

# CITY OF HUNTSVILLE, TEXAS

Andy Brauning, Mayor

Keith D. Olson, Mayor Pro Tem, Position 4  
Paul Davidhizar, Position 1 At-Large  
Tyler McCafferty, Position 2 At-Large  
Clyde D. Loll, Position 3 At-Large



Joe Emmett, Ward 1  
Tish Humphrey, Ward 2  
Ronald Allen, Ward 3  
Joe Rodriguez, Ward 4

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## HUNTSVILLE CITY COUNCIL AGENDA TUESDAY, APRIL 18, 2017 WORK SESSION 5:15 P.M. - REGULAR SESSION 6:00 P.M.

### CITY COUNCIL CHAMBERS & LARGE CONFERENCE ROOM HUNTSVILLE CITY HALL, 1212 AVENUE M, HUNTSVILLE, TEXAS, 77340

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact the City Secretary's office (936.291.5403), two working days prior to the meeting for appropriate arrangements.

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**WORK SESSION [5:15]** - The City Council will discuss options for a smoking ordinance.

#### MAIN SESSION [6:00 P.M.]

**1. CALL TO ORDER**

**2. INVOCATION AND PLEDGES**

*U.S. Flag*

*Texas Flag: Honor the Texas Flag. I pledge allegiance to thee, Texas, one state, under God, one, and indivisible.*

**3. PRESENTATIONS AND PROCLAMATIONS**

- H-GAC – Resolution in honor of Mac Woodward
- Neon for Neurons/Stroke Awareness Month
- Parliamentary Law Month
- National Book Awards Festival Month
- National Public Safety Telecommunicator Week

**4. PUBLIC HEARING** – The City Council will receive comments on a Development Code amendment to amend Section 10.500 Sidewalks in the Development Code of the City of Huntsville and setting an effective date.

**5. CONSENT AGENDA**

Public comments will be called for by the presiding officer before action is taken on these items. *(Approval of Consent Agenda authorizes the City Manager to implement each item in accordance with staff recommendations. An item may be removed from the Consent Agenda and added to the Statutory Agenda for full discussion by request of a member of Council.)*

- a. Approve the minutes of the City Council meeting held on March 4, 2017. [Lee Woodward, City Secretary]

**6. STATUTORY AGENDA**

- a. *Presentation, public comment, discussion, and possible action* to authorize the City Manager to enter an agreement with Freese and Nichols, Inc. for professional engineering services for 2016 Bond Proposition #3 Water Infrastructure Projects (17-01-01) and approve the associated budget amendment Ordinance 2017-26, second reading. [Ram Ramachandra, City Engineer]
- b. *Presentation, public comment, discussion, and possible action* to authorize the City Manager to enter an agreement with Enprotec/Hibbs & Todd, Inc., (eHT) for professional engineering services for 2016 Bond Proposition #3 Wastewater Infrastructure Projects (17-01-02), second reading. [Ram Ramachandra, City Engineer]
- c. *Presentation, public comment, discussion, and possible action* to consider authorizing the City Manager to enter an agreement with Freese and Nichols, Inc. for professional engineering services for 2016 Bond Proposition #3 Wastewater Infrastructure Project – Relocation of Elkins Lake Dam Lift Station and 30" Sewer Main (17-11-09) and approve the associated budget amendment Ordinance 2017-28, second reading. [Ram Ramachandra, City Engineer]
- d. *Presentation, public comment, discussion, and possible action* to consider authorizing the City Manager to enter into a lease agreement with Sealark Investments, LLC for an Oil, Gas and Mineral Lease covering lands situated in Walker County, Texas, second reading. [Aron Kulhavy, Community and Economic Development Director]
- e. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to consider adoption of Ordinance 2017-29, amending Section 10.500 Sidewalks in the *Development Code* of the City of Huntsville and setting an effective date, first reading. [Aron Kulhavy, Community and Economic Development Director]
- f. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to consider adoption of Ordinance 2017-30, regarding smoking regulations, first reading. [Matt Benoit, City Manager]

**7. CITY COUNCIL/CITY MANAGER/CITY ATTORNEY**

- a. **FIRST READING** - *Presentation, public comment, discussion, and possible action* to consider adoption of Ordinance 2017-31, suspending the CenterPoint Energy GRIP rates, first reading. [Leonard Schneider, City Attorney]
- b. *Presentation, public comment, discussion, and possible action* to consider adoption of Resolution 2017-12, in support of a

proposal by Entergy Texas, Inc. Regarding the application of Entergy Texas Inc. to amend its certificate of convenience and necessity to construct Montgomery County power station. [Leonard Schneider, City Attorney]

- c. *Presentation, public comment, discussion, and possible action* to adopt Ordinance 2017-32 to amend the Capital Improvement Projects budget. [Councilmember Allen]

**8. EXECUTIVE SESSION**

City Council will convene in closed session as authorized by Texas Government Code Chapter 551, Section 551.071 - consultation with counsel on legal matters to receive legal advice on contemplated litigation on employment claim by Kimberly Webb. [Leonard Schneider, City Attorney].

**9. RECONVENE**

Take action on items discussed in executive session, if needed.

**10. REQUESTS FOR CITIZEN PARTICIPATION**

An opportunity for citizens to be heard on any topic and for the City Council to participate in the discussion. No action will be taken.

*No requests were received by noon on Tuesday, April 11, 2017.*

**11. MEDIA INQUIRIES RELATED TO MATTERS ON THE AGENDA**

**12. ITEMS OF COMMUNITY INTEREST**

(Hear announcements concerning items of community interest from the Mayor, Councilmembers, and City staff, for which no action will be discussed or taken.)

**13. ADJOURNMENT**

\*If, during the course of the meeting and discussion of any items covered by this notice, City Council determines that a Closed or Executive session of the Council is required, then such closed meeting will be held as authorized by Texas Government Code, Chapter 551, Sections 551.071 – consultation with counsel on legal matters; 551.072 – deliberation regarding purchase, exchange, lease or value of real property; 551.073 – deliberation regarding a prospective gift; 551.074 – personnel matters regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; 551.076 – implementation of security personnel or devices; 551.087 – deliberation regarding economic development negotiation; and/or other matters as authorized under the Texas Government Code. If a Closed or Executive session is held in accordance with the Texas Government Code as set out above, the City Council will reconvene in Open Session in order to take action, if necessary, on the items addressed during Executive Session.

**CERTIFICATE**

I, Lee Woodward, City Secretary, do hereby certify that a copy of the April 18, 2017 City Council Agenda was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, and to the City's website, [www.huntsvilletx.gov](http://www.huntsvilletx.gov), in compliance with Chapter 551, Texas Government Code.

DATE OF POSTING: \_\_\_\_\_

TIME OF POSTING: \_\_\_\_\_ am/pm

TAKEN DOWN: \_\_\_\_\_

\_\_\_\_\_  
Lee Woodward, City Secretary

MINUTES FROM THE HUNTSVILLE CITY COUNCIL REGULAR MEETING HELD ON THE 4th DAY OF APRIL 2017, IN THE CITY HALL, LOCATED AT 1212 AVENUE M, IN THE CITY OF HUNTSVILLE, COUNTY OF WALKER, TEXAS, AT 6:00 P.M.

The Council met in a regular session with the following:

**COUNCILMEMBERS PRESENT:** Andy Brauninger, Keith D. Olson, Joe Emmett, Tish Humphrey, Ronald Allen, Joe P. Rodriguez, Clyde D. Loll, Tyler McCaffety

**COUNCILMEMBERS ABSENT:** Paul Davidhizar

**OFFICERS PRESENT:** Matt Benoit, City Manager; Leonard Schneider, City Attorney; Lee Woodward, City Secretary

**WORK SESSION [5:15 P.M.] - The City Council will discuss options for a smoking ordinance.**

The Council and City Manager discussed the meetings held with restaurant and bar owners recently, as well as levels of prohibition in other cities, in considering a revised smoking ordinance to be considered on an upcoming agenda.

**MAIN SESSION [6:00 p.m.]**

1. **CALL TO ORDER – Mayor Brauninger called the meeting to order at 6:00 p.m.**

2. **INVOCATION AND PLEDGES**

*U.S. Flag*

*Texas Flag: Honor the Texas Flag. I pledge allegiance to thee, Texas, one state, under God, one, and indivisible.*

Councilmember McCaffety gave an invocation. Little Dribblers from the teams headed to the national competition led the pledges.

3. **PRESENTATIONS AND PROCLAMATIONS**

- Sexual Assault Awareness Month
- Little Dribblers Day
- Fair Housing Month
- Safe Digging Month

4. **CONSENT AGENDA**

Public Comments will be called for by the presiding officer before action is taken on these items. *(Approval of Consent Agenda authorizes the City Manager to implement each item in accordance with staff recommendations. An item may be removed from the Consent Agenda and added to the Statutory Agenda for full discussion by request of a member of Council.)*

a. **Approve the minutes of the City Council meeting held on March 21, 2017. [Lee Woodward, City Secretary]**

Mayor Pro Tem Olson moved to adopt the consent agenda; the motion was seconded by Councilmember McCaffety. The motion was unanimously adopted, 8-0.

5. **STATUTORY AGENDA**

a. **FIRST READING - Presentation, public comment, discussion, and possible action to authorize the City Manager to enter an agreement with Freese and Nichols, Inc. for professional engineering services for 2016 Bond Proposition #3 Water Infrastructure Projects (17-01-01) and approve the associated budget amendment Ordinance 2017-26, first reading. [Ram Ramachandra, City Engineer]**

*First reading, no action taken.*

b. **FIRST READING - Presentation, public comment, discussion, and possible action to authorize the City Manager to enter an agreement with Enprotec/Hibbs & Todd, Inc., (eHT) for professional engineering services for 2016 Bond Proposition #3 Wastewater Infrastructure Projects (17-01-02), first reading. [Ram Ramachandra, City Engineer]**

*First reading, no action taken.*

c. **FIRST READING - Presentation, public comment, discussion, and possible action to consider authorizing the City Manager to enter an agreement with Freese and Nichols, Inc. for professional engineering services for 2016 Bond Proposition #3 Wastewater Infrastructure Project – Relocation of Elkins Lake Dam Lift Station and 30” Sewer Main (17-11-09) and approve the associated budget amendment Ordinance 2017-28, first reading. [Ram Ramachandra, City Engineer]**

*First reading, no action taken.*

d. **Presentation, public comment, discussion, and possible action to consider authorizing the City Manager to enter an agreement with American Civil Engineering Services, L.P. (ACES) for Project Management services for 2016 Bond Proposition #3 Water and Wastewater Infrastructure Projects and approving associated budget amendment Ordinance 2017-27. [Ram Ramachandra, City Engineer]**

Councilmember Humphrey moved to authorize the City Manager to enter an agreement with American Civil Engineering Services, L.P. (ACES) for Project Management services for 2016 Bond Proposition #3 Water and Wastewater Infrastructure Projects and approve the associated budget amendment Ordinance 2017-27; the motion was seconded by Mayor Pro Tem Olson. The motion was adopted, 8-0.

- e. **Presentation, public comment, discussion, and possible action to consider authorizing the City Manager to enter into a lease agreement with Sealark Investments, LLC for an Oil, Gas and Mineral Lease covering lands situated in Walker County, Texas. [Aron Kulhavy, Community and Economic Development Director]**

Councilmember Humphrey moved to authorize the City Manager to enter into a lease agreement with Sealark Investments, LLC, for an oil, gas, and mineral lease covering lands situated in Walker County, Texas, and make a finding that Charter Section 14.13 (b) is inapplicable to the leasing of subsurface and oil and gas operations; the motion was seconded by Councilmember Rodriguez. Mayor Pro Tem Olson moved to postpone the item until the April 18<sup>th</sup> Council meeting; the motion was seconded by Councilmembers Allen and Rodriguez. The motion was adopted, 8-0.

**6. CITY COUNCIL/CITY MANAGER/CITY ATTORNEY**

- a. **Presentation, public comment, discussion, and possible action to nominate and select a nominee to be considered for the Walker County Appraisal District Board of Directors and adopt Resolution 2017-09 in support of same. [Mayor Brauning]**

(Councilmember Loll had previously signed a Conflict of Interest affidavit and did not participate in the discussion or vote.) Mayor Brauning nominated Otis Oliphant. The motion was not adopted, 3-4, Mayor Brauning, and Councilmembers McCaffety and Rodriguez voting in support. Councilmember Humphrey nominated Mayor Pro Tem Olson. The motion was adopted, 5-2, Mayor Brauning and Councilmember Rodriguez against. Councilmember Humphrey moved to adopt Resolution 2017-09 in support of the nomination of Mayor Pro Tem Olson for the Walker County Appraisal District Board of Directors; the motion was seconded by Councilmember McCaffety. The motion was adopted, 7-0.

**7. REQUESTS FOR CITIZEN PARTICIPATION**

An opportunity for citizens to be heard on any topic and for the City Council to participate in the discussion. No action will be taken.

*No requests were received by noon on Tuesday, March 28, 2017.*

**8. MEDIA INQUIRIES RELATED TO MATTERS ON THE AGENDA**

There were no media inquiries.

**9. ITEMS OF COMMUNITY INTEREST**

**(Hear announcements concerning items of community interest from the Mayor, Councilmembers, and City staff, for which no action will be discussed or taken.)**

Mayor Pro Tem Olson presented an *HISD Minute!* - It's time to register for this summer's HEAP program! Visit [www.huntsvilleisd.org](http://www.huntsvilleisd.org) and look under the COMMUNITY tab to link to information and registration. It's a great time full of a variety of activities for kids 6-13 and has been a Huntsville summer staple since 1969!

Strong and healthy bodies support strong and healthy minds. Summer can be a challenging time for children on free and reduced meal price programs, so HISD will have the Green Hornet Bus out around town to help! Find out more on the HISD website, or visit one of their three upcoming block parties – University Heights Baptist Church on April 10, Boys & Girls Club on MLK on April 13, Riverside Baptist Church on April 17, and Cogan's Grove subdivision off FM 1696 on April 24. All of the block parties will be at 5:30 p.m. and will provide information for the summer programs. Call 936-435-6300 with any questions.

Councilmember Humphrey shared the following. It's time again for the annual SHSU LEAP Center Democrat vs. Republican charity football game! This fun event benefits the Huntsville YMCA and the John Holcombe Memorial Scholarship Fund. It will be held at noon on Saturday, April 8, at the track near Pritchett Field, on Avenue O. The players have already donated \$1,500 so please help double this amount (or better) with a sponsorship or donation. For more information, contact Mike Yawn at 294-1456.

CoH Clean Minute! – Check your utility bills this month for the City Connection story on beautifying our community. The City Council made this a priority when we developed our Strategic Plan for this year, and the City Manager and staff have quickly taken action. Please support a community that's neat and tidy by posting to our social media pages when you see something positive, clean, and litter-free around town!

Mayor Brauning announced:

- Check the Wynne Home page on the City website for their full schedule of spring classes and events. There are things for all ages and some are free. Learn something new or develop a skill!

**ADJOURNMENT**

Mayor Brauning adjourned the meeting without objection at 7:30 p.m.

Lee Woodward, City Secretary



## CITY COUNCIL AGENDA

4/18/2017

Agenda Item: 6a

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**Item/Subject:** Consider authorizing the City Manager to enter an agreement with Freese and Nichols, Inc. for professional engineering services for 2016 Bond Proposition #3 Water Infrastructure Projects (17-01-01) and approving associated budget amendment Ordinance 2017-26, second reading.

