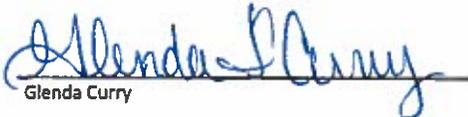
Furthermore, as bidder I certify that:

1. I am the only person or party associated with or having an interest in this bid and it is made without collusion involving any other person, partnership or corporation.
2. The amounts given in this bid have been carefully checked and are submitted as correct and final. Attached is a cashier's check, certified check or a letter of credit from an FDIC insured bank or a bid bond in the amount of five percent (5%) of the maximum total bid amount.

Bidder's  
Signature:

  
Mike Lamoh,  
Vice President of Landmark Structures Management Inc.,  
General Partner

Title:

Witness:   
Glenda Curry

SEAL

**LANDMARK STRUCTURES MANAGEMENT INC.**

**ACTION BY SOLE DIRECTOR WITHOUT A MEETING**

The undersigned, being the sole director of LANDMARK STRUCTURES MANAGEMENT INC., does hereby take the following action by written consent, pursuant to the provisions of section 141 (f) of the General Corporation Law of the State of Delaware.

Adoption of the following Resolutions:

RESOLVED:

- 1) that Michael Lamon, being Vice President of Landmark Structures Management Inc., general partner of Landmark Structures I, L.P., is hereby authorized as follows:
  - a) to submit bids and/or to negotiate contracts and/or to enter into contracts for and on behalf of Landmark Structures I, L.P., and
  - b) to execute and deliver such documents and to take such other actions as he considers necessary or advisable to give effect to this resolution and the transactions provided for herein.
- 2) that any bid submitted and/or any contract negotiated and/or any contract entered into by Michael Lamon in his capacity as Vice President of Landmark Structures Management Inc. as witnessed by his signature thereto is hereby recognized as binding upon Landmark Structures I, L.P., and Landmark Structures Management Inc.

Dated as of the 16<sup>th</sup> day of January, 2001.

  
Douglas Lamon



# Fidelity and Deposit Company of Maryland

Home Office: P.O. Box 1227, Baltimore, MD 21203-1227

## BID BOND

KNOW ALL MEN BY THESE PRESENTS:

Bond Number: 7199966

That we, **Landmark Structures I, L.P. 1665 Harmon Road, Fort Worth, TX 76177**, as Principal, (hereinafter called the "Principal"), and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, of Baltimore, Maryland, a corporation duly organized under the laws of the State of Maryland, as Surety, (hereinafter called the "Surety"), are held and firmly bound unto **City of Rosenberg, TX** as Obligee, (hereinafter called the "Obligee"), in the sum **Five Percent (5%) of the greatest amount of the bid** the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for **1.5 MG Elevated Storage Tank No. 5**

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a contract with the Obligee in accordance with the terms of such bid and give such bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 1<sup>st</sup> day of MAY A.D. 20 15.

Landmark Structures I, L.P.  
BY: Landmark Structures Management Inc., General Partner

By  (SEAL)

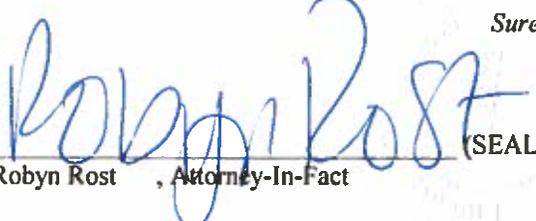
Chris Lamon, Vice President

  
\_\_\_\_\_

Witness Glenda Curry  
Title Sr. Sales Coordinator

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Surety

By  (SEAL)  
Robyn Rost, Attorney-In-Fact

  
\_\_\_\_\_

Karla Luongo, Witness-To-Surety

C325-150M,

Approved by The American Institute of Architects,  
A.I.A. Document No. A-310 February 1970 Edition.

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **GEOFFREY DELISIO, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Robyn ROST, Anthony GRIECO, Raymond GIL and William F. MARONEY, all of Madison, New Jersey, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 15th day of April, A.D. 2014.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*Gregory E. Murray*

By: \_\_\_\_\_

*Assistant Secretary  
Gregory E. Murray*

*Geoffrey Delisio*

*Vice President  
Geoffrey Delisio*

State of Maryland  
City of Baltimore

On this 15th day of April, A.D. 2014, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **GEOFFREY DELISIO, Vice President, and GREGORY E. MURRAY, Assistant Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

*Constance A. Dunn*



**Constance A. Dunn, Notary Public  
My Commission Expires: July 14, 2015**

**EXTRACT FROM BY-LAWS OF THE COMPANIES**

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

**CERTIFICATE**

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 15<sup>th</sup> day of May, 2015.



*Thomas O. McClellan*

Thomas O. McClellan, Vice President

**FIDELITY AND DEPOSIT COMPANY**

OF MARYLAND

600 Red Brook Blvd., Suite 600, Owings Mills, MD 21117

**Statement of Financial Condition**

As Of December 31, 2014

**ASSETS**

Bonds.....	\$ 142,720,308
Stocks .....	21,816,223
Cash and Short Term Investments.....	2,077,768
Reinsurance Recoverable .....	10,375,303
Other Accounts Receivable .....	46,778,921
<b>TOTAL ADMITTED ASSETS.....</b>	<b>\$ 223,768,523</b>

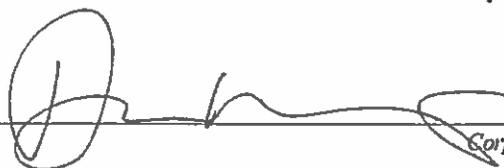
**LIABILITIES, SURPLUS AND OTHER FUNDS**

Reserve for Taxes and Expenses .....	\$ 1,321,332
Ceded Reinsurance Premiums Payable.....	49,965,411
Securities Lending Collateral Liability.....	4,009,064
<b>TOTAL LIABILITIES .....</b>	<b>\$ 55,295,807</b>
Capital Stock, Paid Up.....	\$ 5,000,000
Surplus.....	163,472,717
Surplus as regards Policyholders.....	168,472,716
<b>TOTAL.....</b>	<b>\$ 223,768,523</b>

Securities carried at \$58,191,540 in the above statement are deposited with various states as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of market quotations for all bonds and stocks owned, the Company's total admitted assets at December 31, 2014 would be \$227,936,393 and surplus as regards policyholders \$172,640,586.

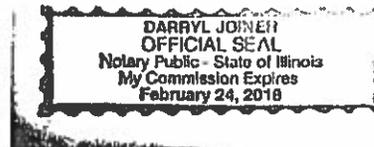
I, DENNIS F. KERRIGAN, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2014.

  
 \_\_\_\_\_  
 Corporate Secretary

State of Illinois }  
 City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 15th day of March, 2015.

  
 \_\_\_\_\_  
 Notary Public





**Landmark Structures**

1665 Harmon Road  
Fort Worth, Texas 76177  
817.439.8888 Phone  
817.439.9001 Fax  
[www.teamlandmark.com](http://www.teamlandmark.com)

**Name and Address of All Partners:**

**General Partner: Landmark Structures Management Inc.**

**Limited Partners: The Landmark Trust  
EL Family Trust  
CL Family Trust  
ML Family Trust**

**Address for all:  
1665 Harmon Road  
Fort Worth, Texas 76177**

Landmark Structures I, LP  
 BID TO CITY OF ROSENBERG, TEXAS  
 ADDENDUM NO. TWO - SECTION 15248 - ITEM 2.2a. EXPERIENCE  
 PARTIAL LIST OF COMPOSITE ELEVATED WATER STORAGE PROJECTS - 1.5 MG TANKS DEMONSTRATING TEN YEARS EXPERIENCE

Location	Year	Size	Owner	Consulting Engineer	Completion
Grand Prairie, Texas	2003	1.5 MG	City of Grand Prairie 620 Small Hill Street Grand Prairie, TX 75053 972/237-8410	Tank Industry Consultants 7740 West New York Street Indianapolis, IN 46214 317/271-3100 Michael L. Doolittle	6/04
Celina, Ohio	2003	1.5 MG	City of Celina 712 South Sugar Street Celina, OH 45822 419/586-2270	Fanning/Howay 1200 Imscher Blvd. Celina, OH 45822 419/586-2292 Jared Ebbing, P.E.	1/05
Burlington, North Carolina	2003	1.5 MG	City of Burlington 425 South Lexington Ave Burlington, NC 27215 910/222-5133 Steve Shoaf	Kimley-Horn & Associates, Inc. 3001 Weston Parkway Cary, NC 27513 919/677-2000 Kevin Carter, P.E.	12/04
Hutchins, Texas	2004	1.5 MG	City of Hutchins 321 N. Main Street Hutchins, TX 75141 971/225-8121 Joe Ed Wallace, Finance Officer	Hunter Associates Texas, LTD Walnut Hill Lane, Suite 500 Dallas, TX 75231-4350 214/368-9178 Shane Walker, P.E.	5/05
Houston, Texas Braeburn	2004	1.5 MG	City of Houston 900 Bagby Street Houston, TX 77002 713/247-1840 Tom Fung, P.E.	Pate Engineers, Inc. 13333 Northwest Freeway, Ste. 300 Houston, TX 77040 713/462-3178 Paul Wallick, P.E.	1/06
Lakeville, Minnesota	2005	1.5 MG	City of Lakeville 20195 Holyoke Ave Lakeville, MN 55044-8339 612/985-4501 Keith Nelson	Short Elliott Hendrickson, Inc. 3535 Vadnais Center Drive St. Paul, MN 55110-5196 651/490-2000 James Norton, P.E.	9/06
Fort Yates, North Dakota	2005	1.5 MG	Standing Rock Rural Water Sys. 9410 11th Avenue Fort Yates, ND 58538 701/854-7415 Ralph Walker	Bartlett & West Engineers, Inc. 3456 East Century Avenue Bismarck, ND 58502-1077 701/258-1110 Doug Mund	10/06
Southlake, Texas	2005	1.5 MG	City of Southlake 1400 Main Street Southlake, TX 76092 817/481-5581 Pedram Farahnak	Cheatham & Associates 2233 Avenue J, Ste. 107 Arlington, TX 76006 817/548-0696 Derek Cheatham, P.E.	5/07
Huron, South Dakota	2005	1.5 MG	City of Huron 239 Wisconsin Avenue SW Huron, SD 57350 605/353-8510 Mike Weaver	Howard R. Green Company 6010 S. Minnesota Ave., Ste. 102 Sioux Falls, SD 57108 605/334-4499 Mark Hardie, P.E.	6/07
Fort Bliss, Texas	2006	1.5 MG	US Army Corps of Engineers c/o J.D. Abrams, LP (Contractor) 111 Congress Ave., Suite 2400 Austin, TX 78701 512/322-4000 Alfonso Fernandez	None	12/08
Eaton, Ohio	2006	1.5 MG	City of Eaton 328 North Maple Street Eaton, OH 45320 937/456-4125 Andy Eddy	Arcadis G & M of Ohio, Inc. 3699 Symmes Road Hamilton, OH 45015 Ph: 513/860-8700 David Vicarel	8/08
Apple Valley, Minnesota	2006	1.5 MG	City of Apple Valley 7100 West 147th Street Apple Valley, MN 55124-6562 952/953-2500 Mike Hammerstead	Bonestroo, Rosens, Anderlik & Assoc. 2335 West Highway 36 St. Paul, MN 55113 651/636/4800 Daryl Kirschenman	7/08
Saginaw, Texas	2007	1.5 MG	City of Saginaw 333 W. McLeroy Blvd. Saginaw, TX 76178 817/232-4640 Terry Highfill	Kimley-Horn & Associates, Inc. 801 Cherry St., Unit #11, Ste. 1025 Fort Worth, TX 76102 817/335-6511 Mike Shelton, P.E.	4/08
Leander, Texas	2007	1.5 MG	City of Leander 200 West Willis Leander, TX 78641 512/528-2760 Wayne Watts, P.E.	Haynie Consulting, Inc. 1010 Provident Lane Round Rock, TX 78664 512/837-2446 Tim Haynie, P.E.	7/08