**Initiating Department/Presenter:** Engineering

**Presenter:** Y. S. "Ram" Ramachandra, City Engineer

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**Recommended Motion:** Move to authorize the City Manager to enter an agreement with Freese and Nichols, Inc. for professional engineering services for 2016 Bond Proposition #3 Water Infrastructure Projects (17-01-01) and approve the associated budget amendment, Ordinance 2017-26.

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**Strategic Initiative:** Goal #4 - Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

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**Discussion:** The citizens of Huntsville approved three (3) bond propositions in November 2016 general elections to fund design and construction of the following City facilities:

The City has completed selection process for professional engineering services for the projects associated with Bond Proposition No. 3 (Water & Wastewater infrastructure). A brief description on the steps that were followed in the selection process is as follows.

Step 1. City staff sought Request for Qualifications from qualified engineering firms during early January of this year. In response, the City received responses from thirty-three (33) engineering firms by submitting their Statement of Qualifications (SOQs).

Step 2. Staff selection committee, consisting of City Manager, Public Works Director, City Engineer and Project Manager reviewed the submittals.

Step 3. Upon completion of review of all the submittals, the City staff shortlisted sixteen (16) firms and sought additional clarifications / answers to a set of questions, to further determine the qualifications and capabilities of the engineering firms that would match the needs of the Bond Proposition No. 3 projects.

Step 3. Eight (8) engineering firms were interview by the staff selection committee.

Step 4. Finally, two top ranked engineering firms were identified – one for Water projects and one for wastewater projects.

***Freese and Nichols, Inc., Fort Worth, TX has been identified as top ranked firm to provide professional engineering services for Bond Proposition No. 3 Water infrastructure projects.***

Freese and Nichols, Inc. has successfully completed a City-wide Water and Wastewater Condition and Capacity Assessment Study for the City last year. Freese and Nichols, is well qualified and well equipped to provide all needed design, procurement, construction support, and construction inspection services for Bond Proposition No. 3 Water Infrastructure projects. Moreover, Freese and Nichols, Inc. has successfully provided very similar professional engineering services to City of Conroe and City of College Station in the recent years.

2016 Bond Proposition Water Infrastructure design projects consists of:

1. Project 1 – 12/18/20/24-inch Montgomery Road Water Lines
2. Project 2 – New Tall Timbers 2.0 MG EST
3. Project 3 – New Palm Street Pump Station
4. Project 4 - 12/20/24/30-inch Sycamore Avenue & SH 30 Water Lines
5. Project 5 – Convert Palm Street Tank to Lower Elevation (580')
6. Project 6 – New Low Pressure Plane Water Plant and 2.0 MG GST
7. Project 7 – Spring Lake Water Plant Pump Replacement
8. Project 8 – 18-inch Hwy 75 Water Line
9. Project 9 – 12-inch Cherry Hills Drive Water Line Replacement
10. Project 10 – Transfer Customers to Upper Pressure Plane

The attached project location map shows the proposed locations/segments of above described projects. These water infrastructure improvement projects are the ones that are identified in the condition and capacity assessment study as priority projects, for implementing during 2016-2021-time range. These projects will largely eliminate existing capacity issues and will provide redundancy to accommodate future growth.

Negotiated fees for design phase services is \$2,445,300 and negotiated fees for construction phases services is \$1,724,600, adding to total professional engineering services fees of \$4,169,900.

Current estimated cost of construction of 2016 Bond Proposition Water Infrastructure projects is in the \$24 million range.

The schedules for completion of design of the project packages are as given below (with May 2017 Notice to Proceed date):

- a) Elevated Storage Tank package (Projects 2 and 5) – February 2018
- b) Pump Station and Ground Storage Tank package (Projects 3, 6 and 7) – May 2018
- c) Pipeline package (Projects 1, 4, 8, 9 and 10) – July 2018

It is planned to proceed with construction procurement process for each project package as and when the design completion occurs.

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**Previous Council Action:** None

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**Financial Implications:**

**Item is budgeted:** Account # 704-70401-62111 for \$2,185,000 and see Ordinance 2017-26 and related Exhibit A for an additional \$260,300.

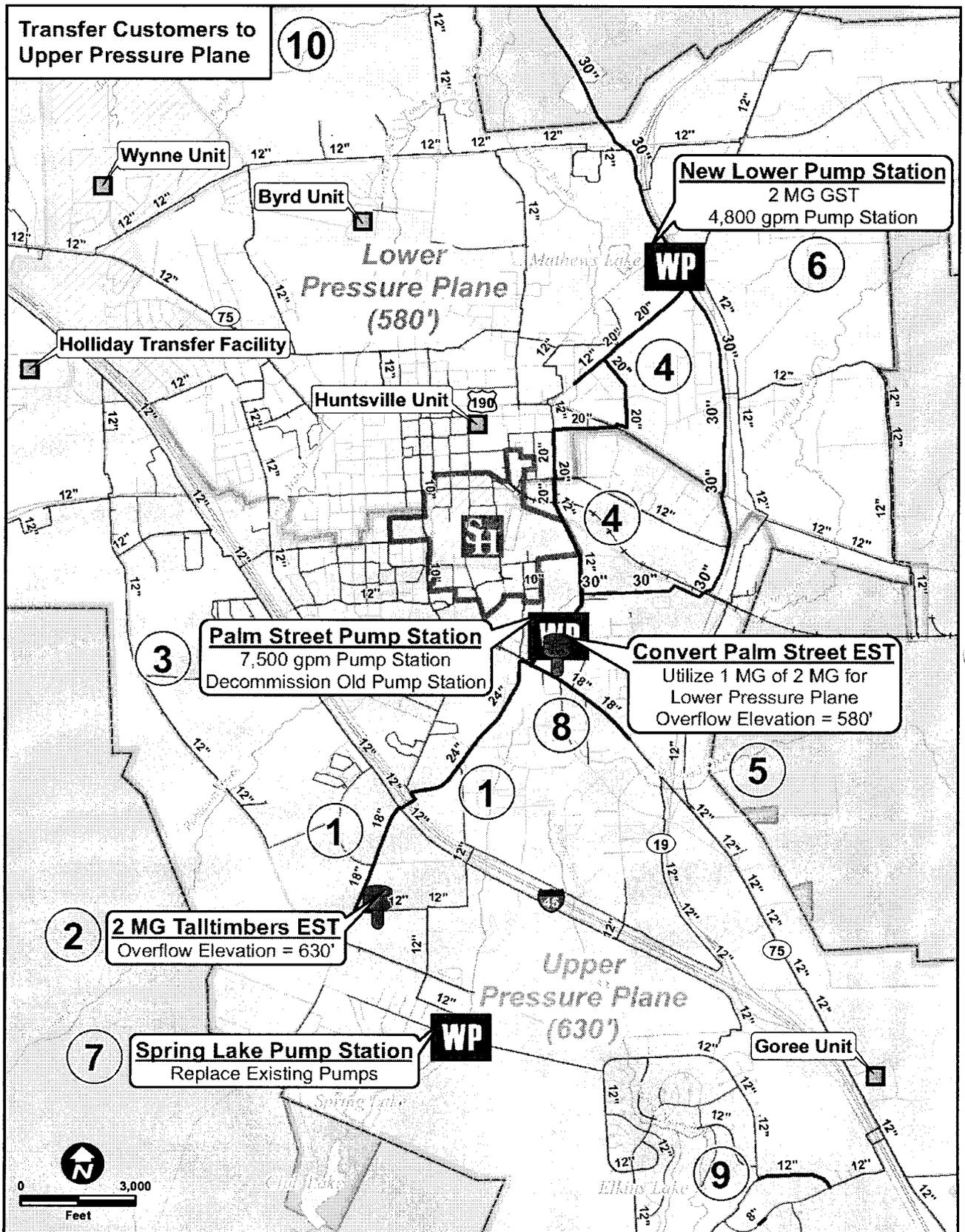
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**Approvals:**     City Attorney             Director of Finance             City Manager

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**Associated Information:**

- Map of Project Locations (pages 4)
- Engineering Agreement (pages 5 thru 12)
- Exhibit 1 to Engineering Agreement (Scope of Services and Fees) (pages 12 thru 39)
- Project Schedule (page 40)
- Budget Amendment Ordinance 2017-26 (page 41)
- Exhibit "A" of Budget Amendment Ordinance 2017-26 (page 42)



AGREEMENT BETWEEN CITY AND ENGINEER  
FOR PROFESSIONAL SERVICES

THIS AGREEMENT made and entered into by and between CITY OF HUNTSVILLE, hereinafter called the OWNER, and FREESE & NICHOLS, INC., City, Texas, hereinafter called ENGINEER, WITNESSETH that whereas the OWNER intends to construct WATER & SYSTEM IMPROVEMENTS identified as Project Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10 in the document titled, "2016 Water and Wastewater Condition and Capacity Assessment Studies," hereinafter called the PROJECT. The effective date of this agreement is \_\_\_\_\_.

NOW, THEREFORE, the OWNER and ENGINEER for the considerations hereinafter set forth, agree as follows:

SECTION 1- RESPONSIBILITY OF THE ENGINEER

The ENGINEER shall serve as the OWNER's professional representative in the planning, design, bidding, and construction phases (including observation of construction) of the PROJECT as outlined in Proposal dated March 28, 2017 from Freese & Nichols, Inc. (the proposal is hereinafter referred to as Exhibit 1), and shall give consultation and advice to the OWNER during the performance of his services. In the event of conflict between any provisions in this Agreement and any provisions in Exhibit 1, the provisions in this Agreement will control.

The ENGINEER shall perform services necessary to accomplish the work required to be performed under this AGREEMENT in a competent and professional manner with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license, as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

The OWNER's approval of drawings, design, specifications, reports incidental engineering work or materials furnished hereunder shall not in any way relieve the ENGINEER of liability for the technical adequacy of his work nor shall the OWNER's approval or acceptance of the ENGINEER's work be construed as a waiver of any rights under this AGREEMENT.

The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or any third party. The ENGINEER shall not be responsible for any time delays in the PROJECT caused by circumstances beyond his control.

SECTION 2- CHARACTER AND EXTENT OF BASIC SERVICES

2.1. General:

The ENGINEER shall serve as the OWNER's professional representative in the planning, design, bidding and construction phases (including observation of construction) of the PROJECT as

outlined in Exhibit 1, and shall give consultation and advice to the OWNER during the performance of his services.

The OWNER and ENGINEER acknowledge and anticipate that the timing and development of any AUTHORIZED WORK may depend on the availability of financing and the needs of the OWNER; therefore, the ENGINEER shall not proceed with any phase of engineering services without specific written authorization by the OWNER.

**2.1.1 Copyright or Patent Infringement:** The ENGINEER shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by him, and he shall hold harmless the OWNER from loss or damage resulting therefrom, providing however, that the OWNER within five (5) days after receipt of any notice of infringement or of summons in any action therefor shall have forwarded the same to the ENGINEER in writing.

**2.1.2 Insurance:** The ENGINEER shall secure and maintain such insurance as will protect him from claims under the Workmen's Compensation Acts and from claims for bodily injury, death, or property damage which may arise from the performance of his services under this Agreement and shall provide a certificate of said insurance to the OWNER to attach to this contract. The ENGINEER shall furnish proof of Error and Omissions Professional Liability Coverage for the ENGINEER for this PROJECT in the amount of One Million Dollars to the OWNER within 15 days after this Agreement is executed and shall continue to maintain said insurance for this PROJECT. ENGINEER agrees to maintain both types of insurance during the duration of the PROJECT.

## 2.2 Planning, Designing, Bidding Support and Construction Support.

Refer to Exhibit 1.

## SECTION 3- ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by the OWNER, the ENGINEER shall provide Additional Services that are not already a part of Exhibit 1 and these will be paid by the OWNER a fee negotiated between the OWNER and the ENGINEER. It is agreed that if any of the additional services listed in this Section 3 are a part of Exhibit 1, then Exhibit 1 controls. Any additional services authorized (including services in addition to the ones listed below) will be in writing and signed by both Parties and attached to this Agreement:

**3.1** Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the PROJECT; preparation or review of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the PROJECT.

**3.2** Services to perform geotechnical investigations, materials testing, engineering surveys or topographic surveys for design, to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by

the OWNER.

3.3 Services resulting from significant changes in general scope of the PROJECT or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond the ENGINEER's control.

3.4 Providing renderings or models for the OWNER's use.

3.5 Preparing documents for alternate bids requested by OWNER for work which is not executed or documents for out of sequence work.

3.6 Investigations involving detailed consideration of operations, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by the OWNER.

3.7 Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, such as consultants for communications, acoustics, and landscaping.

3.8 Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered, and services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

3.9 Services during out of town travel required of the ENGINEER other than visits to the PROJECT site or to regulatory agency offices having jurisdiction over the PROJECT.

3.10 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) prolongation of the contract time of any prime contract by more than sixty (60) days, (4) acceleration of the work schedule involving services beyond normal working hours, and (5) default by any Contractor.

3.11 Construction staking for the PROJECT.

3.12 Land surveys and office computations required to develop plats and metes and bounds descriptions for easement or property acquisition.

3.13 Preparation of operating and maintenance manuals.

3.14 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the PROJECT.

3.15 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the PROJECT.

3.16 Additional services in connection with the PROJECT, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.

3.17 If requested by the OWNER or recommended by the ENGINEER and agreed to in writing by the OWNER, a Resident Project Representative and assistants will be furnished and will act as directed by the ENGINEER in order to provide more extensive representation at the PROJECT site during the Construction Phase.

3.18 Through more extensive on site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if furnished) and assistants, the ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work, but the furnishing of such Resident Project Representation will not make the ENGINEER responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for Contractor(s)' failure to perform the construction work in accordance with the Contract Documents.

3.19 Reimbursable Services of the ENGINEER:

Reimbursable services shall include the following items when authorized in writing by the OWNER: transportation and subsistence of principals and employees on special trips to the PROJECT or to other locations; long distance telephone and telegraph calls as required to expedite the work of the Contractor; reproduction of drawings and specifications.

SECTION 4- THE OWNER'S RESPONSIBILITIES

4.1. THE OWNER AGREES to provide the ENGINEER with complete information concerning the requirements of the PROJECT and to perform the following services:

4.2 Access to the Work: The OWNER shall guarantee access to and make all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform such work as surveys and inspections in the development of the PROJECT.

4.3 Consideration of the ENGINEER's Work: The OWNER, or an agent appointed by OWNER, shall give thorough considerations to all reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the ENGINEER, and shall inform the ENGINEER of all decisions within a reasonable time so as not to delay the work of the ENGINEER.

4.4 Legal Requirements: The OWNER shall serve all required public and private notices, receive and act upon all protests and fulfill requirements necessary in the development of the PROJECT.

4.5 Proposals: The OWNER shall advertise for Proposals from Bidders, open the Proposals at the appointed time and place and pay all costs incidental thereto.

4.6 Protection of Markers: The OWNER shall protect to the best of its ability, all stakes and other markers set by the ENGINEER prior to the assumption of such responsibility by the Contractor. Replacement of markers or stakes which have been damaged, moved or removed shall be paid for by the OWNER as extra services of the ENGINEER.

4.7 Standards: The OWNER shall furnish the ENGINEER with a copy of any design and construction standards it shall require the ENGINEER to follow in the preparation of Contract Documents for the PROJECT.

4.8 OWNER's Representative: The OWNER shall designate in writing, by appendix to this Agreement, a single person to act as the OWNER's Representative with respect to the work to be performed under this Agreement. The person designated as OWNER's Representative shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policy and decisions, with respect to the materials, equipment, elements and systems pertinent to the work covered by this Agreement. The OWNER may also appoint, and will notify the ENGINEER of such appointment, a 3<sup>rd</sup> party to act as the OWNER's agent for consideration of the ENGINEER's work set forth in paragraph 4.3 above.

#### SECTION 5 - THE OWNER'S PAYMENTS TO THE ENGINEER:

5.1 Definitions of Construction Cost of the PROJECT, as herein referred to, means the total cost of all work designed or specified by the ENGINEER but does not include any payments to the ENGINEER or other consultants.

5.2 Payments Withheld from Contractors: No deduction shall be made from the ENGINEER's compensation on account of penalty, liquidated damages, or other amounts withheld from payments to Contractors.

5.3 Abandoned or Suspended Work: If any work performed by the ENGINEER is abandoned or suspended in whole or in part, the ENGINEER shall be paid for services performed on account of it prior to receipt of written notice from the OWNER of such abandonment or suspension.

5.4 The OWNER will make prompt payments in response to the ENGINEER's detailed statements for all categories of completed services rendered under this AGREEMENT, or as provided in an agreed upon schedule which shall be attached to this AGREEMENT. However, the OWNER, in no circumstance, shall be required to make more than one payment a month. It is understood and agreed that the OWNER is not liable for payment of any fees for Basic Services described in this AGREEMENT until funds are available from bond sales or other lawful source of funds.

5.5 Payments for Additional Services of the ENGINEER: The ENGINEER shall be reimbursed according to Attachment Schedule of Charges for the additional services outlined under Section 3. Payments to the ENGINEER for additional services stipulated in Section 3 will be made monthly by the OWNER, upon presentation of monthly detailed

statements by the ENGINEER

SECTION 6 - THE OWNER AND ENGINEER FURTHER AGREE to the following conditions:

6.1 Termination: This Agreement may be terminated by either party by fourteen (14) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one party through no fault of the party. If terminated due to the fault of others than the ENGINEER, the ENGINEER shall be paid for services performed to the date of termination, including reimbursements then due, plus terminal expense. As soon as practicable after receipt of notice of termination, the ENGINEER shall submit a statement, showing in detail the services performed under this AGREEMENT, to the date of termination. The OWNER shall then pay the ENGINEER promptly that proportion of the prescribed charges which the services actually performed under this AGREEMENT bear to total services called for under this AGREEMENT, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, plans and specifications prepared under this AGREEMENT shall be delivered to the OWNER when and if the AGREEMENT is terminated, but subject to the restrictions, as to their use, as set forth in Section 6.3. The Parties agree that neither shall be liable for any consequential damages, loss profits, special damages, or future loss profits if this Agreement is terminated for cause or without cause.

6.2 Disputes: Should a dispute arise during the course of this PROJECT, both parties hereby agree to attempt in good faith to resolve the dispute through mediation prior to seeking relief from any court or through any other legal proceeding.

6.3 Ownership of Documents: Upon execution of this Agreement, the ENGINEER grants to the OWNER a nonexclusive license to reproduce the ENGINEER's completed tracings and master specifications sheets solely for purposes of constructing, using, maintaining, renovating and/or adding onto the PROJECT, provided that the OWNER shall comply with all obligations under this Agreement. The ENGINEER shall obtain similar nonexclusive licenses from the ENGINEER's consultants consistent with this Agreement. Upon termination the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the OWNER to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the PROJECT.

6.4 Except for the licenses granted in Subparagraph 6.3 above, no other license or right shall be deemed granted or implied under this Agreement. The OWNER shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the ENGINEER.

6.5 Successors and Assigns: This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the OWNER and the ENGINEER respectively and his partners, successors, assigns and legal representatives. Neither the OWNER nor the ENGINEER shall have the right to assign, transfer or sublet his interest or obligations hereunder without written

consent of the other party. This Agreement and attachments supersedes any previous contracts or oral agreements between the parties and constitutes the entire agreement between the parties.

6.6 Severability. Provisions of this AGREEMENT are severable and if any provision or part of this AGREEMENT or the application thereof to any person or circumstance should ever be held in any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of the AGREEMENT and the application of such provisions or part of this AGREEMENT to other persons or circumstances shall not be effected thereby.

6.7. Jurisdiction and Venue. The laws of the State of Texas apply to this Agreement. Venue of any civil action will be in the County where the PROJECT is located.

6.8 Indemnity. The OWNER, to the fullest extent permitted by law, will require any Contractor or Subcontractor performing work in connection with Drawings and Specifications produced under this Agreement to hold harmless, indemnify and defend, the OWNER and the ENGINEER, their consultants and each of their officers, agents and employees from liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants or their officers, agents, and employees.

6.9 Written Notice.

Where written notice is mention in the AGREEMENT, it shall be sent by certified mail return receipt requested, or by personal delivery, or by facsimile, to the attention of and to the following addresses:

OWNER Y. S. Ramachandra, P.E. City Engineer City of Huntsville 448 State Highway 75 North Huntsville, TX 77320	ENGINEER Alan C. Hutson Vice President Freese & Nichols, Inc. 10497 Town and Country Way, Suite 600 Houston, TX 77024
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6.10 Staffing. ENGINEER acknowledges that continuity of staffing is important to the OWNER for the duration of the PROJECT. Accordingly, ENGINEER agrees to assign and the following key staff to the PROJECT. No substitution will be made to the assigned key staff without the written consent of the OWNER, provided the identified staff members remain employed by the ENGINEER:

Principal-in-Charge: Jessica Brown  
Project Manager: Alan Hutson  
Water System Modeling: Richard Weatherly

6.11 Design Delays. OWNER and ENGINEER agree that time is of the essence in ENGINEER's work related to the PROJECT. Accordingly, ENGINEER shall have deducted from any amounts owed a sum of \$500.00 per calendar day beyond completion dates for the respective design phases of various PROJECT elements established in the agreed upon schedule attached to this AGREEMENT, as may be amended in writing between both parties. If ENGINEER'S services are delayed through no fault of ENGINEER, ENGINEER shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Owner or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation.

6.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, with such counterparts together constituting one and the same instrument. Alternatively, the Parties acknowledge and agree that this Agreement may be, for convenience, executed in duplicate originals, each of which is intended to be and is as valid as its counterpart original.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the day and year first above written:

OWNER:  
CITY OF HUNTSVILLE

ENGINEER:  
FREESE & NICHOLS, INC.

\_\_\_\_\_  
Matt Benoit - City Manager

\_\_\_\_\_  
Alan Hutson - Vice President

ATTEST:

ATTEST:

\_\_\_\_\_  
Lee Woodward - City Secretary

\_\_\_\_\_  
Jeff Taylor - Vice President

APPROVED AS TO FORM:

\_\_\_\_\_  
Leonard Schneider, City Attorney

**EXHIBIT 1  
SCOPE OF SERVICES**

**I. PROJECT DESCRIPTION:**

Currently the City of Huntsville's water system is primarily served by the Palm Street Water Plant. This plant is supplied groundwater by multiple water wells and surface water through a TRA Transmission Line. The current pressure plane is served by two booster pump stations that pump into a single 2.0 MG EST. A water master plan was completed in 2016 and revealed that the southern part of the City has areas of low pressure. In addition, the northern side of the City has lower elevations that utilize a series of pressure reducing valves to create a low pressure plane on the northern side of the City. The current water system is difficult to operate and maintain and the Palm Street Pump Stations are old and are reaching the end of their service life. The master plan recommendation was to create a new upper pressure plane with an overflow elevation of 630' MSL and a new lower pressure plane with a dedicated EST and booster pump station with an overflow elevation of 580'. The following 10 projects are recommended to be completed in the next five years to improve pressures, fire flows, operations and maintenance (See Figure 1):

1. Project 1 – 12/18/20/24-inch Montgomery Road Water Lines
2. Project 2 – New Tall Timbers 2.0 MG EST
3. Project 3 – New Palm Street Pump Station
4. Project 4 - 12/20/24/30-inch Sycamore Avenue & SH 30 Water Lines
5. Project 5 – Convert Palm Street Tank to Lower Elevation (580')
6. Project 6 – New Low Pressure Plane Water Plant and 2.0 MG GST
7. Project 7 – Spring Lake Water Plant Pump Replacement
8. Project 8 – 18-inch Hwy 75 Water Line
9. Project 9 – 12-inch Cherry Hills Drive Water Line Replacement
10. Project 10 Transfer Customers to Upper Pressure Plane

It is assumed that the above projects be grouped into three (3) separate construction contracts:

- Contract A –Pipeline Package (Projects 1, 4, 8, 9 and 10)
- Contract B - Pump Station Package (Projects 3, 6 and 7)
- Contract C – Elevated Storage Tank Package (Projects 2 and 5)

The project packages above should be large enough to attract competent contractors and will separate plant contractors from utility line contractors and tank contractors.

**PROJECT ASSUMPTIONS:**

**Contract A –Pipeline Package**

- Project 1 includes approximately 10,800 linear feet of 12-inch through 24-inch pipeline (the pipe sizes may be re-evaluated at the time of the design in consultation with the City) and the alignment will begin at the proposed Palm Street Pump Station and continue to the proposed Tall Timbers EST.

- A pipeline routing study will be conducted for the proposed water line from the Palm Street Pump Station to the Tall Timbers EST.
- It is assumed that a majority of the water line will be constructed within road right-of-way and therefore few easement will be required. A TxDOT permit will be required for Montgomery road.
- Crossing of existing active roadways and driveways will be completed by trenchless steel encasement to minimize disturbance unless directed by the City.
- The project will remove the existing distribution line along the selected route and reconnect any branches in the distribution system to the proposed line.
- Final design will include pipe material selection, embedment design, tunnel design, road repair design, and development of traffic control plans and specifications.
- The project will include a crossing of IH45 and a TxDOT permit will be required.
- Project 4 includes approximately 14,900 linear feet of 12-inch through 30-inch pipeline (the pipe sizes may be re-evaluated at the time of the design in consultation with the City) and the alignment will begin at the proposed Lower Pressure Plane Pump Station and continue to the Palm Street Water Plant EST.
  - A pipeline routing study will be conducted for the proposed water line from the Lower Pressure Plane Pump Station to the Palm Street Water Plant.
  - It is assumed that a majority of the water line will be constructed within road right-of-way and therefore few easement will be required.
  - Crossing of existing active roadways and driveways will be completed by trenchless steel encasement to minimize disturbance unless directed by the City.
  - Final design will include pipe material selection, embedment design, tunnel design, road repair design and development of traffic control plans and specifications.
  - The project will remove the existing distribution line along the selected route and reconnect any branches in the distribution system to the proposed line.
- Project 8 - The pipeline package will include Project 8, the 18-inch Highway 75 water line.
- Project 9 - The pipeline package will include Project 9, the 12-inch Cherry Hills Drive water line replacement.
- Project 10 - In order to transfer customers along Avenue I to the Upper Pressure Plane, details, specifications and mapping will be prepared for making service connections for up to 21 customers along Avenue I, moving them from the 8-inch lower pressure plane water line to the 12-inch Upper Pressure Plane water line. This work will be performed by the same pipeline contractor after the lower pressure plane is ready for service.

**Contract B – Pump Station Package**

- The pump station package will include work at the following three facilities:
  - A new 4800 GPM Lower Pressure Plane Pump Station near the intersection of SH30 and SH119 including a 2.0 MG ground storage tank.
  - A new 7000 GPM Pump Station at the Palm Street Water Plant
  - Replacement of pumps at the Spring Lake Water Plant
- The project will include preliminary and final design.
- A preliminary design report (PDR) will be prepared for the pump station improvements.
- The PDR will include a siting study for the new Lower Pressure Plane Pump Station. Alternatives for the pump station layout will be analyzed with recommendations for the delivery point from TRA, the ground storage tank, pump types, and electrical equipment.

- For the new Palm Street Pump Station, the PDR will look at rehabilitation of the existing "New" Pump Station versus building a new plant near the EST. Pump type, station layouts and site piping needs will be analyzed.
- For the Spring Lake Water Plant, the PDR will include a condition assessment of the existing pump station, hydraulic analysis of the pumping needs and recommendations for replacement of three pumps with higher head pumps to pump into the upper pressure plane.
- Design will include all required electrical and pump control valve equipment.

**Contract C – EST Package**

- The new upper pressure plane EST will be located south of Tall Timbers Road and will have a storage capacity of 2.0 MG with an overflow elevation of 630' MSL.
- A siting study will be performed to confirm the location of the tank site and to confirm power availability, optimization of elevations, land availability, landowner coordination and coordination with the Federal Aviation Authority (FAA).
- A small section of pipeline will be included to connect the EST into the proposed 20-inch pipeline along Tall Timbers Road.
- The entire EST site will have a perimeter chain link fence with one motorized sliding vehicular access gate.
- The site will require yard piping, landscaping screening, grading, driveway, fencing, drainage, lighting and irrigation.
- The proposed Tall Timbers EST will be a composite elevated steel water storage tank with concrete pedestal. Standard interior ladder, one (1) roll-up door and one (1) pedestrian door are included in the design. No additional floors or stairs are included.
- It is assumed that a motorized control valve will be required at the base of the tank pedestal.
- There are no known water quality issues. FNI will present several mixing system options during design phase and will assume selection of one of these is included in the design. No chloramine booster systems will be included in design.
- Overflow from tank will be routed to drain away from future development and drainage design as needed.
- Design and orientation of two (2) identical painted City logos, with one (1) 2D daytime rendering.
- Design of tank bowl-mounted LED lighting system will be required, with one (1) 2D illumination rendering.
- Modification to the existing Palm Street EST will reduce the overflow elevation to 580' MSL while maintaining approximately 1 MG of storage.
- The Tall Timbers EST will need to be operational before the existing Palm Street EST can be taken down for modifications.

**II. TASK SUMMARY**

**BASIC SERVICES**

A. **TASK 1 - PROJECT MANAGEMENT** - Consultant shall provide project management services for the project. The following services shall be provided:

1. Schedule, organize and run monthly progress meetings (up to 15) during the design phase of the project. Prepare meeting minutes and submit for review one week after the meeting.

2. Provide a monthly project update report for use by City staff and the third party Program/Project Manager to communicate project progress and milestones.
3. Prepare a project schedule and update over the course of the project. Provide oversight of the schedule during the survey, land acquisition, and engineering process, to attempt to maintain the City's desired schedule.
4. Prepare presentations and attend up to three (3) Council meetings to brief the Council on the progress of the design.
5. Prepare presentations and attend up to three (3) public meetings to inform the public about the water projects.
6. Coordinate the efforts of all involved in the project, including Consultant, the surveyor, the geotechnical engineer, TCEQ, TxDOT and utility agencies, etc.
7. Host a workshop on Alternate Project Delivery to discuss the benefits and challenges associated with Competitive Scaled Proposals (CSP) and Construction Manager at Risk (CMAR) delivery methods. If CMAR delivery method is used, compensation will be required as an additional service.
8. Develop front end specifications for Competitive Scaled Proposals.
  - a. Hold a full day workshop with staff to review procurement decisions and to procurement strategy, compliance with legal requirements, submission requirements and instructions and development of evaluation criteria, weighting and scoring methodology. Submit draft Division 00 Front End documents.
  - b. The draft Agreement, General Conditions and Special Conditions will be prepared by FNI and submitted to City's legal counsel for review and modifications deemed appropriate and necessary. The review, modifications to these documents as well as acceptance as to the form and content of these documents are the City's responsibility.
  - c. Conduct a review meeting with the City to receive comments and revisions.
  - d. Incorporate comments and finalize documents for use by design teams.