Location	Year	Size	Owner	Consulting Engineer	Completion
Wichita Falls, Texas	2007	1.5 MG	City of Wichita Falls 1300 7th Street Wichita Falls, TX 76301 940/761-7477 Scott Taylor, P.E.	Biggs & Mathews, Inc. 2500 Brook Avenue Wichita Falls, TX 76301 940/766-0156 Kerry Maroney, P.E.	7/08
Cibolo, Texas	2007	1.5 MG	City of Cibolo 200 S. Main Street Cibolo, TX 78108 210/658-9900 Todd Parton	Klein Engineering, Inc. 8611 Botts Lane, Ste. 101 San Antonio, TX 78217 210/828-7070 Rudy Klein, P.E.	10/08
Waco, Texas China Spring	2007	1.5 MG	City of Waco Water Utilities 300 Austin Avenue Waco, TX 76702 254/289-2489 Mark Hines	The Wallace Group 8225 Central Park Drive Waco, TX 76712 254/772-8272 Bob Wallace, P.E.	6/10
Lawrence, Kansas	2007	1.5 MG	City of Lawrence-Utilities Department 720 West 3rd Street Lawrence, KS 68044 785/832-7800 Phillip Ciesielski	Black & Veatch 8400 Ward Parkway Kansas City, MO 64114 913/458-2000 Judy Winger	7/09
Corpus Christi, Texas Padre Island Tank	2008	1.5 MG	City of Corpus Christi 1201 Leopard Street Corpus Christi, TX 78401 361/880-3500 Joseph Cavalier, P.E.	LNV Engineering 801 Navigation, Suite 300 Corpus Christi, TX 78408 361/883-1984 Marcus Naiser, P.E.	3/11
Roanoke, Texas	2008	1.5 MG	City of Roanoke 201 Bowle St. Roanoke, TX 76262 817/491-2411 Tim James	Kimley-Horn & Associates, Inc. 801 Cherry St., Unit #11, Ste. 1025 Fort Worth, TX 76102 817/335-6511 Christopher Bollig, P.E.	9/09
Centerville, Massachusetts Old Stage Road Tank	2008	1.5 MG	Centerville-Osterville-Marston Mills P.O. Box 369 Osterville, MA 02655 508/428-3508 Craig Crocker	Earth Tech / AECOM 300 Baker Ave., Suite 290 Concord, MA 01742 978/371-4000 Kristin Berger, P.E.	7/11
San Antonio, Texas Cross Mountain	2010	1.5 MG	San Antonio Water System P.O. Box 2449 San Antonio, TX 78298 210/233-3136 Marc Ripley	Chlang, Patel & Yerby, Inc. 300 E. Sonterra Boulevard, Suite 1250 San Antonio, TX 78298 210/494-8004 Josh Marazzini, P.E.	6/12
Springfield, Tennessee Tom Austin Hwy Tank	2010	1.5 MG	City of Springfield, TN 824 Central Avenue Springfield, TN 37172 615/382-1600	GRW Engineers, Inc. 404 BNA Drive, Suite 201 Nashville, TN 37217 615/366-1800 Barry L. Cloyd, P.E.	6/12
Addison, Texas Surveyor Tank	2011	1.5 MG	Town of Addison, Texas Public Works 16801 Westgrove Drive Addison, TX 75001 972/450-2857 Clay Barnett, P.E.	Freese and Nichols 2220 San Jacinto Blvd., Suite 330 Denton, TX 76205 940/387-4600 Ron King	9/13
Virginia Beach, Virginia Nimmo	2013	1.5 MG	City of Virginia Beach - Purchasing 2388 Court Plaza Drive Virginia Beach, VA 23456 757/385-4438 Mitchell D. Frazier	O'Brien & Gere 2809 S. Lynnhaven Road, Suite 305 Virginia Beach, VA 23452 757/431-2966 Scott Stamm, P.E.	12/14

**RESOLUTION NO. R-1920**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AWARDED BID NO. 2015-06 FOR CONSTRUCTION OF FM 2977 ELEVATED WATER STORAGE TANK; AND, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, APPROPRIATE DOCUMENTS AND/OR AGREEMENTS REGARDING SAME.**

\* \* \* \* \*

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

Section 1. The approval and award of Bid No. 2015-06 to \_\_\_\_\_, in the amount of \$\_\_\_\_\_ for construction of the FM 2977 elevated water storage tank.

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

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

**PASSED, APPROVED, AND RESOLVED** this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, TRMC, **City Secretary**

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



May 8, 2015

Mr. Robert Gracia, City Manager  
City of Rosenberg  
Post Office Box 32  
Rosenberg, Texas 77471

Re: City of Rosenberg  
Construction of 1.5 MG Elevated Storage Tank No. 5  
Jones and Carter Project Number R0001-155-00

Dear Mr. Gracia:

We received bids for the referenced contract in the City of Rosenberg Council Chambers on May 6, 2015 at 10:00 A.M. Bids were publicly opened and read at that time. This project includes the construction of one 1.5 MG elevated storage tank along FM 2977 near Bryan Road in Rosenberg, Texas.

Three (3) contractors submitted proposals for this work. A summary tabulation of the bids is enclosed for your review.

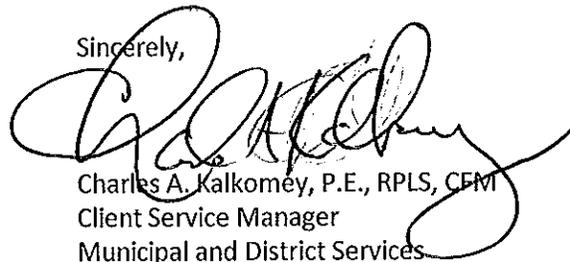
Alternate bids were received on a smaller elevated storage tank (1.25 MG) and an option for factory coating of the steel components. The projected savings of either option or their combination did not warrant exercising these options.

Landmark Structures I, L.P. submitted the lowest Base Bid proposal in the amount of \$3,187,000.00. The contract time was set at 510 calendar days.

Jones and Carter has worked with Landmark Structures I, L.P. previously. We have not had any issues with the quality of their work.

We recommend that the referenced contract be awarded to Landmark Structures I, L.P. on the basis of the Base Bid in the total amount of \$3,187,000.00 and a contract time of 510 calendar days. Please call should you have any questions.

Sincerely,



Charles A. Kalkomey, P.E., RPLS, CFM  
Client Service Manager  
Municipal and District Services

CAK:dme

P:\PROJECTS\R0001 - City of Rosenberg\0155-00 - FM 2977 Elevated Water Storage Tank\Construction\Letters\Recommendation of Award.doc

Enclosure

cc: Landmark Structures I, L.P.  
Mr. John Maresh – Assistant City Manager, City of Rosenberg

City of Rosenberg

City of Rosenberg, Texas

1.5 MG Elevated Storage Tank No. 5

Time: 10:00 AM

Job No. R0001-0155-00

Date: 5/6/2015

**BIDDERS**

	CBI	Landmark Structures	Phoenix Fabricators				
Calendar Days	510	510	510				
Bid Bond	X	X	X				
Total Base Bid	\$3,570,000.00	\$3,187,000.00	\$3,581,400.00				
Base + Alternate 1	\$3,326,460.00	\$2,887,000.00	\$3,210,200.00				
Base + Alternate 2	\$3,451,000.00	\$3,157,000.00	\$3,476,300.00				
Base + Alternate 1 and 3	\$3,214,000.00	\$2,867,000.00	\$3,103,200.00				
Alternate 2 Calendar Days	473	465	455				
Alternate 1 and 3 Calendar Days	473	465	455				
Addendum No. 1	X	X	X				
Addendum No. 2	X	X	X				

\*Denotes Calculation Error

Rosenberg Industrial Park

I-69 / US 59

The Reading Center

Reading Center

Reading Road

Water Plant No. 6

Summer Lakes

FM 2977 - Minonite Road

Fire Station No. 3

Elevated Water Tank Location

Blume Addition



Summer

**AMENDED CITY OF ROSENBERG  
SURFACE WATER SUPPLY IMPLEMENTATION SCHEDULE**

**September 12, 2014**

<b>Year Scheduled</b>	<b>Year Completed</b>	<b>Responsible Entity</b>	<b>Description</b>	<b>City Project Cost</b>
N/A	2009	City	Construct Reuse System for WWTP2	
N/A	2011	City	Reuse System for Seabourne Creek Park	
2012	2012	City	Secure Water Transmission Line Easements	
2012	2012	City	Spur 529 Water Line Extension	
N/A	2012	City	Construct Reuse System for WWTP1A	
2012	2013	City	SCADA System	
N/A	2014	City	Construct Reuse System to LCISD Terry High Campus	
2012	2014	City	500,000 Gallon Ground Storage Tank, and 2-1,500 GPM Booster Pumps at Plant No 5	
2014	2014	City	1,800 GPM Well at Plant No 5	
2014		BWA/City	Execute Surface Water Supply Contract -- BWA	
2014		City	FM 2977 Water Line Extension	\$827,000
2014		BWA	Start Design of Transmission Water Transmission Line and Angelton Pump Station Expansion	
2015		BWA	Start Construction of Water Transmission Line and Angelton Pump Station Expansion	
2015		City	Start Construction of Plant No. 7 -- A. Meyers Road and	\$3,022,000
2015		City	1,000,000 Gallon Elevated Storage Tank -- Plant No. 6	\$3,300,000
2015		City	700,000 Gallon Ground Storage Tank at Plant No. 6	\$1,600,000
2015		City	A. Meyers Road 20-inch Water Line	\$1,088,000
2015		City	Benton Road/Irby Cobb Blvd. 16-inch Water Line	\$345,000
2016		City	Existing Water Plant Chloramine Conversions	\$1,170,000
2016		BWA/City	Produce Surface Water -- 30% Conversion	

**RESOLUTION NO. R-1801**

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

\* \* \* \* \*

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

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

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

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

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

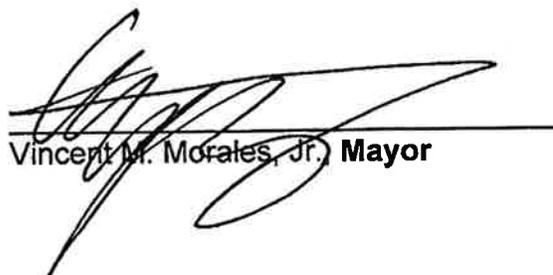
**PASSED, APPROVED, AND RESOLVED** this 17<sup>th</sup> day of June 2014.

**ATTEST:**



Linda Cernosek, **City Secretary**

**APPROVED:**



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



## **FY2015 CAPITAL IMPROVEMENT PROJECTS**

### **GENERAL/STREETS AND DRAINAGE PROJECTS**

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

### **WATER AND WASTEWATER PROJECTS**

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

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

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

7. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1804, A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, FOR AND ON BEHALF OF THE CITY, BUDGET AMENDMENT 14-15 IN THE AMOUNT OF \$15,079.00 FOR THE ADDITION OF AN INFORMATION TECHNOLOGY SPECIALIST.**

**Executive Summary:** In the previous Agenda item, Executive Director of Information Services, Angela Fritz, requested the addition of an Information Technology Specialist. If City Council authorizes the position, a Budget Amendment is needed to fund this position for the remainder of FY2014.