**B. TASK 2 – WATER LINE DESIGN**

1. Alignment Study
  - a. Perform a route analysis for the water transmission mains from the proposed Lower Pressure Plane Pump Station to the Palm Street EST and from the proposed Palm Street Pump Station to the proposed Tall Timbers EST. Consider such elements as cost, impacts on businesses and residents, utility conflicts, easement requirements, and coordination with other projects. Provide recommendations, preliminary layouts, and cost estimates for up to two pipeline route alternatives for each alignment.
  - b. Based upon the abstract map and recommended pipeline route, determine what easements are required for the recommended route, including both temporary and permanent easements
  - c. Update project schedule and opinion of probable construction costs.

- d. Submit an alignment study with ArcGIS mapbook showing route alternatives on half size sheets (11"x17"). Provide three (3) hard copies and a PDF of the alignment study.
2. Technical Memo – Utilize the existing water model to make recommendations for connections to the existing distribution system. Look at the phasing of the water system improvements to bring the new pressure planes on line. Make recommendations for pipe material, trench sections, tunneling methods and road replacement.
  3. Final Design – Upon City approval of the alignment study, Consultant will continue with final design efforts. The final design shall include the following.
    - a. FNI will prepare a 60% design submittal. The submittal will include construction drawings at a scale of 1"=20" horizontal and 1"=2" vertical, three (3) half size (11"x17") and two (2) full size (22"x34") construction drawings, contract documents, updated schedules and updated opinion of probable construction cost. These items will be submitted to the City at the 60% submittal date. In addition, the submittals will include electronic copies of the construction drawings in pdf format. Typical sheets used in the project will be:
      - i. Cover Sheet
      - ii. General Notes
      - iii. Project layout control
      - iv. Plan and Profile sheets
      - v. Details
      - vi. Traffic Control Plans
      - vii. Tree Protection Plans
    - b. Upon receipt of the City's comments on the 60% submittals, one (1) review meeting will be held to discuss the review comments and recommendations based on the 60% plans.
    - c. FNI will submit 60% drawings (11" x 17") to all utility agencies and TxDOT. Work with the third-party Program/Project Manager in getting review comments from the Utility agencies and TxDOT.
    - d. Once the 60% comments have been received from the City, FNI will prepare 90% documents. The submittal will include three (3) sets of half size (11"x17") and two (2) full size (22"x34") construction drawings, specifications, contract documents, bid proposal, updated schedule and updated opinion of probable construction cost. In addition, the submittals will include electronic copies of the construction drawings in pdf and AutoCAD formats, which will be made available for download or on a USB flash drive..
    - e. Upon receipt of the City's comments on the 90% submittal, one (1) review meeting will be held to discuss the review comments and recommendations based on the 90% plans.
    - f. Once the 90% comments have been received from the City, FNI will prepare 100% documents. The submittals will include three (3) sets of half size (11"x17") and two (2) full size (22"x34") construction drawings, specifications, contract documents, bid

proposal, updated schedule and updated opinion of probable construction cost. In addition, the submittal will include electronic copies of the construction drawings in pdf format.

- g. Once the 100% comments have been received from the City, FNI will prepare "final" documents. Provide "final" plans, specifications, contract documents, and bid proposals for construction contracts to complete this project and in accordance with the City's bidding procedures. Three (3) sets of half size (11"x17") and two (2) sets of full size (22"x34") construction drawings, specifications, contract documents, bid proposals and opinion of probable construction costs will be provide to the City during the bidding process. In addition, the submittal will include electronic copies of the construction drawings in pdf on CDs.
- h. Upon completion of the design services and approval of "final" drawings and specifications by the City, FNI will submit these to the TCEQ for review and approval. The project may be advertised and reviewed by the TCEQ concurrently as directed by the City, however the project cannot start construction until TCEQ approval.
- i. FNI will prepare and submit the application for TxDOT crossing approval with the 90% submittal.

C. TASK 3 –PUMP STATION DESIGN - FNI shall provide professional services in this phase as follows:

1. Preliminary Design

- a. 4800 GPM Pump Station and 2 MG GST
  - a. Perform site selection analysis to review potential sites for power, access and connectivity to TRA line and existing Huntsville distribution line.
  - b. Perform a hydraulic analysis of the TRA connection to determine needs for a pressure reducing valve, flow metering and connection requirements.
  - c. Perform an evaluation of storage tank material alternatives and confirm tank size.
- b. 7500 GPM Palm Street Pump Station
  - a. Look at rehab versus replacement alternatives.
  - b. Review yard piping and needs for connections and future yard piping.
- c. The water model will be updated to include additional demands associated with new development.
- d. Develop system curves for the two pump stations with respect to the updated plans for the expansion of the water system.
- e. Evaluate pumping equipment available for use in the Project. Contact various pump manufacturers to determine pumps that are available for the station. Evaluate selections by manufacturers and make recommendations to the City for inclusion in specifications.
- f. Prepare site plans, pump station floor plans and pump station cross-sections for both

pump stations.

- g. Coordinate with the power company to determine adequacy of power supply in the area and cost for connections.
- h. Provide a Preliminary Design Report (PDR) summarizing the recommendations for the pump station including an updated project schedule and opinion of probable construction costs.
- i. Conduct (1) review meeting with City staff on the draft Preliminary Design Report to obtain their comments. Comments will be addressed and the Report will be finalized after the comment review meeting.

## 2. Final Design

- a. 60%, 90% and 100% submittals will be made to the City. The submittals will include construction drawings (3 half size-11"x17" sets, 2 full size-22"x34" sets, and PDF file on CD), specifications (90% and 100% submittals only), contract documents (90% and 100% submittals only), bid proposal (90% and 100% submittals only), updated schedule, and updated opinion of probable construction costs.
- b. Provide final engineering layouts, cross-sections, details, and specifications for the pump station, including proposed pump, piping (pump station), tie-ins to existing piping, valves, electrical equipment and controls.
- c. Provide Electrical plans, details, and specifications for the pump station electrical equipment, instrumentation, and controls.
- d. The submittal will include electronic copies of the construction drawings in pdf and AutoCAD formats, which will be made available for download or on a USB flash drive

## 3. Drainage Assessment

- a. Perform a site evaluation visit to identify existing drainage patterns and possible outfall locations, which will be coordinated with the City Engineer. The discharge point will either be an existing roadside ditch, storm sewer system, or an existing drainage channel. Coordinate with the City Engineer and other local agencies as necessary to discuss storm drainage and detention requirements associated with the site development.
- b. Perform a drainage assessment associated with the site development to quantify existing and proposed peak discharges for the site, and identify detention requirements to mitigate increases in peak runoff rates as necessary. Peak discharges will be developed for the 5, 10, 25, and 100-year storm events for both the site and areas upstream of the site which drain to the same discharge point, to be calculated using the Rational Method. Upstream areas will be assumed to be fully developed. No hydrologic routing will be performed as a part of this task.
- c. Utilize the Malcom Method hydrograph comparison to estimate detention volume requirements and size detention system to mitigate additional runoff rates associated

with the site development. Coordinate with overall site design on layout and grading of detention facility and outfall structures.

- d. Perform hydraulic calculations of downstream drainage facilities to determine water surface elevations for channels or ditches, and depth of water for public streets which are to be used as drainage facilities to demonstrate no worsening of existing conditions. Identification or sizing of drainage improvements (including but not limited to channels, storm sewers, roadside ditches, or streets) downstream of the site are not included as a part of this scope of work.
- e. Prepare and submit drainage improvement plans in accordance with City's Engineer Design Criteria. The drainage improvement plans will include the following: a location map showing the site in relation to the entire watershed, calculations showing the anticipated storm water flow including watershed area, runoff coefficient, time of concentrations, and basis for design of all improvements, and detailed plans for drainage structures, or any other proposed improvements.
- f. Prepare and submit a site drainage assessment technical memorandum to the City for review and comments. The memorandum will contain sufficient text, supporting data and exhibits, assumptions, and methodology to clearly illustrate the methods and results of the drainage study. FNI will address up to two (2) rounds of comments from the City to obtain a drainage approval letter.

D. TASK 4 – 2.0 MG EST - FNI shall provide professional services in this phase as follows:

1. Perform Siting Study of the proposed Tall Timbers elevated storage tank.
  - a. Evaluate up to three (3) potential tank sites based on:
    - i. Site elevation
    - ii. Land Availability
    - iii. Proximity to existing and/or proposed water lines
    - iv. FAA restrictions
  - b. Verify recommended tank site hydraulics.
  - c. Develop draft technical memorandum summarizing findings of the siting study and submit to the City.
  - d. Conduct one (1) conference call to review City's comments on draft technical memorandum.
  - e. Finalize technical memorandum and submit to City.
  - f. Assist the City in land acquisition negotiations as needed.
2. Provide final layout, elevation, details, and specifications for the proposed Tall Timbers elevated storage tank, showing tank and pedestal, inlet and outlet lines, drains, overflow, interior and yard piping, access ladders, valves, re-circulation arrangement, man ways, basic logo, access roadway, fencing, landscaping, irrigation, and site drainage. Provide adequate detail to enable the tank manufacturer to prepare final design and shop drawings for the tank foundation and complete tank. Tank is assumed to be a composite tank with a concrete pedestal and steel bowl.
3. Provide electrical plans, details, and specifications for the elevated storage tank electrical equipment, instrumentation, controls, site lighting, bowl lighting, and related appurtenances.

It is assumed the design will include a SCADA operated control valve inside of the tank pedestal.

4. Provide plans, profiles, details, and specifications for the Tall Timbers EST yard piping. Provide details for connection of the yard piping to proposed water line along Tall Timbers Lane. Limit of any yard piping plans will be the tank site property line.
5. Provide final layout, elevation, details, and specifications for modifications to the existing Palm Street elevated storage tank, including modifications to overflow weir, control valves, yard piping, coatings, and associated electrical improvements. Internal inspection and site modifications, including paving, drainage, lighting, tank recoating and landscaping are not included in this scope of work.
6. Drainage Assessment
  - a. Perform a site evaluation visit to identify existing drainage patterns and possible outfall locations, which will be coordinated with the City Engineer. The discharge point will either be an existing roadside ditch, storm sewer system, or an existing drainage channel. Coordinate with the City Engineer and other local agencies as necessary to discuss storm drainage and detention requirements associated with the site development.
  - b. Perform a drainage assessment associated with the site development to quantify existing and proposed peak discharges for the site, and identify detention requirements to mitigate increases in peak runoff rates as necessary. Peak discharges will be developed for the 5, 10, 25, and 100-year storm events for both the site and areas upstream of the site which drain to the same discharge point, to be calculated using the Rational Method. Upstream areas will be assumed to be fully developed. No hydrologic routing will be performed as a part of this task.
  - c. Utilize the Malcom Method hydrograph comparison to estimate detention volume requirements and size detention system to mitigate additional runoff rates associated with the site development. Coordinate with overall site design on layout and grading of detention facility and outfall structures.
  - d. Perform hydraulic calculations of downstream drainage facilities to determine water surface elevations for channels or ditches, and depth of water for public streets which are to be used as drainage facilities to demonstrate no worsening of existing conditions. Identification or sizing of drainage improvements (including but not limited to channels, storm sewers, roadside ditches, or streets) downstream of the site are not included as a part of this scope of work.
  - e. Prepare and submit drainage improvement plans in accordance with City's Engineer Design Criteria. The drainage improvement plans will include the following: a location map showing the site in relation to the entire watershed, calculations showing the anticipated storm water flow including watershed area, runoff coefficient, time of concentrations, and basis for design of all improvements, and detailed plans for drainage structures, or any other proposed improvements.
  - f. Prepare and submit a site drainage assessment technical memorandum to the City for

review and comments. The memorandum will contain sufficient text, supporting data and exhibits, assumptions, and methodology to clearly illustrate the methods and results of the drainage study. FNI will address up to two (2) rounds of comments from the City to obtain a drainage approval letter.

7. 50%, 90% and 100% submittals will be made to the City. The submittals will include construction drawings (3 half size-11"x17" sets and PDF files), specifications (90% and 100% submittals only), contract documents (90% and 100% submittals only), bid proposal (90% and 100% submittals only), updated schedule, and updated opinion of probable construction costs.
  8. Conduct and attend one meeting for each of the 50%, 90%, and 100% design submittals (3 meetings total) to review the City's comments on the design and discuss project issues.
  9. Following the 100% design comment review meeting, revise the plans and specifications to "final" status.
  10. Provide "final" plans, specifications, contract documents, and bid proposals for one construction contract to complete this project and in accordance with the City's bidding procedures. Three (3) sets of half size (11"x17") and two (2) sets of full size (22"x34") construction drawings, specifications, contract documents, bid proposal and opinion of probable construction cost will be provide to the City during the bidding process. In addition, the submittal will include electronic copies of the construction drawings in pdf and AutoCAD formats, which will be made available for download or on a USB flash drive
  11. Upon completion of the design services and approval of "final" drawings and specifications by the City, FNI will submit these to the TCEQ for review and approval. The project may be advertised and reviewed by the TCEQ concurrently as directed by City, however the project cannot start construction until TCEQ approval.
- E. TASK 5 - PROCUREMENT PHASE - Upon completion of the design services and approval of "Final" drawings and specifications by City, Consultant will proceed with the performance of services in this phase as follows for three (3) construction contracts:
1. Assist City in securing Competitive Sealed Proposals (CSP) for each of the four construction contracts. Issue a Notice to Proposers to prospective contractors and vendors listed in Consultant's database of prospective bidders, and to selected plan rooms. Provide a copy of the notice to proposers for City to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by the City.
  2. Print Bid Documents and distribute to selected plan rooms, and to prospective bidders that respond to the Notice to Bidders.
  3. Maintain information on entities that have been issued a set of bid documents. Distribute information on plan holders to interested contractors and vendors on request.
  4. Assist City by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.