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

Budget Amendment 14-15 is included as Exhibit "A" to Resolution No. R-1804. In order to add this position in FY2014, staff recommends approval of Resolution No. R-1804 as presented.

**Key discussion points:**

- Joyce Vasut read the Executive Summary regarding Resolution No. R-1804.

**Action:** Councilor Grigar made a motion, seconded by Councilor Euton to approve Resolution No. R-1804, a Resolution authorizing the City Manager to execute, for and on behalf of the City, Budget Amendment 14-15 in the amount of \$15,079.00 for the addition of an Information Technology Specialist. The motion carried by a unanimous vote of those present.

8. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1801, A RESOLUTION APPROVING CAPITAL IMPROVEMENT PLAN PRIORITIES FOR FY2015.**

**Executive Summary:** During the FY2015 Budget process, staff reviewed the current Capital Improvement Plan (CIP) and is recommending that a total of twenty-five (25) projects be addressed in FY2015. Exhibit "A" to Resolution No. R-1801 lists the twenty-five (25) individual projects. The Planning Commission met on May 21, 2014, and also recommended approval of the projects proposed for the FY2015 CIP. These projects were also presented to City Council at the May 27, 2014 City Council Workshop.

Existing or proposed funding is available for all or a portion of twenty (20) of the Capital Projects that will be addressed in FY2015. There are two (2) projects for which funding needs have not been determined. The three (3) remaining Capital Projects are not completely funded. Funding for these projects may include the issuance of Certificates of Obligation or other funding sources. Funding for these projects will be addressed during FY2015.

Approval of Resolution No. R-1801 will establish the City's FY2015 Capital Improvements Plan and allow for the projects to be properly included in the proposed FY2015 Budget. Staff recommends approval of Resolution No. R-1801.

**Key discussion points:**

- Joyce Vasut gave an overview of the item regarding Resolution No. R-1801 and the City's FY 2015 Capital Improvements Plan.

**Questions:**

- Councilor Benton expressed concern with #11 – Traffic signal Reading Road at Town Center Boulevard and asked how urgent it is.
- John Maresh explained that is tied to a development agreement. The developer that is working on the project from Fire Station 2 will trigger when they have to put up fifty percent (50%) of the money for that traffic signal. There is a timeframe by which the City has to come up with the remaining fifty percent (50%). They are getting close to the triggering point.
- Councilor Grigar asked if the items are the twenty-five in each of the two areas that surfaced to the top.
- Joyce Vasut explained staff looked at the 2014 list and any projects that were not complete or not substantially complete by September 30<sup>th</sup> were left on the list. Staff then looked at 2015 in the five year plan and pulled those out that staff felt needed to rise to the top. A lot of these are projects that are started that we need to complete that we have County mobility funding. We need to move on that project so we do not lose the funding. #11 that was referred to is based on the development agreement

that we think will need action during FY2015. The developer will pay one-half and we have requested the other half from the RDC.

- Items 15, 16, and 17 are all GRP projects that are part of the Subsidence mandate we need to get done. At this time, all except three are funded in one way or another with available funds. The other three, which is Airport Road and Bryan Road that was discussed at the Workshop meeting. Airport Road and Bryan Road will need additional funding and we discussed certificates of obligation and Council felt they could agree to that. Staff will bring back those options along with the budget. The majority of these will be funded in the fiscal year.

**Action:** Councilor Grigar made a motion, seconded by Councilor Euton to approve Resolution No. R-1801, a Resolution approving Capital Improvement Plan Priorities for FY2015. The motion carried by a unanimous vote of those present.

9. **CONSIDERATION OF AND ACTION ON RESOLUTION NO. R-1802, A RESOLUTION APPROVING CAPITAL IMPROVEMENT PLAN PRIORITIES FOR FY2016 TO FY2019.**

**Executive Summary:** Pursuant to the City Charter which requires a five-year Capital Improvement Plan (CIP), staff has prepared a proposed schedule for Capital Projects in FY2016, FY2017, FY2018 and FY2019. The development of the CIP for FY2016 to FY2019 is based on several factors, including but not limited to:

- Deadline for compliance with the Fort Bend Subsidence District mandate,
- Availability of Fort Bend County Mobility Funds,
- Possibility of a City Bond Election in 2015,
- Results of the City Facilities Assessment, and
- Needs Identified in the Five Year Strategic Plan.

The proposed FY2016-FY2019 CIP was attached to Resolution No. R-1802 as Exhibit "A" and will allow City Council to approve the proposed FY2016-FY2019 Capital Improvement Plan for the City of Rosenberg. Staff recommends approval of Resolution No. R-1802.

**Key discussion points:**

- Joyce Vasut gave an overview of the item regarding Resolution No. R-1802. Exhibit A to Resolution No. R-1802 was included in the agenda packet.

**Questions:**

- Councilor Euton – FY2017 Streets and Drainage – 3<sup>rd</sup> Street at Intersection with Avenue E – what does that entail?
- John Maresh stated this is a carryover project that has been on the CIP for several years and has never been ranked high enough to be funded. It is at the intersection of 3<sup>rd</sup> Street where there is a rise in the street and a hump as you approach Avenue N. It would be to cutout that section of 3<sup>rd</sup> Street and reconstruct it.
- FY2018 – Brooks Avenue what is the plan?
- This is a long range future project that was placed on the list recently. That would be an improvement project to reconstruct that street with curb and gutter.
- FY 2019 – Klauke Road extension – is that still on our radar?
- It is long range for 2019. There have been discussions about addressing some connectivity and other ways.
- FY2018 – Brazos River Trail Project – Councilor Euton stated she objected to that project because some of the residents would be displaced in the north area of town.
- Darren McCarthy, Director of Parks and Recreation stated it has nothing to do with residential displacement. It is a paddle trail utilizing the resources of the Brazos River. Fort Bend Green at the direction of Judge Hebert just completed a three year master plan study of that. Councilor McConathy was part of the group in the Rosenberg segment. That will be coming to Council in a future Workshop after the budget is complete. Mayor Morales, Councilor McConathy and Robert Gracia have copies of that master plan. Staff plans to distribute to Council when it is brought to Council in a Workshop.
- Councilor Grigar – FY2018 – Streets and Drainage – Avenue C Extension; Avenue D Street Paving and Drainage – is that in connection to get an east/west connection because of railroad crossing closures?
- John Maresh stated that is specifically the crossing and east to Rawson Road and would connect there. That is the only access in and out over that grade crossing that would provide that connectivity.
- Avenue D – this is long range. We have been focusing with our CDBG funds to try to get the infrastructure of the sanitary sewer replaced. The application we have before the County now is for waterline replacements. We hope to complete that in the next 3 to 5 years and then we could do some street and sidewalk improvements.



# CITY COUNCIL COMMUNICATION

May 19, 2015

ITEM #	ITEM TITLE
7	<b>Resolution No. R-1969 - Amendment No. 1 to Municipal Maintenance Agreement</b>

## ITEM/MOTION

Consideration of and action on Resolution No. R-1969, authorizing the City Manager to execute, for and on behalf of the City, Amendment No. 1 to the Municipal Maintenance Agreement, by and between the City and the State of Texas, acting through the Texas Department of Transportation, for permission to provide supplemental right-of-way mowing and litter removal.

## FINANCIAL SUMMARY

## ELECTION DISTRICT

### Annualized Dollars:

One-time  
 Recurring  
 N/A

### Budgeted:

Yes  No  N/A

### Source of Funds:

RDC

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

## SUPPORTING DOCUMENTS:

- Resolution No. R-1969
- Exhibit "B" to Amendment No. 1 – Supplemental Mowing of State Right-of-Way

**MUD #:** N/A

## APPROVALS

### Submitted by:

  
Rigo Calzoncin  
Public Works Director

### Reviewed by:

Exec. Dir. of Administrative Services   
 Asst. City Manager of Public Services   
 City Attorney **DNRBHZ/rl**  
 City Engineer  
 Director of Economic Development 

### Approved for Submittal to City Council:

  
Robert Gracia  
City Manager

## EXECUTIVE SUMMARY

On April 13, 1999, the City and the State of Texas, through the Texas Department of Transportation (TxDOT) entered into a Right-of-Way Maintenance Agreement (Agreement) which provided the City with permission to perform supplemental right-of-way (ROW) mowing and litter control in certain areas along U.S. 59/I-69, from FM 762 to just beyond Bamore Road. The purpose and intent is to provide additional mowing and litter removal services above the level provided by TxDOT in an effort to project a clean, neat and positive image of Rosenberg. This in turn will help promote economic development and encourage the traveling public to stop and shop in Rosenberg.

Proposed Amendment No. 1, attached to Resolution No. R-1969 as Exhibit "A", would extend the term of said Agreement for five (5) years and would revise the ROW areas where TxDOT has agreed to allow supplemental mowing and litter control by the City. Exhibit "B" to Amendment No. 1 has been included as a separate supporting document to show the revised area. The revised area now includes U.S. 59/I-69 from FM 762 to the Rosenberg City Limits, which is approximately one (1) mile southwest of Daily Road, and the portion of FM 2218 located within the City Limits from approximately Town Center Boulevard to Koeblen Road.

The Agreement allows the City to provide the supplemental mowing and litter control if it so desires, but does not obligate the City to provide said supplemental services. The City is the entity in which TXDOT must enter into the Agreement with. In previous years, the Rosenberg Development Corporation (RDC) has provided the supplemental mowing and litter control services.

Staff recommends approval of Resolution No. R-1969 as presented.

**RESOLUTION NO. R-1969**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT NO. 1 TO THE MUNICIPAL MAINTENANCE AGREEMENT, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS AND THE STATE OF TEXAS, ACTING THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION, FOR PERMISSION TO PROVIDE SUPPLEMENTAL RIGHT-OF-WAY MOWING AND LITTER REMOVAL.**

\* \* \* \* \*

**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 negotiate and execute an Amendment No. 1 to the Municipal Maintenance Agreement for permission to provide supplemental right-of-way mowing and litter removal.

Section 2. A copy of said Amendment 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**

STATE OF TEXAS §

COUNTY OF TRAVIS §

**MUNICIPAL MAINTENANCE AGREEMENT  
AMENDMENT #\_1\_\_**

**THIS AMENDMENT** is made by and between the State of Texas, acting through the Texas Department of Transportation, called the State, and the City of Rosenberg hereinafter called the Local Government.

**WITNESSETH**

**WHEREAS**, the State and the Local Government executed a contract on April 6, of 1999 to effectuate their agreement to renew a five year extension; and,

**WHEREAS**, it has become necessary to amend that contract;

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties, the State and the Local Government do agree as follows:

**A G R E E M E N T**

**1. Description of Amended Items**

WHEREAS, the Local Government has requested a five year extension on the said agreement as shown on Exhibit A

WHEREAS, the Local Government has requested State permission to provide supplemental right-of-way mowing and litter removal in addition to that provided by the State, on US 59/IH69 from FM 762 southwest to the City Limit line located approximately 5,000 feet southwest of Daily Road as shown on the attached Exhibit B and FM 2218 from the City Limit line located approximately 1,500 feet south of Koeblen Road to the City Limit line located approximately 1,000 feet north of Town Center Boulevard as shown on Exhibit B.

All other provisions of the original contract are unchanged and remain in full force and effect.