5. Assist the City in conducting three (3) pre-proposal conferences for the construction projects and coordinate responses with City. Response to the pre-proposal conferences will be in the form of addenda issued after the conference.
  6. At City request, Consultant will assist City in the opening, tabulating, and analyzing the proposals received. Review and identify non-compliance items in each proposal, review qualifications, develop list of questions and comments related to each proposal, identify strengths and weaknesses of each proposal and make recommendations for non-responsive proposers.
  7. Conduct reference checks. Develop a list of questions to ask each reference, conduct reference checks and prepare a technical memo summarizing findings of the reference checks.
  8. Attend a one day meeting with the City (selection committee) to review proposals. Review technical memo, assist with preliminary evaluation of proposals and scoring by answering selection committee questions and facilitate discussion and assist in determining consensus scores.
  9. Attend interviews with top three proposers. Meet with City to develop interview agenda and questions to ask each proposer, some specific to proposals and some identical questions for all proposers.
  10. Meet with City to select best value proposal. Discuss with the selection committee the evaluations, answer questions, facilitate discussion and develop interview results. Assist in finalization of evaluation and scoring of the proposals. Assist in selection of best value by answering final questions from selection committee during its final deliberations.
  11. Attend City Meeting where the recommendation for award is on the agenda. Develop and provide any documentation City needs for this meeting including selection committee consensus evaluation, scoring, ranking and selection.
  12. Assist City in the preparation of Construction Contract Documents for construction contracts. Provide ten (10) sets of Construction Contract Documents for each construction contract, which include information from the apparent low bidders bid documents, legal documents, and addenda bound in the documents for execution by the City and construction contractor. Distribute five (5) copies of these documents for each construction contract to the contractor with a notice of award that includes directions for the execution of these documents by the construction contractor. Provide City with the remaining five (5) copies of these documents for each construction contract for use during construction. Additional sets of documents can be provided as an additional service.
  13. Furnish contractor copies of the drawings and specifications for construction pursuant to the General Conditions of the Construction Contract. Assist in execution of the contract and issuance of Notice to Proceed.
- F. TASK 6 - CONSTRUCTION GENERAL REPRESENTATION - Upon completion of the procurement phase services, Consultant will proceed with the performance of construction phase services as described below. Consultant will endeavor to protect the City in providing these services. However, it is understood that Consultant does not guarantee the Contractor's

performance, nor is Consultant responsible for supervision of the Contractor's operation and employees. Consultant shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. Consultant shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

The City agrees to include provisions in the construction contract documents that will require the construction contractors to include Consultant and their subconsultants on this project to be listed as an additional insured on contractors' insurance policies.

1. Assist City in conducting pre-construction conference(s) with the Contractor(s), review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract, and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.
2. Establish communication procedures with the City, its authorized representative and contractor.
3. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Review contractor's submittals, including requests for information (RFI), modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects.
4. Based on Consultant's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that Consultant recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
5. Make two visits per month for the 12 month construction duration to the water pipeline site, two visits per month for the 15 month construction duration of the pump station projects and two visits per month for 18 month construction duration to the elevated storage tank site to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort Consultant will endeavor to protect the City against defects and deficiencies in the work of Contractors and will report any observed deficiencies to the City. Visits to the sites in excess of the specified number are an Additional Service.
6. Notify the contractor of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.
7. Interpret the drawings and specifications for the City and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by the City, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an Additional Service.

8. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the City to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the City. Documentation of field orders, where cost to City is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the City are an additional service. Substitutions of materials or equipment or design modifications requested by the City are an Additional Service.
  9. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the City on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the City if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of Consultant are an Additional Service.
  10. Conduct, in company with City's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two trips are an Additional Service.
  11. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction Two (2) sets of prints of "Record Drawings" shall be provided by Consultant to the City. Consultant shall also provide a DWG electronic copy of the Record Drawings to the City.
- G. TASK 7 – CONSTRUCTION MANAGEMENT AND INSPECTION: - The Consultant will have a Resident Project Representative (RPR) on the Site. The duties, responsibilities, and the limitations of authority of the RPR, and designated assistants, are as follows:
1. RPR is the Consultant's agent at the site, will act as directed by and under the supervision of Consultant, and will confer with Consultant regarding RPR's actions. RPR's dealings in matters pertaining to the on-site Work shall in general be with Consultant and CONTRACTOR, keeping City advised as necessary. RPR's dealings with Subcontractors shall only be through or with full knowledge and approval of CONTRACTOR.
  2. FNI will endeavor to protect the City in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

3. Provide the services of an on-site Construction Inspector / RPR acceptable to the City. FNI will provide a level of service based on the duration and schedule of the project as outlined in the fee spreadsheet. The Consultant will provide two full-time inspectors and a part-time construction manager. One inspector will cover the waterline projects over the expected construction duration of 12 months. The other inspector will cover the pump station projects over the expected construction duration of 15 months. They are expected to work an average of 52 hours per week. The CM will average two trips to the site a week for the duration of the work, expected to be 18 months.
4. Duties and Responsibilities of the RPR
  - a. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by CONTRACTOR and consult with Consultant concerning acceptability.
  - b. Conferences and Meetings: Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
  - c. Liaison:
    - i. Serve as ENG Consultant's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of Contract Documents; and assist Consultant in serving as City's liaison with CONTRACTOR when CONTRACTOR's operations affect City's on-site operations. Provide communication link between the City, Consultant, and Contractor.
    - ii. Coordinate the work of testing laboratories and others required for the testing or inspection of materials, witness tests, factory testing, etc. for quality control.
  - d. PMIS:
    - i. Maintain a Project documentation system consistent with the requirements of the Construction Contract Documents, including daily field inspection and construction reports and tracking corrections to defective work.
    - ii. Maintain a photographic log of construction activities.
    - iii. Advise Consultant and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by Consultant.
  - e. Review of Work, Rejection of Defective Work, Inspections, and Tests:
    - i. Conduct on-site observations of the Work in progress to determine if the Work is in general proceeding in accordance with the Contract Documents.
    - ii. Report to Consultant whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Consultant of Work the RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
    - iii. Verify that tests, equipment, and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the CONTRACTOR maintains adequate records thereof; and observe

- record and report to Consultant appropriate details relative to the test procedures and start-ups.
- iv. Accompany visiting inspectors representing public or other agencies having authority over the Project, record the results of these inspections and report to Consultant.
  - v. Observe whether the Contractor has performed inspections required by laws or regulations, ordinances, codes, or order applicable to the work, including but not limited to, those to be performed by public agencies having jurisdiction over the work.
  - vi. Notify the Consultant and City of non-conforming work observed.
- f. Interpretation of Contract Documents: Report to Consultant when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by Consultant.
  - g. Request for Revisions: Consider and evaluate CONTRACTOR's suggestions for revisions to Drawings or Specifications and report with RPR's recommendations to Consultant. Transmit to CONTRACTOR in writing decisions as issued by Consultant.
  - h. Records: Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents, including all Work Change Directives, Addenda, Change Orders, Field Orders, Written Amendments, additional Drawings issued subsequent to the execution of the Contract, Consultant's clarifications and interpretations of the Contract Documents, progress reports, submittals and correspondence received from and delivered to CONTRACTOR and other Project related documents.
  - i. Reports:
    - i. Report all activities to the ENGINEER and City on a daily/weekly basis including progress reports, deficiencies noted and corrected, schedule status and changes, conflicts on the plans, attend progress meetings, quantity overruns and underruns, potential future change order request, etc.
    - ii. Consult with Consultant in advance of scheduled major tests, inspections or start of important phases of the Work.
    - iii. Draft proposed Written Amendments, Change Orders, and Work Change Directives, obtaining backup material from CONTRACTOR and recommend to Consultant Written Amendments, Change Orders, Work Change Directives, and Field Orders.
    - iv. When known, report immediately to Consultant and City the occurrence of any accident.
  - j. Payment Requests: Review Applications for Payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to the City, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment at the Site but not incorporated in the Work.
  - k. Review Contractor's record documents periodically to determine that the drawings are being maintained during the construction of the project.
  - l. Certificates, Maintenance, and Operation Manuals: During the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Consultant for review and forwarding to the City prior to final payment for the Work.
  - m. Completion:

- i. Before Consultant issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- ii. Observe whether CONTRACTOR has performed inspections required by laws or regulations, ordinances, codes or order applicable to the Work, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- iii. Conduct a final inspection in the company of Consultant, City and CONTRACTOR and prepare a list of deficiencies to be corrected by the Contractor before recommendation of final payment.
- iv. Observe whether all items on final list have been completed or corrected and make recommendations to Consultant concerning acceptance.

#### **SPECIAL SERVICES**

H. **TASK 8 - TOPOGRAPHICAL SURVEY:** - Upon written notice to proceed, Consultant shall retain (as a subconsultant) and monitor the services of a surveying firm to perform surveying services for the project. The following survey shall be provided.

1. Abstract map of the proposed Pump Station and EST sites and pipeline alignments. This map will consist of available property line information from the Walker County Appraisal District. The abstract property information will be overlaid onto an aerial photograph of the City of Huntsville, and used to determine and display alternative pipeline alignments.
2. Prepare letters of permission for access to private properties for surveying and geotechnical boring activities. These letters are to be put on the City of Huntsville letterhead and sent to the appropriate landowners. The City will follow-up with unresponsive landowners.
3. Perform a design topographic survey of the Tall Timbers EST site, proposed pump station sites and the pipeline alignments. Survey all surface features within the survey areas, including 1-foot contours, ditches, creeks, outlines of tree-lines, telephone poles, fences, valves, vaults, manholes, roads, culverts, buildings, mailboxes, utility boxes, driveways, and all other such surface features. The vertical datum will be referenced to (NAVD 88) and tied to the City of Huntsville Mapping Control Network benchmarks.
4. Call DigTess to flag all existing underground franchise utilities, and survey these utilities into the design survey. Research existing City of Huntsville utility plans, and include these lines in the survey.

I. **TASK 9 - EASEMENT DOCUMENTS:** - Upon written notice to proceed, FNI shall retain (as a subconsultant) and monitor the services of a surveying firm to perform easement document services for the project. The following shall be provided.

1. Prepare an exhibit and boundary easement description for each tract that the proposed water lines will cross. The legal descriptions and plats shall meet the criteria stated below. Easements shall be signed and sealed by a Registered Professional Land Surveyor, currently registered in the State of Texas. Each easement shall have attached to it a copy of the corresponding deed for that property and a closure computation sheet for the easement tract. The exhibit plat will include any temporary construction easement required for the project. This information will be shown on the exhibit only and not included within the legal descriptions. A draft copy of each easement shall be submitted. After review by the City,

Consultant shall incorporate comments as appropriate and submit one final copy of the easements and deeds to the City. This proposal is based upon preparation of two access easement, ten (10) permanent utility easements and ten (10) temporary construction easements. Easements prepared in excess of this number will be an additional service.

2. Exhibit Plats and legal descriptions must meet all the rules of the Texas Board of Professional Land Surveying and the Professional Land Surveying Practices Act. The Manual of Practice for Land Surveying in the State of Texas, as published by the Texas Society of Professional Surveyors, is the standard to which all Consultant's survey work shall be performed. The latest revision for category URBAN CONDITIONS II will be used.
3. Legal descriptions shall include sufficient information to identify the location, boundaries, monumentation, and area of the described tract, as well as its relationship to the parent tract out of which it is surveyed. Each legal description shall be accompanied by an exhibit plat which depicts the worded description. Legal descriptions and Exhibit Plats shall be reproduced on 8 1/2 x 11 size paper. All must be legible. The Exhibit Plat or Legal Description should be able to stand alone.

a. The Exhibit Plat should contain the following:

- i. North Arrow
- ii. Graphic Scale
- iii. Legend
- iv. Mathematical Closure
- v. Abstract name and number
- vi. Basis of bearing
- vii. Controlling Monuments
- viii. Check bearings and distances against legal description (They should be the same)
- ix. Show adjoiners
- x. Show existing easements (with instrument recording information)
- xi. Exhibit plat should acknowledge existence of the Legal description
- xii. Line and curve tables are discouraged
- xiii. Curve data must contain the following: delta, radius, length, long chord bearing and long chord distance. State if curve is tangent or non-tangent.
- xiv. The survey plat shall bear the firm name and registration number, surveyors name, address, and phone number of the land surveyor responsible for the land survey, his/her official seal, his/her original signature, and date surveyed (663.19.5)
- xv. Acreage to the appropriate number of decimal places. (no square feet)

b. The Legal Description shall contain the following (metes and bounds descriptions only):

- i. General Description
  1. Name of current owner of record
  2. Type of conveyance record (warranty deed, quit claim deed, etc.)
  3. The conveyance instrument recording information (Deed record Volume and Page)
  4. Survey Name and Abstract Number
  5. County, City, and State
- ii. Specific Description

1. POINT OF BEGINNING tied to a monumented corner of the parent tract and its (NAD 83) coordinate value stated. With reference to the City of Huntsville Mapping Control Network points it was tied from.
2. Check bearings and distances against Exhibit plat (They should be the same)
3. Curve data must contain the following: delta, radius, length, long chord bearing and long chord distance. State if curve is tangent or non-tangent.
4. References to adjoining properties
5. Basis of Bearing
6. Legal description should acknowledge existence of the Exhibit plat
7. Acreage to the appropriate number of decimal places. (no square feet)

J. TASK 10 - SUBSURFACE UTILITY ENGINEERING (SUE): - Consultant will subcontract with a SUE firm to provide the following SUE services:

1. SUE Quality Level "A" (QLA) – Provide QLA information for a total of thirty (30) test hole locations along various points throughout the pipeline alignment. QLA services will be in accordance with ASCE Publication CI/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data). Subconsultant will excavate test holes by means of non-destructive vacuum excavation methods. Subconsultant will produce a summary sheet containing the coordinates and elevation to the top of the utility at each test hole location with test holes incorporated in the surveyor's topographic survey file.
2. SUE Quality Level B (QLB) – Designate horizontal location information within a 100-ft wide section for the section of pipeline through existing right-of-ways listed below:

This information is obtained through the application and interpretation of appropriate non-destructive surface geophysical methods. A variety of electromagnetic equipment will be used to complete the process. Residential services and irrigation systems will not be mapped, commercial services will be mapped should they cross or parallel the alignment. Un-locatable lines will be depicted as per records from the utility if available.

K. TASK 11 - ENVIRONMENTAL SERVICES: – Consultant will render the following professional environmental services in connection with the project.

1. Wetland Delineation - Prior to making a field visit, obtain information for the vicinity such as soils maps, National Wetland Inventory maps, topographic maps, floodplain maps, and other readily available, pertinent data. This information will be evaluated to guide the field survey described below. Consultant's scientists will conduct a pedestrian survey of the route to identify environmental issues. This investigation will include the following:
  - a. Identification of "waters of the U.S." as defined by U.S. Army Corps Engineers' regulations. These waters of the U.S. are regulated by the USACE and require a permit for activities conducted within the jurisdictional boundaries. The presence of jurisdictional waters such as ephemeral, intermittent, or perennial streams; wetlands; or other open waters will be documented.
  - b. The presence of potential habitat for any federally listed threatened or endangered species will be determined.
2. Hazardous Materials Review - Conduct a limited desktop review for any unknown hazardous

materials sites present in the project corridor.

3. Section 404 Permitting - Consultant will prepare a letter report that will include a description of field observations described above; an opinion of whether or not jurisdictional waters are present, and if so, the type(s) of waters; an estimate of the area of impact to waters of the U.S.; and a discussion of potential USACE 404 permit options. The design team will work with the environmental team to pick sites and alignments that avoid impacts that would trigger the necessity for preconstruction notification to the USACE.
  4. PCN - If required under the terms and conditions of the applicable nationwide permit or permits, Consultant will prepare a preconstruction notification (PCN). The draft PCN will be submitted to the City for review and comment. FNI assumes no more than one PCN would be required. After the City's comments are incorporated into the PCN, it will be submitted to the Galveston District Corps of Engineers. If a PCN is not required, Consultant will submit documentation to the City describing the permit conditions and requirements. All permit conditions and requirements will be included in the construction contract documents, and the construction contractor will be required to abide by these during construction. If an archeological survey is required, this will be considered Additional Services.
  5. Section 404 Mitigation Plan - These services do not include any mitigation plan services, if required by the permit. If these are required, they will be considered additional services, and will be negotiated between Consultant and the City if requested by the City.
- L. **TASK 12 - GEOTECHNICAL ENGINEERING SERVICES:** - Consultant will render the following geotechnical engineering professional services in connection with the project consisting of field exploration, laboratory testing, engineering analysis, and reporting.

Field Exploration

1. Select appropriate locations for exploratory borings within the vicinity of the proposed improvements at each site and along the proposed pipeline alignment.
2. The Consultant will coordinate with the City and Texas 811 regarding underground utilities within the vicinity of the planned boring locations prior to commencement of the field exploration activities.
3. Subcontract with a drilling contractor to drill exploratory borings for the proposed improvements according to the schedule provided below. The boring depths are intended to provide a 15- to 30-foot profile of the bedrock below the EST and may be adjusted based on *in situ* conditions to achieve this penetration.
  - a. **New Lower Pressure Plane Water Plant:** Four (4) borings to a depth of 40 feet and two (2) borings to a depth of 60 feet below existing grade for the pump station and one additional boring to a depth of 25 feet below existing grade for the meter vault. Four (4) borings to a depth of 40 feet around the tank perimeter and one (1) boring to a depth of 70 feet below existing grade near the center of the ground storage tank.
  - b. **Palm Street Water Plant:** Four (4) borings to a depth of 40 feet below existing grade for the pump station.
  - c. **Tall Timbers Elevated Storage Tank:** Three (3) borings to a depth of 50 feet and one (1) boring to a depth of 75 feet below existing grade.

- d. **Water Transmission Lines:** Ten (10) borings to a depth of 15 feet and sixteen (16) borings to a depth of 25 feet below existing grade
  - e. The borings will be advanced using standard rotary drilling equipment with continuous-flight augers (solid or hollow stem) or rotary wash methods. Subsurface samples will be collected using 3-inch diameter Shelby tubes for cohesive soils and a 2-inch diameter split-spoon sampler in conjunction with the Standard Penetration Test (SPT) for intermediate and non-cohesive soils. Rock and rock-like materials will be cored using an NX core barrel and/or tested *in situ* using the Texas Cone Penetration (TCP) Test or the SPT, as appropriate for the material.
  - f. Groundwater observations within the borings will be recorded at the time of drilling and at the completion of drilling and sampling.
  - g. The borings will be backfilled with auger cuttings upon completion of drilling and sampling.
4. A Consultant or Geologist experienced in logging borings will direct the drilling, log the borings, and handle and transport the samples. Visual classification of the subsurface stratigraphy shall be provided according to ASTM D2488 and the Unified Soil Classification System (USCS) during drilling and sampling.

Laboratory Testing

- 1. Testing shall be performed on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials.
- 2. The Consultant will select samples for laboratory testing, assign tests, and review the test results.
- 3. Laboratory tests will be appropriately assigned for the specific subsurface materials encountered during exploration, but are expected to include:
  - a. Classification tests (liquid and plastic limits and percent passing the no. 200 sieve or gradation)
  - b. Moisture content
  - c. Unit dry weight
  - d. Unconfined compressive strength of soil and rock
  - e. One-dimensional swell (restrained and unrestrained)
  - f. One-dimensional consolidation

Engineering Analysis and Reporting

- 1. The Consultant will perform the geotechnical engineering analysis and prepare separate technical memorandums for each of the three (3) construction contracts summarizing the geotechnical investigation relevant for each contract. The technical memorandums will include the following:
  - a. Appendix with the boring locations, boring logs, laboratory test results, and a key to the symbols used.
  - b. Discussion of subsurface conditions and soil properties indicated by the field and laboratory work and the implications for design.

- c. Foundation recommendations, including bearing capacity of soils, suitable bearing material, lateral and overturning resistance, etc. applicable for the recommended foundation or foundation options.
- d. Subgrade treatment and preparation recommendations for new access drives.
- e. General discussion of expected construction related issues.
- f. Earthwork related recommendations for use during development of plans and specifications.

2. Submittals will include an electronic PDF copy of each technical memorandum.

**M. TASK 13 – MATERIALS TESTING SERVICES:**

- 1. **Field Services** Qualified engineering technicians, directed by Professional Engineers licensed in the State of Texas, will perform the requested testing and observations for the project. The technicians assigned to the project will be qualified and equipped to perform the following field services:
  - a. Sample materials proposed for use as subgrade, select fill, general site fill, and utility backfill, as requested. Prepare and test the samples to determine classification by sieve analysis, the Atterberg limits, pH and Moisture Density Relationship.
  - b. Proof roll exposed subgrade prior to placement of fill materials.
  - c. Perform field gradations on chemically stabilized soils, as well as pH and Atterberg limits.
  - d. Perform field density tests using the nuclear method to determine the moisture content and percent compaction of the soil materials of the subgrade.
  - e. Perform depth checks and field density tests every 200 linear feet to determine depth, Plasticity Index, moisture content, and percent compaction of the pavement subgrade materials.
- 2. **Reporting** - Results of field tests will be submitted verbally to available personnel at the site. Written reports of field tests and observations will be distributed within three business days. Test reports will be distributed via e-mail. The City will need to provide the consultant with a distribution list prior to the beginning of the project. The list will need to include the company name, address, contact person name, phone number, and e-mail address for each person. Reported test locations will typically be estimated by pacing distances and approximating angles and elevations from local control data (staking and layout lines) provided by others on site. The accuracy of the locations will be dependent on the accuracy, availability and frequency of the control points provided by the client and/ or contractor.
- 3. Retests for failed tests are reimbursable by the contractor.

**ADDITIONAL SERVICES:** Additional Services to be performed by Consultant, if authorized by the City, which are not included in the above described scope of services, are described as follows:

- A. Field layouts or the furnishing of construction line and grade surveys.
- B. Mitigation planning required by the USACOE 404 permit.

- C. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required in connection with the replacement of such Work.
- D. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by the City.
- E. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- F. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- G. Preparing Operation and Maintenance Manuals or conducting operator training, other than typical manuals and training prepared by the Contractor..
- H. Assisting the City in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s) or condemnation proceedings with landowners.
- I. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- J. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- K. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this Agreement.
- L. Services required to resolve bid protests or to rebid the projects for any reason.
- M. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- N. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- O. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of Consultant.
- P. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- Q. Provide follow-up professional services during Contractor's warranty period.

- R. Detailed settlement studies or other engineering issues resulting from soft soil conditions or other unexpected site conditions.
- S. Cathodic control design and construction consisting of field evaluations, engineering analysis and construction services.

**III. DELIVERABLES**

Task 1 – Project Management	Invoices, one page reports and schedule updates. Monthly meeting minutes
Task 2– Water Line Design	Provide an alignment study technical memo and mapbook. Provide 60%, 90% and final design plans and specifications for the proposed water lines.
Task 3 – Pump Stations:	A Preliminary Design Report outlining the proposed site layout, pump station and tank alternatives, recommendations on number of pumps and operation considerations and costs. Provide 60%, 90% and final design plans and specifications.
Task 4 – EST	Provide a siting study technical memo. Provide 60%, 90% and final design plans and specifications for the 2.0 MG LPP EST with site layout and associated details.
Task 5 – Proposal Phase Services	Assist the City in securing bids and issuing construction plans and specifications for the design of the PL, PS, and EST contracts.
Task 6 – Construction Phase General Representative	Provide general construction representative services throughout the construction of the project. As-built drawings in CAD format.
Task 7 – Resident Representative	Daily Construction Reports. Weekly Construction Summary.
Task 8 – Topographical Survey	AutoCAD file with horizontal and vertical control points, property lines, existing easements, existing utilities and 1-foot contours.
Task 9 – Easement Documents	Exhibits and legal descriptions for the proposed permanent and temporary easements for both the pipeline and two properties to be acquired for the Lower Pressure Plane PS and the Tall Timbers Tank site.
Task 10 – Subsurface Utility Engineering	AutoCAD file with horizontal locations of Level B

locations and vertical elevation of Level A locations.

**Task 11 – Environmental Services**

Documentation from field observations and permit requirements for the remaining supply pipeline.

**Task 12 – Geotechnical Engineering Services**

Documentation from field exploration and laboratory testing on geotechnical bores utilized within the PS, GST and EST sites.

**Task 13 – Materials Testing**

Lab test reports.

**EXHIBIT 2  
COMPENSATION SCHEDULE**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
BETWEEN THE CITY OF HUNTSVILLE, TEXAS, AND FREESE AND NICHOLS, INC.,  
FOR THE BOND PROPOSITION 3 WATER PROJECTS**

**I. COMPENSATION SUMMARY**

<b>Task (Lump Sum)</b>	<b>Compensation</b>
Task 1 – Project Management	\$ 190,400
Task 2 – Water Line Design	\$ 551,000
Task 3 – Pump Station Design	\$ 797,000
Task 4 – 2.0 MG EST & Palm Street Tank Modifications	\$ 234,000
Task 5 – Procurement Phase	\$ 101,400
Task 6 – Construction Phase (General Rep)	\$ 383,800
Task 7 – Construction Resident Representative	\$ 1,099,300
Task 8 – Topographical Survey	\$ 242,400
Task 9 – Easement Documents	\$ 26,100
Task 10 – Subsurface Utility Engineering	\$ 99,400
Task 11 – Environmental Services	\$ 80,300
Task 12 – Geotechnical Engineering	\$ 123,300
Task 13 – Materials Testing Services	\$ 241,500
<b>Total Compensation</b>	<b>\$ 4,169,900</b>

**II. COMPENSATION SUMMARY**

<b>Basic Services (Lump Sum)</b>	<b>Amount</b>
Task 1 – Project Management	\$ 190,400
Task 2 – Water Line Design	\$ 551,000
Task 3 – Pump Station Design	\$ 797,000
Task 4 – 2.0 MG EST & Palm Street Tank Modifications	\$ 234,000
Task 5 – Procurement Phase	\$ 101,400
Task 6 – Construction Phase (General Rep)	\$ 383,800
<b>Total Basic Services:</b>	<b>\$ 2,257,600</b>

<b>Special Services (Lump Sum)</b>	<b>Amount</b>
Task 7 – Construction Resident Representative	\$ 1,099,300
Task 8 – Topographical Survey	\$ 242,400
Task 9 – Easement Documents	\$ 26,100
Task 10 – Subsurface Utility Engineering	\$ 99,400

Task 11 – Environmental Services	\$ 80,300
Task 12– Geotechnical Engineering	\$ 123,300
Task 13 – Materials Testing Services	\$ 241,500
<b>Total Special Services:</b>	<b>\$ 1,912,300</b>

### III. MILESTONE INVOICING SCHEDULE

<b>Milestone Deliverable</b>	<b>Month</b>	<b>Compensation</b>
<b>Task 1 – Project Management</b>		<b>\$ 190,400</b>
1. Completion of 15 Monthly Design Meetings	September '18	\$105,000
2. Project Schedule and Budget	May '17	\$15,000
3. Kick-off Meeting	May '17	\$15,200
4. APD Workshop	December '17	\$15,200
5. CSP Front End Documents	October '17	\$40,000
<b>Task 2 – Water Line Design</b>		<b>\$ 551,000</b>
1. Alignment Study	July '17	\$86,000
2. Technical Memo	August '17	\$40,000
3. 60% Design	February '18	\$243,000
4. 90% Design	May '18	\$107,000
5. 100% Design	July '18	\$75,000
<b>Task 3 – Pump Station Design</b>		<b>\$ 797,000</b>
1. Drainage Assessment Technical Memos	July '17	\$45,000
2. Preliminary Design Report	September '17	\$176,000
3. 60% Design	December '17	\$228,000
4. 90% Design	March '18	\$258,000
5. 100% Design	May '18	\$90,000
<b>Task 4 – 2.0 MG EST &amp; Palm Street Tank Mods.</b>		<b>\$ 234,000</b>
1. Siting Study TM	June '17	\$21,000
2. Drainage Assessment TM and PDR	July '17	\$23,000
3. 60% Design	October '17	\$65,000
4. 90% Design	December '17	\$70,000
5. 100% Design	February '18	\$55,000
<b>Task 5 – Procurement Phase</b>		<b>\$ 101,400</b>
1. Recommendation of Award – EST Package	May '18	\$16,400
2. Recommendation of Award – Pump Station Package	August '18	\$45,000
3. Recommendation of Award – Pipeline Package	October '18	\$40,000
<b>Task 6 – Construction Phase (General Rep)</b>		<b>\$ 383,800</b>
1. Pre-Construction Meeting – Pipeline Package	October '18	\$10,000

2. Pre-Construction Meeting – Pump Station Package	August '18	\$10,000
3. Pre-construction Meetings – EST Package	May '18	\$10,000
4. Invoice Monthly – Tied to Tank Contractor's Pay App.	Varies	\$65,000 / 18
5. Invoice Monthly – Tied to PS Contractor's Pay App.	Varies	\$150,000 / 15
6. Invoice Monthly – Tied to PL Contractor's Pay App.	Varies	\$138,800 / 12
<b>Task 7– Construction Resident Representative</b>		<b>\$ 1,099,300</b>
1. Invoice Monthly – Tied to Tank Contractor's Pay App.	Varies	\$163,000 / 18
2. Invoice Monthly – Tied to PS Contractor's Pay App.	Varies	\$ 501,300 / 15
3. Invoice Monthly – Tied to PL Contractor's Pay App.	Varies	\$435,000 / 12
<b>Task 8 – Topographical Survey</b>		<b>\$ 242,400</b>
1. Final Survey of Tall Timbers Site	September '17	\$15,700
2. Final Survey of Pump Station Sites	November '17	\$24,700
3. Final Survey of Pipeline Alignments	December '17	\$101,000
<b>Task 9 – Easement Documents</b>		<b>\$ 26,100</b>
1. Draft Exhibits and Legal Description for Pipeline Easements	July '17	\$ 21,000
2. Final Exhibits and Legal Descriptions for PS/Tank Parcels	August '17	\$ 5,100
<b>Task 10 – Subsurface Utility Engineering</b>		<b>\$ 99,400</b>
1. Pipeline SUE Survey Level B	August '17	\$60,000
2. Pipeline SUE Survey Level A	September '17	\$39,400
<b>Task 11 – Environmental Services</b>		<b>\$ 80,300</b>
1. Wetland Delineation Mapping	August '17	\$25,000
2. Hazardous Materials Review Mapping	September '17	\$15,300
3. 404 Permitting Requirements for TM	October '17	\$10,000
4. PCN Submittal to Galveston USACE (if required)	Varies	\$30,000
<b>Task 12– Geotechnical Engineering</b>		<b>\$ 123,300</b>
1. Boring Logs – Tank Project	July '17	\$10,000
2. Boring Logs – Pump Station Project	September '17	\$30,000
3. Boring Logs – Pipeline Project	September '17	\$30,000
4. Geotechnical Report – Tank Project	August '17	\$8,300
5. Geotechnical Report – Pump Station Project	October '17	\$24,000
6. Geotechnical Report – Pipeline Project	October '17	\$21,000
<b>Task 13 – Materials Testing Services</b>		<b>\$ 241,500</b>
1. Invoice Monthly – Tied to Tank Contractor's Pay App.	Varies	\$41,500
2. Invoice Monthly – Tied to PS Contractor's Pay App.	Varies	\$100,000
3. Invoice Monthly – Tied to PL Contractor's Pay App.	Varies	\$100,000
<b>Total Compensation</b>		<b>\$ 4,169,900</b>