**2. Signatory Warranty**

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

**THIS AGREEMENT IS EXECUTED** by the State and the Local Government in duplicate.

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**THE STATE OF TEXAS**

\_\_\_\_\_  
District Engineer  
Texas Department of Transportation

\_\_\_\_\_  
Date

59 only  
**EXHIBIT A**

742 ORIGINAL

THE STATE OF TEXAS

THE COUNTY OF TRAVIS

RIGHT-OF-WAY MAINTENANCE AGREEMENT

THIS AGREEMENT, is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the City of Rosenberg, hereinafter called the "City."

WITNESSETH

WHEREAS, in Fort Bend County, US 59 is a designated part of the State Highway System and a "controlled access highway" as that term is used in Article 6674w through 6674w-5, Texas Revised Civil Statutes, as amended; and,

WHEREAS, the City has requested State permission to provide supplemental right-of-way mowing and litter removal, in addition to that provided by the State, on US 59 from FM 762 west to the bridge over the SPTC Railroad, hereinafter called the "Project," and as shown on the attached EXHIBIT A; and

WHEREAS, the State finds that the City's request is in the public interest and will not damage the highway facility, impair safety or otherwise restrict the operation of the highway facility; and

WHEREAS, it is understood that the State, by execution of this Agreement does not impair or relinquish the State's right to use such land for right-of-way purposes when it is required for the construction or reconstruction of the traffic facility for which it was acquired, nor shall use of the right-of-way under such Agreement ever be construed as abandonment by the State of such land acquired for highway purposes.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto be by them respectively kept and performed as hereinafter set forth, the State and the City do mutually agree as follows:

## AGREEMENT

### ARTICLE 1. Term of Agreement.

Subject to the provision of Article 10 below, this Agreement for the "Project" becomes effective when finally executed (signed) by the State and shall terminate upon the anniversary of the final execution date. Should the City, at any time during the term of this agreement, desire to continue supplemental mowing and litter control past the current five year term, the State, based upon satisfactory negotiations with the City, may execute supplemental agreements with the City, granting such extensions provided that each supplemental agreement is executed for a minimum five year extension term. It is contemplated that the State will approve such requested time extensions if the City is performing its commitments under this agreement.

### ARTICLE 2. Project Funding.

All labor, material, equipment and incidentals required to provide supplemental mowing, debris removal, and litter control within the Project limits shall be furnished by the City at the City's sole cost and expense.

### ARTICLE 3. Responsibility of the Parties:

#### A. The City agrees to:

1. Indemnify and save harmless the State, its agents and employees, to the extent allowed by the law, from all suits, actions or claims and from all liability and damages for any and all injuries sustained by any person, or by any abutting, adjoining or other property in consequence of any neglect in the performance of the City, its agents and employees under this Agreement.
2. Indemnify, defend and hold the State harmless from any and all claims and law-suits, to the extent allowed by the law, by third parties arising from or incident to the performance, or neglect in the performance of the City, its officers, employees or agents under this Agreement. The City shall defend all suits covered by the City's obligation of indemnification under this Agreement and pay all costs and expenses incidental thereto, but the State shall have the right at its option and expense, to participate in the defense of any suit, without relieving the City of any obligation hereunder. The State shall provide written notification to the City of any suit, action, claim, demand or expense covered by the indemnities set forth herein. Furthermore, the State shall be free to settle such portion of any suit, action, claim, or demand which shall be the liability of the State, but the State shall not settle such portion of any suit, action, claim, or demand (or otherwise interfere with or impair the City's defense thereof) for which it is indemnified by the City and for which the City accepts responsibility without the written concurrence of the City.

3. The City will coordinate the supplemental mowing, debris removal, and litter control operations in such a way as to be performed between the normal, scheduled mowing and litter control operations by the State.
4. The City will provide advance notice of supplemental mowing, debris removal, and litter control operations to the State, to allow for coordination of the Project with other ongoing roadway operations.
5. The City is authorized, but not obligated, to perform supplemental mowing, debris removal, and litter control on the City right-of-way.
6. Provide to the State for approval a Traffic Control Plan a minimum of two weeks prior to performance of such work by the City. Implementation of the Traffic Control Plan for the Project shall be the responsibility of the City, at the sole cost and expense of the City.
7. Provide, erect and maintain barricades, signs and traffic handling devices necessary to protect the safety of the traveling public for of the Project. All placements of barricades, signs and traffic handling devices must conform to the Texas Manual on Uniform Traffic Control Devices.
8. Provide all labor, equipment, material and incidentals as may be required to repair or replace structures or surfaces damaged by the City or its agents (contractor) during any phase of the Project to the satisfaction of the State.

B. The State agrees to:

1. Continue to provide mowing, debris removal, and litter control consistent with District policy and the Roadside Vegetation Management Manual.
2. Perform review and inspections, as appropriate, of the Project.
3. Coordinate with the City in determining the requirements of any barricades, signs and traffic handling devices necessary to protect the safety of the traveling public for each phase of the Project.
4. Allow the City and its agents (contractor) to utilize the right-of-way for all aspects of the project described in this Agreement.
5. Coordinate with the City in setting up a schedule of routine State mowing, debris removal, and litter control operations with the supplemental operations performed by the City.

ARTICLE 4. Amendments.

Changes in time frame, character, or obligations herein shall be enacted by written amendment. Both parties must execute all amendments to this Agreement within the contract period specified in Article 1.

ARTICLE 5. Successors and Assigns.

The City shall not assign or otherwise transfer its rights and obligations under this Agreement except with prior written consent of the State, and any prohibited assignment or transfer shall be null and void. Such written consent by the State shall not be unreasonably withheld.

ARTICLE 6. Remedies.

Violation or breach of contract terms by the City shall be grounds for termination of this Agreement, provided that the State has given the City written notice of such violation or breach and the City, within thirty (30) days after receiving such written notice, has not resolved such violation or breach or, if such violation or breach cannot be resolved within such thirty (30) day period, has not commenced efforts in good faith to resolve such violation or breach. In the event of such a termination, any increased cost to the State arising from the City's default, breach of contract or violation of terms shall be paid by City. This Agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 7. Insurance.

Prior to the start of any construction, the City, through its contractor, shall complete and attach to each Agreement counterpart, a completed TxDOT Certificate of Insurance. Limits of liability amounts for Worker's Compensation, Commercial General Liability, Texas Business Automobile Policy and Umbrella Policy (if applicable) shall meet the latest requirements as specified on TxDOT Form 1560 (Rev. 12-91). The City, through its contractor, shall maintain insurance coverage in conformance with the latest requirements as specified in TxDOT Form 1560, and shall furnish the State with an updated Certificate of Insurance prior to expiration of existing insurance coverage. The City or their agents will not perform any work on the State's right of way until all required insurance coverages have been obtained and effective.

ARTICLE 8. Work Outside the Right-of-Way.

The City shall not perform any mowing, debris removal, and litter control operations as part of the Project outside of the State's right of way unless written approval is received from the owner of the adjacent property.

ARTICLE 9. Gratuities.

Texas Department of Transportation Commission policy mandates that employees of the Department shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with the State under this agreement. The only exceptions allowed are ordinary business lunches and items that have received advanced written approval of the Texas Department of Transportation Engineer-Director. Any person doing business with or who may reasonably be seeking to do business with the State under this agreement may not make any offer of benefits, gifts or favors to Departmental employees, except as mentioned here above. Failure on the part of the City to adhere to this policy may result in the termination of this Agreement.

ARTICLE 10. Termination.

This Agreement may be terminated by any of the following conditions:

- A. By mutual written agreement and consent of both parties.
- B. By the City upon thirty days written notice to the State; provided the Project defined under this Agreement is then currently underway, the City will cooperate with the State and will use its good faith efforts to leave the State's right of way in a safe condition insofar as pertains to the Project.
- C. By the State, upon the failure of the City to fulfill its obligations as set forth in this Agreement provided that the State has given the City written notice of such violation or breach and the City, within thirty (30) days after receiving such written notice, has not resolved such violation or breach or, if such violation or breach cannot be resolved within said thirty (30) day period, has not commenced efforts in good faith to resolve such violation or breach.
- D. By satisfactory prosecution of all services and obligations described herein upon the first anniversary of the final execution date.

Should this Agreement terminate prior to the five year period established in Article 1, the State assumes the responsibility only for the standard maintenance of the right of way as specified in the Department of Transportation's Vegetation Management Manual for the Project at time of termination. The City will be responsible for the payment of any debts, which may have been incurred by the City in conjunction with the Project prior to the termination of this agreement.

ARTICLE 11. Notices.

All notices to either party by the other under this Agreement shall be delivered personally or sent by certified or registered U.S. mail, postage prepaid, addressed to such party at the following addresses:

City of Rosenberg  
P.O. Box 32  
Rosenberg, Texas 77471-0032

Attention: The Honorable Dorothy W. Ryan  
Mayor, City of Rosenberg

The State of Texas: Texas Department of Transportation  
7721 Washington Avenue  
P. O. Box 1386  
Houston, Texas 77251-1386

Attention: Mr. Gary K. Trietsch, P.E.  
Houston District Engineer

and shall be deemed given on the date so delivered or received, unless otherwise provided herein. Either party hereto may change the above by sending written notice of such change to the other in the manner provided for above.

ARTICLE 12. Compliance with Laws.

The City shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance or obligations of this agreement.

ARTICLE 13. Legal Construction.

In case any one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 14. Prior Agreements Superseded.

This agreement superseded any prior understandings or written or oral agreements between the parties respecting the within subject matter.

ARTICLE 15. Authorized Signatory.

The undersigned signatory of the City hereby represents and warrants that he is an officer of the organization for which he has executed this agreement and that he has full and complete authority to enter into this agreement on behalf of the City.

IN WITNESS WHEREOF, the State and the City have executed triplicate counterparts to effectuate this Agreement.

THE CITY OF ROSENBERG

THE STATE OF TEXAS

Executed for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission under the authority of Minute Order 100002.

By:           *Dorothy W. Ryan*            
(Signature)

          DOROTHY W. RYAN            
(Printed Name)

          MAYOR, CITY OF ROSENBERG            
(Title)