City of Huntsville		Project Schedule		2019																							
ID	Task Name	Duration	Start	Finish	Predecessor	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	NOTICE TO PROCEED	1 day	Mon 5/1/17	Mon 5/1/17																							
2	DESIGN	385 days	Tue 5/2/17	Mon 10/22/18	1																						
3	TASK 1 - Project Management	356 days	Tue 5/2/17	Tue 9/11/18	1																						
27	TASK 2 - Water Line Design	308 days	Wed 5/17/17	Fri 7/20/18	8																						
28	Preliminary Design	97 days	Wed 5/17/17	Thu 9/28/17																							
41	Final Design	222 days	Thu 9/14/17	Fri 7/20/18	37																						
57	TASK 3 - Pump Station Design	264 days	Wed 5/17/17	Mon 5/21/18	8																						
58	Preliminary Design	117 days	Wed 5/17/17	Thu 10/26/17																							
77	Final Design	163 days	Thu 10/5/17	Mon 5/21/18	72																						
93	TASK 4 - EST Design	199 days	Wed 5/17/17	Mon 2/19/18	8																						
94	Preliminary Design	82 days	Wed 5/17/17	Thu 9/7/17																							
113	Final Design	138 days	Thu 8/10/17	Mon 2/19/18																							
129	TASK 5 - Procurement Phase	175 days	Tue 2/20/18	Mon 10/22/18	128																						
130	Procurement Phase for Water Lines Project	66 days	Mon 7/23/18	Mon 10/22/18	56																						
136	Procurement Phase for Pump Stations Project	66 days	Mon 5/21/18	Mon 8/20/18	91																						
142	Procurement Phase for EST Project	66 days	Tue 2/20/18	Tue 5/22/18	128																						
148	CONSTRUCTION	396 days	Wed 5/23/18	Wed 11/27/19	147																						
149	TASK 6 - General Representation	396 days	Wed 5/23/18	Wed 11/27/19																							
150	General Representation for Water Lines Project	264 days	Tue 10/23/18	Fri 10/25/19	135																						
153	General Representation for Pump Stations Project	330 days	Tue 8/21/18	Mon 11/25/19	141																						
156	General Representation for EST Project	396 days	Wed 5/23/18	Wed 11/27/19	146																						
159	TASK 7 - Construction Management	396 days	Wed 5/23/18	Wed 11/27/19																							
163	TASK 8 - Topographical Survey	145 days	Mon 5/22/17	Fri 12/8/17																							
171	TASK 9 - Easement Documents	25 days	Tue 7/18/17	Mon 8/21/17																							
176	TASK 10 - SUE	43 days	Wed 8/2/17	Fri 9/29/17																							
179	TASK 11 - Environmental Services	36 days	Thu 8/17/17	Thu 10/5/17																							
183	TASK 12 - Geotechnical Services	74 days	Thu 7/20/17	Tue 10/31/17																							
190	TASK 13 - Material Testing Services	396 days	Wed 5/23/18	Wed 11/27/19	147																						

Task Split Milestone Summary  
 Project Summary External Tasks Inactive Milestone Manual Summary Rollup  
 Inactive Summary Manual Summary Start-only Finish-only  
 Inactive Task External Milestone Inactive Task Manual Task  
 Inactive Task Inactive Task

Deadline Critical Critical Split Progress

**ORDINANCE NO. 2017-26**

**AN ORDINANCE OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING THE 2016-2017 ANNUAL BUDGET AND CAPITAL IMPROVEMENTS PROJECTS (CIP) BUDGETS, ORDINANCE NO. 2016-40 TO AMEND ADOPTED EXPENDITURES OF THE BUDGET; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the 2016-2017 Annual Budget and CIP Budgets were adopted by Ordinance 2016-40 on September 20, 2016;

**WHEREAS**, various unforeseen circumstances affecting the City have presented themselves during the course of the fiscal year;

**WHEREAS**, the City Council considered the circumstances independently, deliberating appropriately on the associated revenues and expenditures and the overall impact on the general financial status of the City;

**WHEREAS**, pursuant to the laws of the State of Texas and the City Charter of the City of Huntsville, Texas, the City Council has determined that it will be beneficial and advantageous to the citizens of the City of Huntsville to amend the annual budget for fiscal year 2016 – 2017 and the Capital Improvements Projects (CIP) budget as set forth herein; and

**WHEREAS**, this ordinance combines the independent Council actions into one budget amendment document;

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

**Section 1.** The findings set forth above are incorporated into the body of this ordinance.

**Section 2.** The annual budget for fiscal year 2016 – 2017 is hereby amended to include the expenditures and revenues in Exhibit “A” and the Capital Improvements Projects budget is hereby amended to include the expenditures described in Exhibit “A” attached hereto and made a part of this ordinance as if set out verbatim herein.

**Section 3.** All ordinances of the City in conflict with the provisions of this ordinance are hereby repealed, and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

**Section 4.** Should any section, portion, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the force or effect of any other section or portion of this ordinance.

**Section 5.** The necessity for amending the budget for the fiscal year 2016 – 2017 and Capital Improvements Projects, as required by the laws of the State of Texas, requires that this ordinance shall take effect immediately from and after its passage, as the law in such cases provides.

**Section 6.** This ordinance shall take effect immediately after its passage.

PASSED AND APPROVED on this the \_\_\_\_\_ day of \_\_\_\_\_ 2017.

**THE CITY OF HUNTSVILLE, TEXAS**

\_\_\_\_\_  
Andy Brauninger, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney

**Budget Amendments FY 16-17  
April 4, 2017**

**Exhibit  
A**

Increase: Water Fund - Transfer to CIP (from Unallocated Reserves)		\$ 260,300
Increase: Water CIP - Prop 3 Bonds - Engineering		\$ 260,300
Explanation:	<p>The RFQ process and related negotiations with the selected engineering firm, Freese &amp; Nichols, has resulted in the need for additional budget for engineering design cost for the anticipated water projects. An original amount of \$2,185,000 was approved by Council and placed in the budget back on December 6, 2016. The amount submitted by Freese &amp; Nichols for projects costs totaling \$22,928,200 for engineering design is \$2,445,300. This budget amendment requests use of \$260,300 of Water Fund's Unallocated Reserves to fund this cost. Water Fund's Unallocated Reserves balance after this use (if approved) would be \$7,855,075 which is \$4,369,875 over the required minimum 25% of \$3,485,200. Engineering fees for the Construction phase of the projects in the amount of \$1,724,600 will be budgeted for during the FY 17-18 budget process and it is anticipated the funding of these will come from what has normally been appropriated for Transfer to CIP for funding new Water CIP projects in the amount of approximately \$2,200,000 from operations.</p>	



## CITY COUNCIL AGENDA

4/18/2017

Agenda Item: 6b

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**Item/Subject:** Consider authorizing the City Manager to enter an agreement with Enprotec/Hibbs & Todd, Inc., (eHT) for professional engineering services for 2016 Bond Proposition 3 Wastewater Infrastructure Projects (17-01-02), second reading.

**Initiating Department/Presenter:** Engineering

**Presenter:** Y. S. "Ram" Ramachandra, City Engineer

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**Recommended Motion:** Move to authorize the City Manager to enter an agreement with Enprotec/Hibbs & Todd, Inc., (eHT) for professional engineering services for 2016 Bond Proposition #3 Wastewater Infrastructure Projects (17-01-02).

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**Strategic Initiative:** Goal #4 - Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

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**Discussion:** The City has completed selection process for professional engineering services for the projects associated with 2016 Bond Proposition 3 (Water & Wastewater infrastructure). A brief description on the steps that were followed in the selection process is as follows.

Step 1. City staff sought Request for Qualifications from qualified engineering firms during early January of this year. In response, the City received responses from thirty-three (33) engineering firms by submitting their Statement of Qualifications (SOQs).

Step 2. Staff selection committee, consisting of City Manager, Public Works Director, City Engineer, and Project Manager reviewed the submittals.

Step 3. Upon completion of review of all the submittals, the City staff shortlisted sixteen (16) firms and sought additional clarification/answers to a set of questions, to further determine the qualifications and capabilities of the engineering firms that would match the needs of the Bond Proposition 3 projects.

Step 3. Nine (9) engineering firms were interviewed by the staff selection committee.

Step 4. Finally, two top ranked engineering firms were identified – one for water projects and one for wastewater projects.

***Enprotec/Hibbs & Todd, Inc., (eHT), Abilene, TX has been identified as top ranked firm to provide professional engineering services for Bond Proposition 3 Wastewater infrastructure projects.***

eHT is well qualified and well equipped to provide all needed design, procurement, construction support, and construction inspection services for Bond Proposition No. 3 Water Infrastructure projects. eHT has extensive experience in providing professional engineering services on projects very similar to the City's Wastewater Infrastructure projects. eHT has worked on similar projects for various communities in Texas, which includes the City of Abilene.

2016 Bond Proposition Wastewater Infrastructure design projects consists of:

1. Project 1 – Rehabilitation of A.J. Brown WWTP
2. Project 2 – Replace 30-inch with 48-inch trunk sanitary sewer main to A.J. Brown WWTP
3. Project 3 – Replace 30-inch with 42-inch trunk sanitary sewer main in the AJ-08 Basin (Segment A)
4. Project 4 - Replace 30-inch with 42-inch trunk sanitary sewer main in the AJ-08 Basin (Segment B)
5. Project 5 – Replace 30-inch with 42-inch trunk sanitary sewer main in the AJ-08 Basin (Segment C)
6. Project 6 – Replace 24-inch with 42-inch gravity Sanitary main in the AJ-10 Basin.
7. Project 7 – Rehabilitation of N.B. Davidson WWTP

Attached project location map shows the proposed locations/segments of the above described projects. These wastewater infrastructure improvement projects are the ones that are identified in the condition and capacity assessment study as priority projects, for implementation during the 2016-2021 time frame.

Negotiated fees for design phase services is \$3,107,000 and negotiated fees for construction phases services is \$2,504,000, adding to total professional engineering services fees of \$5,611,000.

However, the available budget at this time will cover only engineering design of Project 1 – Rehabilitation of A.J. Brown WWTP, which has a design fee of \$1,753,000. eHT will be issued Notice-to-Proceed for the design of Project 1 - Rehabilitation of A.J. Brown WWTP only, at this time. Notice-to-Proceed for the design of remaining projects (Project 2 through 7) will be issued at later dates as funds become available.

Current estimated cost of construction of 2016 Bond Proposition Wastewater Infrastructure projects is in \$41 million range.

The schedules for completion of design of the project packages are as given below (with May 2017 Notice to Proceed date):

- a) Rehabilitation of A.J. Brown WWTP (Project 1) – January 2018, assuming May 2017 design start date.
- b) Replacing 30-inch with 48-inch trunk sanitary sewer Main (Project 2) – Approx. 270 days from Notice to Proceed date.
- c) Replacing 24/30-inch with 42-inch trunk sanitary sewer Main (Projects 3, 4, 5 & 6) – Approx. 210 days from Notice to Proceed date.
- d) Rehabilitation of N.B. Davidson WWTP (Project 7) – Approx. 300 days from Notice to Proceed date. It is planned to proceed with the construction procurement process for each project package as the design completion occurs.

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**Previous Council Action:** None

**Financial Implications:**

There is no financial impact associated with this item.

Item is budgeted: 712-71201-62111 In the amount of \$1,900,000

Item is not budgeted:

Item is estimated to generate additional revenue:

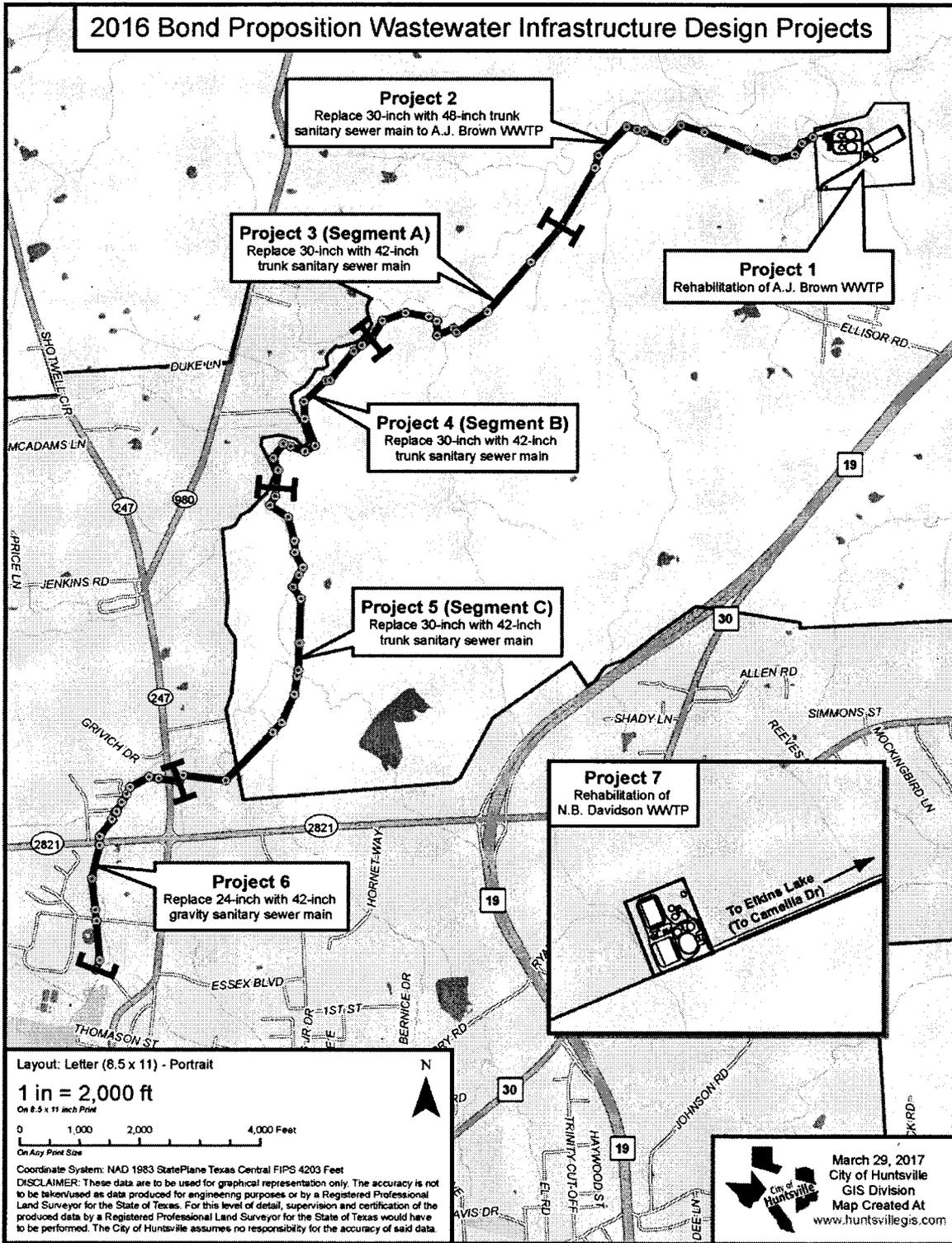
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**Approvals:**     City Attorney                       Director of Finance                       City Manager

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**Associated Information:**

- Map of Project Locations (page 4)
- Engineering Agreement (pages 5-12)
- Exhibit 1 – Scope of Services (pages 13-44)



AGREEMENT BETWEEN CITY AND ENGINEER  
FOR PROFESSIONAL SERVICES

THIS AGREEMENT made and entered into by and between CITY OF HUNTSVILLE, hereinafter called the OWNER, and ENPROTEC/HIBBS & TODD, INC., Abilene, Texas, hereinafter called ENGINEER, WITNESSETH that whereas the OWNER intends to construct 2016 Bond Proposition No. 3 WASTEWATER INFRASTRUCTURE PROJECTS (Project No. 17-01-02). The effective date of this agreement is \_\_\_\_\_.