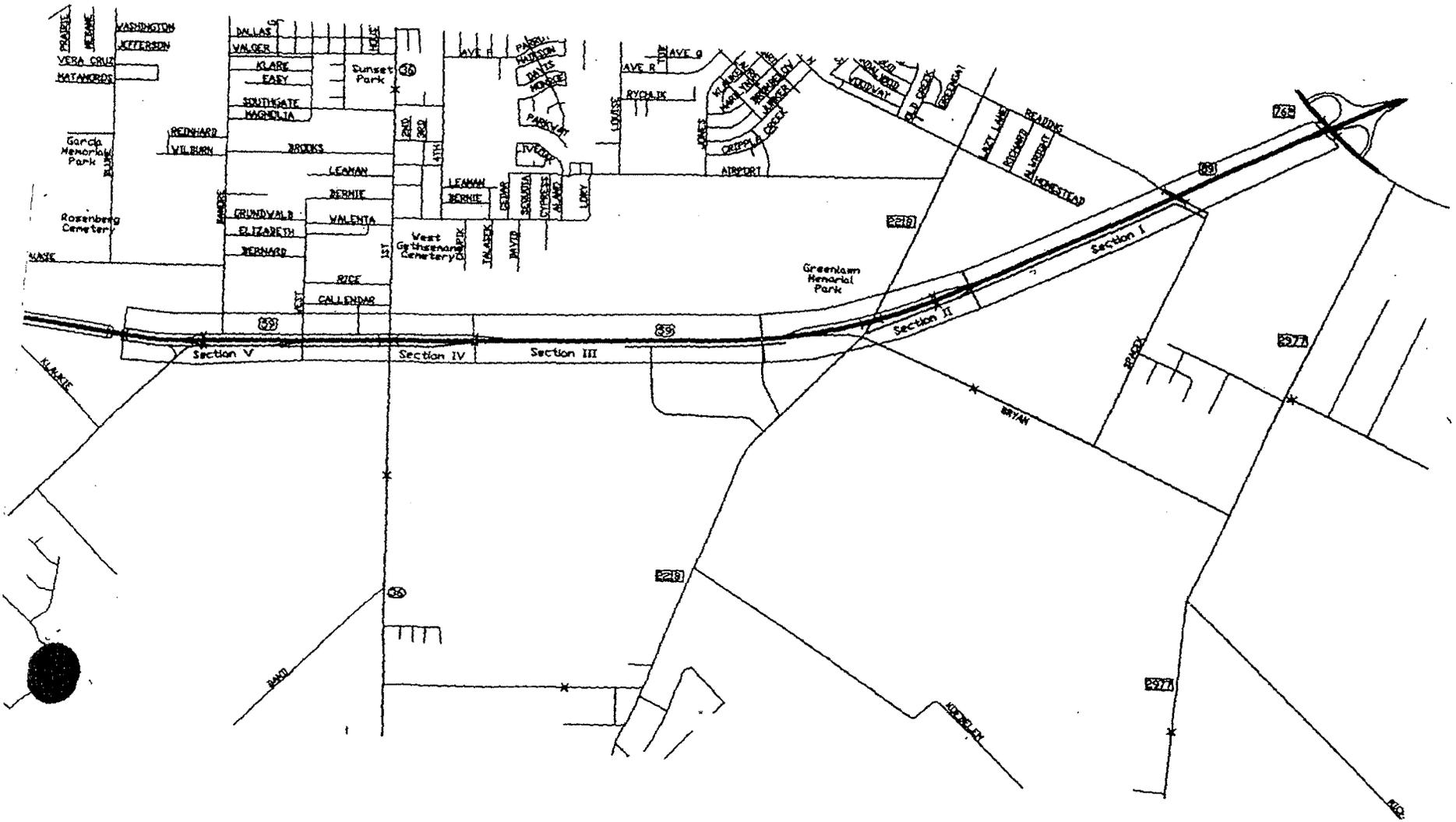
          APRIL 6, 1999            
(Date)

APPROVED:           *[Signature]*            
By:           *[Signature]*            
for Gary K. Trietsch, P.E.  
Houston District Engineer

          4/13/99            
(Date)

ATTEST:  
          *Lyn Adolphus*            
LYN ADOLPHUS, CITY SECRETARY

# Exhibit A



# Certificate of Insurance

23 98 08:59p

Loert Taylor

(713) 650-6461

08/23/98 WED 15:27 FAX 7136367449

East Harris Area Office

002

TADDY Form no. 1500 (Rev. 12/91) Previous editions of this form may not be used.

NOTE: Copies of the endorsements listed below are not required as attachments to this certificate.

**TEXAS  
DEPARTMENT OF TRANSPORTATION  
CERTIFICATE OF INSURANCE  
FOR STATE-WIDE BID CONTRACTS**



ADDRESS INFORMATION ON BACK

The named contractor shall not commence work until he/she has obtained the minimum insurance specified in Section II, below, and obtained the following endorsements: The Texas Department of Transportation as an Additional Insured for coverages 3 and 4, and a Waiver of Subrogation in favor of the Texas Department of Transportation under coverages 2, 3 and 4. Only certificates of insurance published by this department are acceptable as proof of insurance. Commercial carriers' certificates are unacceptable.

**SECTION I - IDENTIFICATION DATA - DO NOT REFER TO SPECIFIC PROJECTS/CONTRACTS ON THIS FORM!!!**

1.1 Insured Contractor's Name  
**Bio Energy Landscape & Maintenance, Inc.**

1.2 Street/Postal Address  
**7930 Pinemont  
Houston**

1.4 State  
**Texas**

1.3 Zip  
**77040**

1.8 Phone Number  
Area Code (713) **462-8552**

**SECTION II - TYPE OF INSURANCE**

Type	Policy Number	Effective Date	Expiration Date	Limits of Liability Not Less Than:
2. WORKERS' COMPENSATION	2.1 W988181847	2.2 8/30/98	2.3 8/30/99	Statutory - Texas
Endorsed with a Waiver of Subrogation in favor of the Texas Department of Transportation.				
3. COMMERCIAL GENERAL LIABILITY	3.1 CPP1314145	3.2 8/30/98	3.3 8/30/99	\$600,000 combined single limit each occurrence and in the aggregate
Endorsed with the Texas Department of Transportation as an Additional Insured and endorsed with a Waiver of Subrogation in favor of the Texas Department of Transportation.				
4. TEXAS BUSINESS AUTOMOBILE POLICY				\$1,000,000 CSL
A. Bodily Injury	4.1 CA1314144	4.2 8/30/98	4.3 8/30/99	\$250,000 ea. person
B. Property Damage	4.4 CA1314144	4.5 8/30/98	4.6 8/30/99	\$500,000 ea. occurrence
Endorsed with the Texas Department of Transportation as an Additional Insured and endorsed with a Waiver of Subrogation in favor of the Texas Department of Transportation.				
5. UMBRELLA POLICY (If Applicable)	5.1 _____	5.2 _____	5.3 _____	\$ _____

**SECTION III - CERTIFICATION**

This Certificate of Insurance neither affirmatively nor negatively amends, extends, or alters the coverage afforded by the above insurance policies issued by the insurance company named below.

Cancellation of the insurance policies shall not be made until THIRTY DAYS AFTER the undersigned agent or his/her company has sent written notice by certified mail to the contractor and the Texas Department of Transportation.

THIS IS TO CERTIFY as the Texas Department of Transportation, acting on behalf of the State of Texas, that the insurance policies above meet all the requirements stipulated above and such policies are in full force and effect.

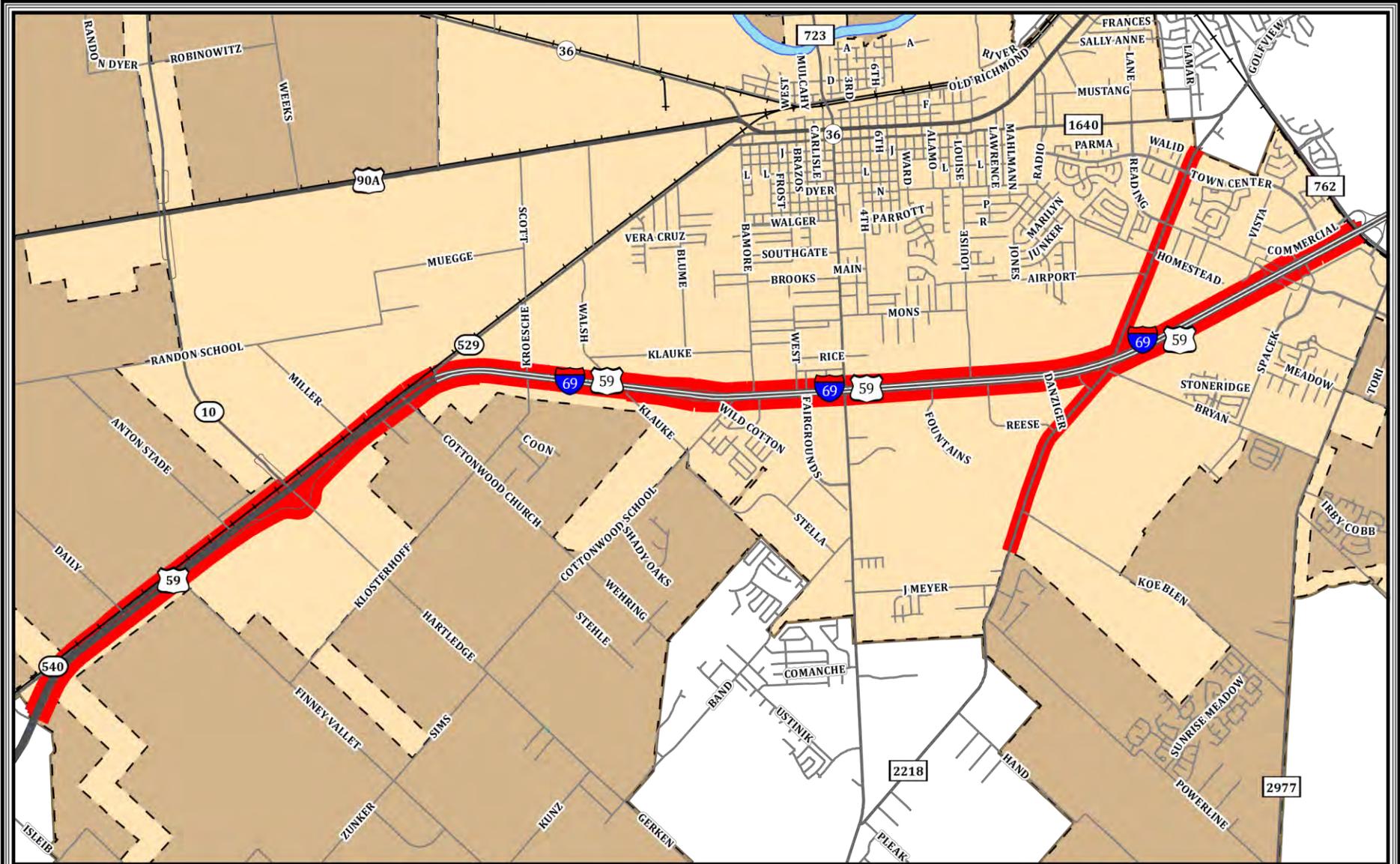
5.1 Name of Insurance Company <b>Amerisure Insurance Company</b>	7.1 Name of Authorized Agent <b>Brady, Chapman, Holland &amp; Associates, Inc.</b>				
5.2 Company Address <b>P. O. Box 569680</b>	7.2 Agent's Address <b>P. O. Box 922019</b>				
5.3 City <b>Dallas</b>	5.4 State <b>Texas</b>	5.5 Zip <b>75356</b>	7.3 City <b>Houston</b>	7.4 State <b>Texas</b>	7.5 Zip <b>77292</b>
7.6 Authorized Agent's Phone No. Area Code: <b>713, 688-1500</b>	Original Signature of Authorized Agent <i>Randall T. Winger</i> 9/24/98 Date				

TEXAS DEPARTMENT OF TRANSPORTATION  
HOUSTON DISTRICT MAINTENANCE

MAK 12 1999

08/23/98 08:59

# EXHIBIT B

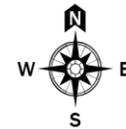
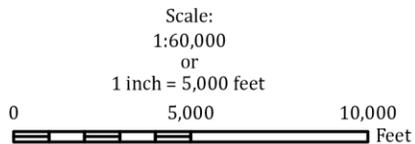


- Interstate
- US Highway
- State Highway
- Public Road
- Private Road
- City Mowing of State ROW
- Brazos River
- Rosenberg City Limits
- Rosenberg ETJ

## City Mowing of State Right-of-Way City of Rosenberg, Texas

Created by: City of Rosenberg GIS - Paul M. Jones  
 Date Created: March 26, 2015  
 Original Size: 8.5" x 11"  
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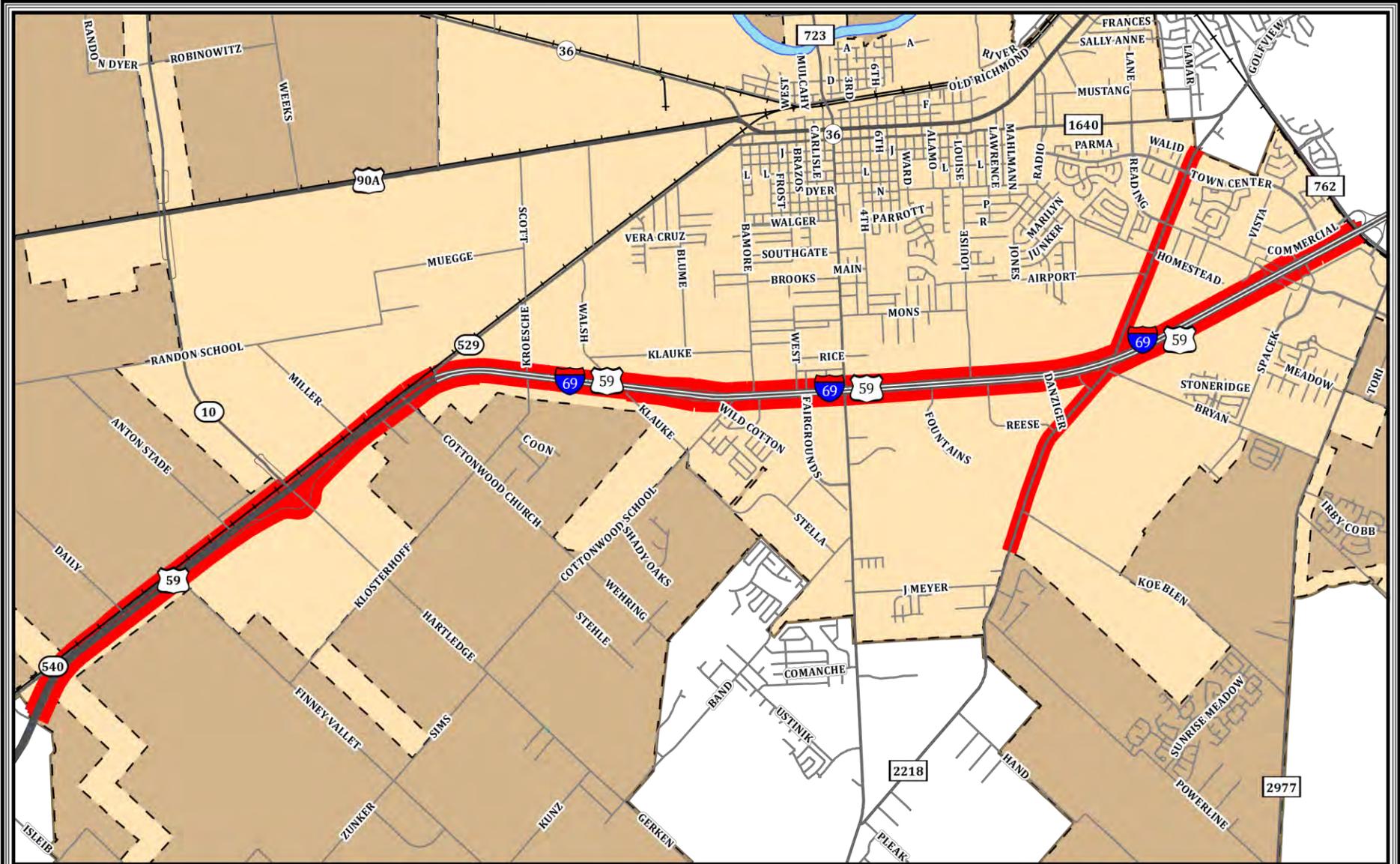
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This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of geographic features.



# EXHIBIT B

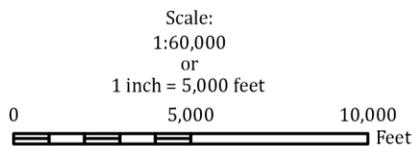


- Interstate
- US Highway
- State Highway
- Public Road
- Private Road
- City Mowing of State ROW
- Brazos River
- Rosenberg City Limits
- Rosenberg ETJ

### City Mowing of State Right-of-Way City of Rosenberg, Texas

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# CITY COUNCIL COMMUNICATION

## May 19, 2015

ITEM #	ITEM TITLE
8	Ordinance No. 2015-17 – Masonry Standards

### ITEM/MOTION

Consideration of and action on Ordinance No. 2015-17, an Ordinance amending the Code of Ordinances by amending Chapter 6 – Buildings and Building Regulations, Article XVII - Single-Family and Accessory Dwelling Units; Sections 6-425 Definitions and 6-426 Single-family Dwelling Units; repealing all ordinances or parts of ordinances inconsistent or in conflict herewith; providing for severability; and providing an effective date.

### 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:

**MUD #:** N/A

1. Ordinance No. 2015-17 – Redlined
2. Ordinance No. 2015-17
3. City Council Meeting Minute Excerpt – 01-27-15
4. Planning Commission Meeting Minute Excerpt – 10-15-14
5. Planning Commission Meeting Minute Excerpt – 07-16-14

### APPROVALS

**Submitted by:**

*Travis Tanner*  
 Travis Tanner, AICP  
 Executive Director of  
 Community Development

**Reviewed by:**

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

**Approved for Submittal to City Council:**

*Robert Gracia*  
 Robert Gracia  
 City Manager

### EXECUTIVE SUMMARY

This Agenda item provides for amendments to Chapter 6 of the Code of Ordinances relating to minimum masonry standards for single-family residential construction in new subdivisions within the City Limits. Over the last several months, the Planning Commission (Commission) and City Council have discussed a number of possible amendments to Chapter 6 including this particular Amendment. Chapter 6 generally relates to Building and Building Regulations, and the specific proposed Amendment would be found under the Single-Family Residential Dwelling Standards (Article XVII). Attached are proposed revisions to the Ordinance, which staff will cover in detail at the City Council meeting. Additional background information on the Agenda item is provided below.

On July 16, 2014, the Commission received a presentation from the Texas Masonry Council explaining the benefits of masonry planning policies or ordinances requiring a minimum percentage of masonry on residential and/or nonresidential structures. The Commission had previously expressed interest in such policies, noting the amount of HardiPlank siding on homes in new subdivisions, and concerns regarding maintenance. Among the benefits of masonry planning policies that were discussed were that masonry products generally are lower maintenance, result in increased home values, are more durable, and provide for more predictability of development or architectural control. That being said, on October 15, 2014, the

Commission recommended approval to City Council of an Ordinance Amendment that would require homes on lots platted after the effective date of the Ordinance to generally have a minimum of seventy-five (75) percent masonry exterior.

Staff has further refined the proposed Amendment to seventy-five (75) percent masonry exterior for one (1) story structures and fifty (50) percent for two (2) stories and above. If adopted, this would not apply to existing subdivisions or development, or to any homes built in the Extraterritorial Jurisdiction (ETJ); it would only apply to homes constructed in future subdivisions within the City with two (2) or more lots. Further, the reason this item only pertains to single-family residential is that there is an existing minimum standard in the Code of Ordinances for multi-family; additionally, most new commercial construction for which a masonry standard would be appropriate is already regulated by the West Fort Bend Management District, which has strict masonry standards.

City staff believes this Ordinance would benefit the quality of future development in the City without affecting existing development or homeowners. Staff recommends approval of Ordinance No. 2015-17.

**ORDINANCE NO. 2015-17**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, AMENDING CHAPTER 6 BUILDING AND BUILDING REGULATIONS, ARTICLE XVII SINGLE-FAMILY AND ACCESSORY DWELLING UNITS, SECTIONS 6-425 DEFINITIONS AND 6-426 SINGLE-FAMILY DWELLING UNITS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Tex. Loc. Gov't Code Chapter 211 authorizes the City of Rosenberg to adopt rules and regulations regarding land use within the City limits of the City of Rosenberg for the purpose of promoting the safe, orderly, and healthful development of the City; and

**WHEREAS**, the City Council of the City of Rosenberg, Texas finds that the promotion of public safety through the establishment of high-quality construction standards is beneficial to the community; and

**WHEREAS**, the City Council of the City of Rosenberg, Texas, has determined that that high quality development results in longevity, durability and sustainability that strengthens the local tax base of the community; and

**WHEREAS**, the City Council of the City of Rosenberg, Texas, has determined that it is in the best interest of the public and in support of the health, safety, morals, and general welfare of the citizens of the City that the Building Code regulations relative to subdivision masonry standards, be established as hereinafter stated.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

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

Section 2. That the Code of Ordinances of the City of Rosenberg, Chapter 6 – Buildings and Building Regulations, Article XVII Single-Family and Accessory Dwelling Units, Section 6-425 Definitions and 6-426 Single Family dwelling units are hereby amended by including the additional language as follows:

**“Sec. 6-425. - Definitions.**

The following definitions shall be applicable to the terms and provisions as used in this article:

*Accessory dwelling unit* shall mean a subordinate structure that is located on the same lot, tract, or parcel of land as the main structure, which is incidental to the use of the main structure.

*Estate lot* shall mean a residential lot, tract, or parcel of land containing three (3) acres or greater.

Exterior shall mean the façade of the building not including windows or doors.

Masonry shall mean brick, stone, real stucco or a combination thereof and shall not include exterior insulation and finishing system (EIFS), hardiplank or any other material not specifically provided for in this definition.

*Single-family dwelling unit* shall mean a building containing one (1) dwelling unit that is designed to be occupied by one (1) family.

**Sec. 6-426. - Single-family dwelling units.**

- (1) There shall be only one (1) single-family dwelling unit permitted per platted lot, tract, or parcel of land.
- (2) Single-family dwellings in subdivisions consisting of two (2) or more lots, and for which a completed land plan, preliminary plat, or final plat application has not been submitted to the City of Rosenberg prior to the effective date of this ordinance, shall consist of a minimum of:
  - (a) Seventy-five (75) percent masonry exterior for structures that are one (1) story in height
  - (b) Fifty (50) percent masonry exterior for structures that are two (2) stories and above in height.”

Section 3. All ordinances or parts inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 4. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of

the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law. Any non-conforming buildings existing at the time of enactment of this ordinance are exempt from the provisions of this ordinance.

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

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, **City Secretary**

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

**APPROVED AS TO FORM:**

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

**ORDINANCE NO. 2015-17**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, AMENDING CHAPTER 6 BUILDING AND BUILDING REGULATIONS, ARTICLE XVII SINGLE-FAMILY AND ACCESSORY DWELLING UNITS, SECTIONS 6-425 DEFINITIONS AND 6-426 SINGLE-FAMILY DWELLING UNITS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Tex. Loc. Gov't Code Chapter 211 authorizes the City of Rosenberg to adopt rules and regulations regarding land use within the City limits of the City of Rosenberg for the purpose of promoting the safe, orderly, and healthful development of the City; and,

**WHEREAS**, the City Council of the City of Rosenberg, Texas, finds that the promotion of public safety through the establishment of high-quality construction standards is beneficial to the community; and,

**WHEREAS**, the City Council of the City of Rosenberg, Texas, has determined that that high quality development results in longevity, durability and sustainability that strengthens the local tax base of the community; and,

**WHEREAS**, the City Council of the City of Rosenberg, Texas, has determined that it is in the best interest of the public and in support of the health, safety, morals, and general welfare of the citizens of the City that the Building Code regulations relative to subdivision masonry standards, be established as hereinafter stated.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

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

Section 2. That the Code of Ordinances of the City of Rosenberg, Chapter 6 – Buildings and Building Regulations, Article XVII Single-Family and Accessory Dwelling Units, Section 6-425 Definitions and 6-426 Single Family dwelling units are hereby amended by including the additional language as follows:

**“Sec. 6-425. – Definitions.**

\* \* \*

*Exterior* shall mean the façade of the building not including windows or doors.

*Masonry* shall mean brick, stone, real stucco or a combination thereof and shall not include exterior insulation and finishing system (EIFS), hardiplank or any other material not specifically provided for in this definition.

\* \* \*

**Sec. 6-426. - Single-family dwelling units.**

\* \* \*

- (2) Single-family dwellings in subdivisions consisting of two (2) or more lots, and for which a completed land plan, preliminary plat, or final plat application has not been submitted to the City of Rosenberg prior to the effective date of this ordinance, shall consist of a minimum of:
  - (a) Seventy-five (75) percent masonry exterior for structures that are one (1) story in height.
  - (b) Fifty (50) percent masonry exterior for structures that are two (2) stories and above in height.”

Section 3. All ordinances or parts inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 4. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law. Any non-conforming buildings existing at the time of enactment of this ordinance are exempt from the provisions of this ordinance.

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

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, **City Secretary**

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

**APPROVED AS TO FORM:**

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

- The petition should be done first and then the traffic study to determine need.
- Change the forms from "petition" to "application" and add a date line for signatures.
- Scott Tschirhart, Attorney for the City stated clarification of authority of the City Manager is needed to more clearly define the City Manager's authority to determine the area included or the location of the speed hump of the affected properties.
- Councilor McConathy asked for clarification under the "Notification/Evidence Support" to the wording to better describe the placement information.
- The general consensus of Council was for staff to bring the item back with the changes as discussed.
- No action was taken on the item.

4. **REVIEW AND DISCUSS PROPOSED AMENDMENTS TO CODE OF ORDINANCES, CHAPTER 6, ARTICLES XVI AND XVII, REGARDING PARKING LOT AND SINGLE-FAMILY RESIDENTIAL DWELLING STANDARDS, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

**Executive Summary:** This Agenda item addresses a number of issues in Chapter 6 that have been discussed over a relatively long period of time. Staff believed the best approach would be to cover them all in one Agenda item since all proposed amendments are found under the same Chapter. Should City Council direct staff to move forward, one (1) Ordinance addressing all of the proposed amendments described below could be placed on a future Agenda for City Council's consideration.

Over the last several months, the Planning Commission (Commission) and City Council have at different times discussed a number of possible amendments to Chapter 6 of the Code of Ordinances. Chapter 6 relates to Building and Building Regulations and the proposed amendments in particular would address Parking Lot and Single-Family Residential Dwelling Standards (Articles XVI and XVII, respectively). An overview of the proposed amendments, and draft revisions to the Ordinance were included in the agenda packet for City Council's consideration.

On April 22, 2014, City Council directed staff to research and discuss with the Commission the regulation of parking in residential yards as well as outside display of merchandise. These items were discussed by the Commission on May 21, 2014, and the Commission recommended approval of amendments to the City's existing ordinances on these matters on June 18, 2014. The ordinance amendments in question are similar to the City of Sugar Land's ordinance (as directed by City Council) and generally provide for the following:

- No parking of vehicles in residential front yards except on improved surfaces or preexisting unimproved driveways;
- Strict limitations on outside display of merchandise (i.e., 25' setback from right-of-way, not located in parking areas, owned by the owner or lessee of the property, and not greater than ten (10) percent of the building area), with the exception of certain types of merchandise such as landscaping materials and vehicles.

Further, on July 16, 2014, the Commission received a presentation from the Texas Masonry Council explaining the benefits of masonry planning policies or ordinances requiring a minimum percentage of masonry on residential and/or nonresidential structures. The Commission had previously expressed interest in such policies, noting the amount of HardiPlank siding on homes in new subdivisions and concerns regarding maintenance. Among the benefits of masonry planning policies that were discussed were that masonry products generally are lower maintenance, result in increased home values, are more durable, and provide for more predictability of development or architectural control. That being said, on October 15, 2014, the Commission recommended approval to City Council of an Ordinance Amendment that would require homes on lots platted after the effective date of the Ordinance to generally have a minimum of seventy-five (75) percent masonry exterior. Staff has further refined the proposed amendment to seventy-five (75) percent masonry exterior for one (1) story structures and fifty (50) percent for two (2) stories and above. If adopted, this would not apply to existing subdivisions or to homes built in the Extraterritorial Jurisdiction (ETJ); it would only apply to homes constructed in future developments within the City.

Finally, the Commission has previously discussed and made recommendations to City Council regarding the Parking Lot Standards and Specifications related to parking spaces abutting public streets. The City's Ordinance currently allows for businesses with twenty-five (25) or fewer parking spaces to have spaces that back into the public right-of-way. The Commission believed, and staff concurs, that it would be in the best interest of the City from a mobility and safety standpoint to not have future parking spaces abutting the right-of-way. Existing businesses would be "grandfathered" in relation to this requirement. This also would not apply to the Downtown area. The Commission recommended approval of this proposed Amendment on April 24, 2013.

Staff is requesting direction from City Council on these proposed amendments to Chapter 6 of the Code of Ordinances.

**Key discussion points:**

- Travis Tanner, Executive Director of Community Development presented the proposed amendments to Code of Ordinances, Chapter 6, Articles XVI and XVII, regarding parking lot and single-family residential dwelling standards.
- After discussion by the Council, the following recommendations were made:
  - An ordinance is needed to address permanent front yard parking, but should not be so strict as to not take into account different variables for short term use. Will work with legal and come back with a proposal for future discussion.
  - Add language regarding parking spaces being used for display of merchandise.
  - Proceed with ordinance proposal of 75% masonry exterior for one story homes and 50% for two story and above for future developments inside city limits.
  - Proceed with ordinance proposal to disallow new businesses to have head-in parking spaces adjoining public streets.
- No action was taken on the item.

5. **THE ITEM WAS TABLED.**

**REVIEW AND DISCUSS A PROPOSED TAX CREDIT MULTIFAMILY DEVELOPMENT PROJECT BY PALLADIUM ROSENBERG, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

**Executive Summary:** Palladium USA, a multifamily residential developer, has requested the opportunity to discuss with City Council a proposed tax credit multifamily development. It is staff's understanding that the project would be in the Extraterritorial Jurisdiction (ETJ) and not in the City Limits; however, they will potentially be requesting City Council's support for the project, hence the discussion item on the Agenda. At this time, specific plans for the project have not been submitted. As staff understands it, the project would be located on property bounded by FM 2977, Tori, Rohan and Reading Roads immediately outside of the City Limits.

6. **REVIEW AND DISCUSS A REQUEST FOR STATUE PLACEMENT IN SEABOURNE CREEK PARK, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

**Executive Summary:** On December 18, 2014, at the regularly scheduled Parks and Recreation Board (Board) meeting, staff presented a statue request from Ms. Joan Williams McLeod. Ms. McLeod had previously addressed City Council on August 19, 2014, with a request that half of the six (6) acres of land previously donated by her family be returned. The City Attorney and City Council presented reasons why abandoning the property is a difficult process. Ms. McLeod revisited City Council on November 18, 2014, with an alternate request that a statue by guest artist Eric Kaposta be placed in Seabourne Creek Park to honor her family for donating land. Ms. McLeod also requested for the City to pay for all costs associated with the proposed statue with the monies received from the pipeline crossing the park. Recognition for the donation of land was not written into the family's Agreement, which expired one (1) year ago. The Board reviewed the meeting minutes of City Council and after some discussion, the Board unanimously recommended that a walking trail be named after the family.

Staff has placed this item on the Agenda to receive City Council's input on the Board recommendation that a walking trail being named after the Williams family to honor the family's prior donation of land to Seabourne Creek Park.

**11. CONSIDERATION OF AND ACTION OF PROPOSED AMENDMENTS TO CODE OF ORDINANCES, CHAPTER 6, ARTICLES I AND XVII PROVIDING FOR A MINIMUM MASONRY REQUIREMENT FOR NEW SINGLE-FAMILY RESIDENTIAL CONSTRUCTION.**

**Executive Summary:** Potential masonry standards have been discussed at several previous Planning Commission meetings. At the July 16, 2014 meeting, representatives of the Texas Masonry Council gave a presentation on the benefits of masonry planning policies. Among the benefits they discussed were the following:

- Masonry products are lower maintenance;
- Increased home values and tax base;
- Lower cost of ownership and more advantageous from a resale standpoint;
- Results in more predictable development; and,
- Safety considerations.

Because of the West Fort Bend Management District corridors and commercial and multi-family development already being subject to masonry standards in most instances, staff and the Commission have discussed a masonry requirement for new single-family residential developments in the City (these standards could not be applied in the ETJ). Therefore, staff has created definitions and established a minimum percentage of masonry for homes constructed on lots platted after the effective date of this Ordinance. Under the proposed amendments, masonry would include brick, stone, and stucco and would exclude HardiPlank and EIFS (synthetic stucco) materials. The minimum percentage of masonry would be seventy-five (75) percent. The calculation would of course exclude windows and doors (this is covered in the definitions).

The 75 percent masonry requirement is similar to what has been negotiated for recent residential developments in Brazos Town Center. The goal is to ensure a minimum of three (3) sides masonry construction. Staff recommends that the Planning Commission recommend approval to City Council of the proposed amendments to the Code of Ordinances, Chapter 6, Article I and XVII.

**Key Discussion:**

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

**Action Taken:** Commissioner Parsons moved, seconded by Commissioner Poldrack, to recommend approval to City Council of the proposed amendments to Code of Ordinances, Chapter 6, Article I and XVII providing for a minimum masonry requirement for new single-family residential construction.

**12. CONSIDERATION OF AND ACTION ON THE 2015 PLANNING COMMISSION MEETINGS AND SUBMITTAL DEADLINES CALENDER.**

**Executive Summary:** Staff has included this item for the Planning Commission to consider and take action on the proposed 2015 Planning Commission Meetings and Submittal Deadlines Calendar (Calendar). With the change to the third Wednesday of the month, it is no longer necessary to accommodate the end of year holidays by moving the meeting date.

Staff recommends approval of the proposed Calendar as presented.

**Key Discussion:**

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

**Action Taken:** Commissioner Parsons moved, seconded by Commissioner Poldrack, to approve the 2015 Planning Commission Meetings and Submittal Deadlines Calendar. The motion carried unanimously.

**13. CONSIDERATION OF AND ACTION ON THE STAFF REPORT OF CURRENT ACTIVITIES AND REQUESTS FOR FUTURE AGENDA ITEMS.**

**Executive Summary:** The Staff Report of Current Activities consists of projects that staff is currently working on as well as other updates that are relevant to the Planning Commission. This item also allows the Planning Commission the opportunity to request the items be placed on future agendas.

- sizes.
- Mr. Kalkomey replied that no one is currently tracking lot sizes along with house starts. It would be easy if the whole development is a single lot size and all lots had built out. But in subdivisions with multiple lot sizes and ongoing development, that number is not readily available but can be generated after some research.
  - Commissioner Parsons replied that information is important for this Commission's long range plan for what this City will look like in 20-25 years.
  - Mr. Tanner replied that is something that the Comprehensive Plan Update will look at. In house, there is not adequate staff for additional reporting.
  - Commissioner Parsons stated that as part of the master plan, it is a good exercise to see where the City is and where it is going. Has the Comprehensive Plan Update been approved?
  - Councilor McConathy replied no.
  - Commissioner Poldrack stated that 50-foot lots do not necessarily indicate a starter home. The Reserve at Brazos Town Center has smaller lot sizes but have 200K homes.
  - Commissioner Parsons agreed and stated that he does not take issue with a smaller lot size if a quality home is going on it. The City does not need any more starter homes.

**Action Taken:** Upon voting, the motion carried unanimously by those present.

**3. HEAR AND DISCUSS A PRESENTATION BY THE TEXAS MASONRY COUNCIL, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

**Executive Summary:** As part of a request to discuss possible masonry requirements for single-family homes, the Planning Commission requested staff to extend an invitation to the Texas Masonry Council for a representative to make a presentation to the Commission on possible masonry standards.

**Presentation Summary:**

- Ms. Leila Sequeiros, Austin/San Antonio Area Government Relations Specialist, introduced herself and Mr. Tony Topping, Houston Area Government Relations Specialist with the Texas Masonry Council, to the Commissioners and made the following PowerPoint presentation:
  - **Presentation Overview**
    - Introduction to Texas Masonry Council
    - Overview of Masonry Planning Policies
    - Rosenberg's Opportunities
    - How We Can Help
    - Questions and Discussion
  - **Texas Masonry Council**
    - The Texas Masonry Council is a non-profit organization that promotes the long standing tradition of building in Texas with beautiful, durable and sustainable masonry materials.
    - We are the only organization in Texas specializing specifically in assisting communities with the development of Masonry Planning Policies.
    - We have worked with over 200 cities across Texas assisting with the development of Masonry Planning Policies.
    - Best of all, ALL OUR SERVICES ARE FREE.
  - **Masonry Planning Policies**
    - In Texas, municipalities such as Rosenberg have the lawful right to adopt local legislation to protect the health, safety and welfare of their citizens.
    - One such form of legislation is a Masonry Planning Policy.
    - Some Masonry Planning Policies come in the form of:
      - New zoning ordinances of an amendment to an existing zoning ordinance.
      - New building codes or an amendment to an existing building code.
      - Residential construction design guidelines (can include multi-family).
      - Non-residential construction guidelines (commercial construction).
      - An overlay or designated district, such as a Historical Downtown District.
      - Architectural guidelines.
  - **What is Masonry?**
    - According to the International Building Code (IBC) and International Residential Building Code (IRC), the state mandated building codes of Texas, masonry is, "a form of construction composed of brick, stone, concrete block or other materials of equal characteristics laid up unit by unit and set in mortar."
    - Although these codes define masonry, they do not require it.

- By definition, masonry does not include other inferior building materials such as fiber cement siding, stucco or synthetic stucco.
- **A Local Planning Tool**
  - **Local Decision**
    - The percentage of masonry required by the policy, and the materials that will be considered acceptable, are determined by the needs and desires of the community.
    - With a library of over 200 masonry policies in Texas, we can help guide the process and assist in crafting the details of a new policy.
- **Benefits of Masonry Policies**
  - **FACT: Masonry Products are Low Maintenance**
    - True masonry products require little to no maintenance at all.
    - Here is a picture of a Rosenberg home that is less than three years old.
    - Note the growth of mildew on the fiber cement siding.
    - Homes in this neighborhood were 25% or less true masonry.
  - **Increases the Tax Base and Home Value**
    - Masonry homes appreciate in value faster than non-brick homes. Some research shows they appreciate up to 6% in the first year alone. That means a bigger tax base and increased revenue available for cities to provide essential city services. Services that are even increasing in cost. Masonry homes very rarely depreciate in value, unlike some homes built with inferior materials such as fiber cement siding.
  - **Lower Cost of Ownership and Faster Resale**
    - Masonry homes are more energy efficient – up to 7% lower energy costs
    - Masonry homes have lower insurance premiums.
    - Lower maintenance costs:
      - No painting needed.
      - No need to replace decaying siding.
      - Looks great for decades.
  - **More Predictable Development Creating a “Sense of Place”**
    - More predictable development. Brick, stone and masonry products are such classic and traditional building materials that they lend themselves to more classic architecture styles. City leaders don’t have to worry as much about some oddball development popping up in the middle of a neighborhood. It certainly happens. Who in here wants this home built next to yours? (photo example shown of snail-shaped stucco structure painted in rainbow colors.)
  - **Brick Homes are Safer**
    - Texas Tech University built two wall systems according to the state mandated residential building code. One was built with a brick exterior and the other with fiber cement. They fired a 2x4 at the wind speed of a category 3 tornado into the walls. The 2x4 shattered upon impact with the brick wall. But the 2x4 fired at the fiber cement wall went straight through it. Imagine if a child were sleeping there when that 2x4 came flying through the wall.
- **University of Michigan Research**
  - “Found that the adoption of a masonry ordinance not only enhances the durability and aesthetic value of local properties, but it also increases the property value, tax base, and overall fiscal health of the community. In addition, the research indicates that the adoption of a masonry ordinance promotes population growth and does not significantly affect the affordability of housing or rental costs.”
- **Rosenberg’s Opportunities**
  - West Fort Bend Management District already incorporates many of these ideas into their design guidelines.
  - “Growth is coming and Rosenberg is about to grow exponentially. The question is what kind of people are going to come.” - Commissioner Mike Parsons
- **How Can We Help?**
  - Recommendations
    - Recommend that Rosenberg begin to look at creating a residential masonry ordinance.
  - Research
    - Other ordinances adopted throughout Texas
    - Connect you with communities that have them in place

- Lead workshops to help leaders make decisions
- Draft the ordinance
- All services are FREE
- **Questions and Discussion**

- Commissioner Parsons stated that this is not the first time this presentation has been made to the Planning Commission. There was a previous presentation in the last tenure with another group regarding the development of masonry requirements. Masonry requirements are integral to the successful growth of Rosenberg in the long run. It would be interesting to know which Texas cities have endorsed masonry guidelines. Our City is not zoned but it is important to add to our building codes what we foresee as the Rosenberg we want to see 25-30 years from now. We need to be progressive and ahead of the curve with what we want to see in this City.
- Ms. Sequeiros replied that a few years ago, Cedar Park was not that attractive of a city. They have put in strong masonry standards over the past few years and the difference is dramatic. Cities that did not do what was needed before growth came to their areas are now struggling. If masonry standards are not established, it will mean lower quality development.
- Commissioner Poldrack stated that he agrees with Commissioner Parsons but also feels it needs to be taken a step further and look at building standards overall and what can be done to enhance the quality of future development. Masonry is one part of that. There are other things that can be done to enhance quality of construction down the road.
- Ms. Sequeiros replied that the Texas Masonry Council has also assisted with the whole design guidelines that are not just masonry but also landscaping, setbacks, etc. We can provide some samples if you want to start working on it.
- Chairperson Pavlovsky inquired if the Texas Masonry Council had ever made a presentation to the West Fort Bend Management District (WFBMD).
- Mr. Topping replied that it was likely in the past.
- Mr. Tanner stated that the WFBMD already has stringent masonry standards – they require 80% masonry.
- Chairperson Pavlovsky stated that the more successful cities are doing things like this and thanked the representatives for coming out.
- Commissioner Parsons stated that some action is needed so we can move in this direction. He would like the Commission to make a motion to endorse this idea of masonry enhancement for the City as well as other enhancements in the building code.
- Commissioner Poldrack inquired of Councilor McConathy if City Council would be receptive to amending the design standards.
- Councilor McConathy replied that she is only one Councilor and cannot speak for the rest. She would support it.
- Mr. Tschirhart commented that the Agenda is not worded to allow specific action on this item but the Commission may direct staff to bring back an item on the next Agenda.
- Chairperson Pavlovsky thanked Ms. Sequeiros and Mr. Topping for their presentation.

***No action taken.***

#### **4. CONSIDERATION OF AND ACTION ON THE STAFF REPORT OF CURRENT ACTIVITIES AND REQUESTS FOR FUTURE AGENDA ITEMS.**

***Executive Summary:*** The Staff Report of Current Activities consists of projects that staff is currently working on as well as other updates that are relevant to the Planning Commission. This item also allows the Planning Commission the opportunity to request that items be placed on future agendas.

After being tabled on May 6, 2014, the scope of the Comprehensive Plan update was discussed at the June 24, 2014 City Council Workshop Meeting. The consensus of City Council was to move forward with the project.

Additionally, given that the “Sign” Ordinance amendments pertaining to the West Fort Bend Management District (WFBMD) corridors have been completed and approved by City Council, staff is coordinating with the WFBMD for them to formally recognize the City’s regulations for freestanding sign height and size. This was discussed at the June 17, 2014 WFBMD Board Meeting. The Board directed their staff to move forward and an item will be on the July 15, 2014 WFBMD Agenda to accept the City standards for height and size.

***Key Discussion:***

- Mr. Tanner presented the item and reviewed the executive summary. The quarterly report that is typically presented on this Agenda will be on the next regular Agenda.

# **ITEM 9**

**Hold Executive Session to deliberate economic development negotiations regarding business prospects seeking to locate, stay or expand in the Rosenberg area pursuant to Section 551.087 of the Texas Government Code.**

# **ITEM 10**

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



# CITY COUNCIL COMMUNICATION

May 19, 2015

ITEM #	ITEM TITLE
11	Resolution No. R- 1971 - Paragon Outlets Performance Agreement

### ITEM/MOTION

Consideration of and action on Resolution No. R-1971, a Resolution authorizing the Mayor to execute, for and on behalf of the City, a Performance Agreement, by and among the City, the Rosenberg Development Corporation, and Paragon Outlets Rosenberg Limited Partnership.

FINANCIAL SUMMARY	ELECTION DISTRICT
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**Annualized Dollars:**

- One-time
- Recurring
- N/A

**Budgeted:**

- Yes  No  N/A

**Source of Funds:** N/A

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

**SUPPORTING DOCUMENTS:****MUD #:** 159 (Oaks of Rosenberg)

- Resolution No. R-1971 – Exhibit “A” to be provided under separate confidential cover

### APPROVALS

**Submitted by:**

  
 Randall Malik  
 Economic Development  
 Director

**Reviewed by:**

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

**Approved for Submittal to City Council:**

  
 Robert Gracia  
 City Manager

### EXECUTIVE SUMMARY

This Agenda item provides City Council the opportunity to take action on a Performance Agreement by and among the City, the Rosenberg Development Corporation, and Paragon Outlets Rosenberg Limited Partnership.

The RDC considered said Performance Agreement at its regular meeting on May 14<sup>th</sup> and authorized execution of same. A draft minute excerpt from the RDC meeting was not yet available at the time this Agenda packet went to print.

The RDC and staff recommend approval of Resolution No. R-1971, thus authorizing the Mayor to execute the Performance Agreement with Paragon Outlets Rosenberg Limited Partnership.

**RESOLUTION NO. R-1971**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE, FOR AND BEHALF OF THE CITY OF ROSENBERG, TEXAS, A PERFORMANCE AGREEMENT, BY AND AMONG THE CITY OF ROSENBERG, TEXAS, THE ROSENBERG DEVELOPMENT CORPORATION, AND PARAGON OUTLETS ROSENBERG LIMITED PARTNERSHIP.**

\* \* \* \* \*

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

Section 1. The City Council hereby authorizes the Mayor to execute a Performance Agreement (Agreement) by and among the City of Rosenberg, the Rosenberg Development Corporation, and Paragon Outlets Rosenberg Limited Partnership.

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

**PASSED, APPROVED, AND RESOLVED** this \_\_\_\_ day of \_\_\_\_\_ 2015.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Linda Cernosek, **CITY SECRETARY**

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

**EXHIBIT "A"**

*This document to be provided under separate confidential cover.*

# **ITEM 12**

**Announcements.**

# **ITEM 13**

**Adjournment.**