NOW, THEREFORE, the OWNER and ENGINEER for the considerations hereinafter set forth, agree as follows:

SECTION 1- RESPONSIBILITY OF THE ENGINEER

The ENGINEER shall serve as the OWNER's professional representative in the planning, design, bidding, and construction phases (including observation of construction) of the PROJECT as outlined in Proposal dated March 24, 2017 from Enprotec/Hibbs & Todd, Inc. Engineering firm (the proposal is hereinafter referred to as Exhibit 1), and shall give consultation and advice to the OWNER during the performance of his services. In the event of conflict between any provisions in this Agreement and any provisions in Exhibit 1, the provisions in this Agreement will control.

The ENGINEER shall perform services necessary to accomplish the work required to be performed under this AGREEMENT in a competent and professional manner with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license, as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

The OWNER's approval of drawings, design, specifications, reports incidental engineering work or materials furnished hereunder shall not in any way relieve the ENGINEER of liability for the technical adequacy of his work nor shall the OWNER's approval or acceptance of the ENGINEER's work be construed as a waiver of any rights under this AGREEMENT.

The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or any third party. The ENGINEER shall not be responsible for any time delays in the PROJECT caused by circumstances beyond his control.

SECTION 2- CHARACTER AND EXTENT OF BASIC SERVICES

2.1. General:

The ENGINEER shall serve as the OWNER's professional representative in the planning, design, bidding and construction phases (including observation of construction) of the PROJECT as outlined in Exhibit 1, and shall give consultation and advice to the OWNER during the performance of his services.

The OWNER and ENGINEER acknowledge and anticipate that the timing and development of any AUTHORIZED WORK may depend on the availability of financing and the needs of the OWNER; therefore, the ENGINEER shall not proceed with any phase of engineering services without specific written authorization by the OWNER.

2.1.1 Copyright or Patent Infringement: The ENGINEER shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by him, and he shall hold harmless the OWNER from loss or damage resulting therefrom, providing however, that the OWNER within five (5) days after receipt of any notice of infringement or of summons in any action therefor shall have forwarded the same to the ENGINEER in writing.

2.1.2 Insurance: The ENGINEER shall secure and maintain such insurance as will protect him from claims under the Workmen's Compensation Acts and from claims for bodily injury, death, or property damage which may arise from the performance of his services under this Agreement and shall provide a certificate of said insurance to the OWNER to attach to this contract. The ENGINEER shall furnish proof of Error and Omissions Professional Liability Coverage for the ENGINEER for this PROJECT in the amount of One Million Dollars to the OWNER within 15 days after this Agreement is executed and shall continue to maintain said insurance for this PROJECT. ENGINEER agrees to maintain both types of insurance during the duration of the PROJECT.

## 2.2 Planning, Designing, Bidding Support and Construction Support.

Refer to Exhibit 1. .

## SECTION 3- ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by the OWNER, the ENGINEER shall provide Additional Services that are not already a part of Exhibit 1 and these will be paid by the OWNER a fee negotiated between the OWNER and the ENGINEER. It is agreed that if any of the additional services listed in this Section 3 are a part of Exhibit 1, then Exhibit 1 controls. Any additional services authorized (including services in addition to the ones listed below) will be in writing and signed by both Parties and attached to this Agreement:

3.1 Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the PROJECT; preparation or review of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the PROJECT.

3.2 Services to perform geotechnical investigations, materials testing, engineering surveys or topographic surveys for design, to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by the OWNER.

3.3 Services resulting from significant changes in general scope of the PROJECT or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond the ENGINEER's control.

3.4 Providing renderings or models for the OWNER's use.

3.5 Preparing documents for alternate bids requested by OWNER for work which is not executed or documents for out of sequence work.

3.6 Investigations involving detailed consideration of operations, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by the OWNER.

3.7 Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, such as consultants for communications, acoustics, and landscaping.

3.8 Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered, and services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

3.9 Services during out of town travel required of the ENGINEER other than visits to the PROJECT site or to regulatory agency offices having jurisdiction over the PROJECT.

3.10 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) prolongation of the contract time of any prime contract by more than sixty (60) days, (4) acceleration of the work schedule involving services beyond normal working hours, and (5) default by any Contractor.

3.11 Construction staking for the PROJECT.

3.12 Land surveys and office computations required to develop plats and metes and bounds descriptions for easement or property acquisition.

3.13 Preparation of operating and maintenance manuals.

3.14 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the PROJECT.

3.15 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the PROJECT.

3.16 Additional services in connection with the PROJECT, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.

3.17 If requested by the OWNER or recommended by the ENGINEER and agreed to in writing by the OWNER, a Resident Project Representative and assistants will be furnished and will act as directed by the ENGINEER in order to provide more extensive representation at the PROJECT site during the Construction Phase.

3.18 Through more extensive on site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if furnished) and assistants, the ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work, but the furnishing of such Resident Project Representation will not make the ENGINEER responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for Contractor(s)' failure to perform the construction work in accordance with the Contract Documents.

3.19 Reimbursable Services of the ENGINEER:

Reimbursable services shall include the following items when authorized in writing by the OWNER: transportation and subsistence of principals and employees on special trips to the PROJECT or to other locations; long distance telephone and telegraph calls as required to expedite the work of the Contractor; reproduction of drawings and specifications.

SECTION 4- THE OWNER'S RESPONSIBILITIES

4.1. THE OWNER AGREES to provide the ENGINEER with complete information concerning the requirements of the PROJECT and to perform the following services:

4.2 Access to the Work: The OWNER shall guarantee access to and make all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform such work as surveys and inspections in the development of the PROJECT.

4.3 Consideration of the ENGINEER's Work: The OWNER, or an agent appointed by OWNER, shall give thorough considerations to all reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the ENGINEER, and shall inform the ENGINEER of all decisions within a reasonable time so as not to delay the work of the ENGINEER.

4.4 Legal Requirements: The OWNER shall serve all required public and private notices, receive and act upon all protests and fulfill requirements necessary in the development of the PROJECT.

4.5 Proposals: The OWNER shall advertise for Proposals from Bidders, open the Proposals at the appointed time and place and pay all costs incidental thereto.

4.6 Protection of Markers: The OWNER shall protect to the best of its ability, all stakes and

other markers set by the ENGINEER prior to the assumption of such responsibility by the Contractor. Replacement of markers or stakes which have been damaged, moved or removed shall be paid for by the OWNER as extra services of the ENGINEER.

4.7 Standards: The OWNER shall furnish the ENGINEER with a copy of any design and construction standards it shall require the ENGINEER to follow in the preparation of Contract Documents for the PROJECT.

4.8 OWNER's Representative: The OWNER shall designate in writing, by appendix to this Agreement, a single person to act as the OWNER's Representative with respect to the work to be performed under this Agreement. The person designated as OWNER's Representative shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policy and decisions, with respect to the materials, equipment, elements and systems pertinent to the work covered by this Agreement. The OWNER may also appoint, and will notify the ENGINEER of such appointment, a 3<sup>rd</sup> party to act as the OWNER's agent for consideration of the ENGINEER's work set forth in paragraph 4.3 above.

#### SECTION 5 - THE OWNER'S PAYMENTS TO THE ENGINEER:

5.1 Definitions of Construction Cost of the PROJECT, as herein referred to, means the total cost of all work designed or specified by the ENGINEER but does not include any payments to the ENGINEER or other consultants.

5.2 Payments Withheld from Contractors: No deduction shall be made from the ENGINEER's compensation on account of penalty, liquidated damages, or other amounts withheld from payments to Contractors.

5.3 Abandoned or Suspended Work: If any work performed by the ENGINEER is abandoned or suspended in whole or in part, the ENGINEER shall be paid for services performed on account of it prior to receipt of written notice from the OWNER of such abandonment or suspension.

5.4 The OWNER will make prompt payments in response to the ENGINEER's detailed statements for all categories of completed services rendered under this AGREEMENT, or as provided in an agreed upon schedule which shall be attached to this AGREEMENT. However, the OWNER, in no circumstance, shall be required to make more than one payment a month. It is understood and agreed that the OWNER is not liable for payment of any fees for Basic Services described in this AGREEMENT until funds are available from bond sales or other lawful source of funds.

5.5 Payments for Additional Services of the ENGINEER: The ENGINEER shall be reimbursed according to Attachment Schedule of Charges for the additional services outlined under Section 3. Payments to the ENGINEER for additional services stipulated in Section 3 will be made monthly by the OWNER, upon presentation of monthly detailed statements by the ENGINEER

SECTION 6 - THE OWNER AND ENGINEER FURTHER AGREE to the following conditions:

6.1 Termination: This Agreement may be terminated by either party by fourteen (14) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one party through no fault of the party. If terminated due to the fault of others than the ENGINEER, the ENGINEER shall be paid for services performed to the date of termination, including reimbursements then due, plus terminal expense. As soon as practicable after receipt of notice of termination, the ENGINEER shall submit a statement, showing in detail the services performed under this AGREEMENT, to the date of termination. The OWNER shall then pay the ENGINEER promptly that proportion of the prescribed charges which the services actually performed under this AGREEMENT bear to total services called for under this AGREEMENT, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, plans and specifications prepared under this AGREEMENT shall be delivered to the OWNER when and if the AGREEMENT is terminated, but subject to the restrictions, as to their use, as set forth in Section 6.3. The Parties agree that neither shall be liable for any consequential damages, loss profits, special damages, or future loss profits if this Agreement is terminated for cause or without cause.

6.2 Disputes: Should a dispute arise during the course of this PROJECT, both parties hereby agree to attempt in good faith to resolve the dispute through mediation prior to seeking relief from any court or through any other legal proceeding.

6.3 Ownership of Documents: Upon execution of this Agreement, the ENGINEER grants to the OWNER a nonexclusive license to reproduce the ENGINEER's completed tracings and master specifications sheets solely for purposes of constructing, using, maintaining, renovating and/or adding onto the PROJECT, provided that the OWNER shall comply with all obligations under this Agreement. The ENGINEER shall obtain similar nonexclusive licenses from the ENGINEER's consultants consistent with this Agreement. Upon termination the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the OWNER to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the PROJECT.

6.4 Except for the licenses granted in Subparagraph 6.3 above, no other license or right shall be deemed granted or implied under this Agreement. The OWNER shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the ENGINEER.

6.5 Successors and Assigns: This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the OWNER and the ENGINEER respectively and his partners, successors, assigns and legal representatives. Neither the OWNER nor the ENGINEER shall have the right to assign, transfer or sublet his interest or obligations hereunder without written consent of the other party. This Agreement and attachments supersedes any previous contracts or oral agreements between the parties and constitutes the entire agreement between the parties.

6.6 Severability. Provisions of this AGREEMENT are severable and if any provision or part of this AGREEMENT or the application thereof to any person or circumstance should ever be held in any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of the AGREEMENT and the application of such provisions or part of this AGREEMENT to other persons or circumstances shall not be effected thereby.

6.7. Jurisdiction and Venue. The laws of the State of Texas apply to this Agreement. Venue of any civil action will be in the County where the PROJECT is located.

6.8 Indemnity. The OWNER, to the fullest extent permitted by law, will require any Contractor or Subcontractor performing work in connection with Drawings and Specifications produced under this Agreement to hold harmless, indemnify and defend, the OWNER and the ENGINEER, their consultants and each of their officers, agents and employees from liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants or their officers, agents, and employees.

6.9 Written Notice.

Where written notice is mentioned in the AGREEMENT, it shall be sent by certified mail return receipt requested, or by personal delivery, or by facsimile, to the attention of and to the following addresses:

OWNER Y. S. Ramachandra, P.E. City Engineer City of Huntsville 448 State Highway 75 North Huntsville, TX 77320	ENGINEER Scott F. Hibbs, P.E. President Enprotec/Hibbs & Todd, Inc. 402 Cedar Street Abilene, TX 79601
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6.10 Staffing. ENGINEER acknowledges that continuity of staffing is important to the OWNER for the duration of the PROJECT. Accordingly, ENGINEER agrees to assign and the following key staff to the PROJECT. No substitution will be made to the assigned key staff without the written consent of the OWNER, provided the identified staff members remain employed by the ENGINEER:

Principal: Scott F. Hibbs, P.E. – President  
Technical Director: Joshua Berryhill, P.E. – Associate Vice President  
Project Manager: Jordan S. Hibbs, P.E. – Associate Vice President

6.11 Design Delays. OWNER and ENGINEER agree that time is of the essence in

ENGINEER's work related to the PROJECT. Accordingly, ENGINEER shall have deducted from any amounts owed a sum of \$500 per calendar day beyond completion dates for the respective design phases of various PROJECT elements established in the agreed upon schedule attached to this AGREEMENT, as may be amended in writing between both parties.

6.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, with such counterparts together constituting one and the same instrument. Alternatively, the Parties acknowledge and agree that this Agreement may be, for convenience, executed in duplicate originals, each of which is intended to be and is as valid as its counterpart original.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the day and year first above written:

OWNER:  
CITY OF HUNTSVILLE

ENGINEER:  
ENPROTEC/HIBBS & TODD, INC.

\_\_\_\_\_  
Matt Benoit - City Manager

\_\_\_\_\_  
Scott F. Hibbs, P.E. - President

ATTEST:

ATTEST:

\_\_\_\_\_  
Lee Woodward - City Secretary

\_\_\_\_\_  
Robert R. Benham - Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Leonard Schneider, City Attorney

**EXHIBIT 1**  
**SCOPE OF SERVICES PROPOSAL**  
**FOR**  
**WASTEWATER SYSTEM CAPITAL IMPROVEMENTS PROGRAM**  
**March 24, 2017**

This Exhibit 1 is part of the AGREEMENT between Enprotec / Hibbs & Todd, Inc. (Engineer) and the City of Huntsville (Owner) for a PROJECT generally described as:

Implementation of improvements established in the study and report prepared by Freese & Nichols, Inc., titled "2016 Water and Wastewater Condition Assessment and Studies", dated November 18, 2016 (2016 Report). Additionally, the report prepared by Freese & Nichols, Inc., titled "A.J. Brown Wastewater Treatment Plant Condition Assessment", dated May 23, 2016 (2016 AJ Brown Report) shall be relied upon by the Engineer. Specifically, the following projects have been identified by the Owner for inclusion in this Exhibit 1 (The CIP Project No. is provided in parenthesis for back reference to the 2016 Report):

- Project No. 1 (CIP Project No. 1): Rehabilitation of A. J. Brown WWTP at 4.15 MGD Capacity
- Project No. 2 (CIP Project No. 3): Replace 30-inch with 48-inch trunk line to A. J. Brown WWTP
- Project No. 3 (CIP Project No. 4): Replace 30-inch with 42-inch trunk line in the AJ-08 Basin (Segment A)
- Project No. 4 (CIP Project No. 5): Replace 30-inch with 42-inch trunk line in the AJ-08 Basin (Segment B)
- Project No. 5 (CIP Project No. 6): Replace 30-inch with 42-inch trunk line in the AJ-08 Basin (Segment C)
- Project No. 6 (CIP Project No. 7): Replace 24-inch with 42-inch gravity line in the AJ-10 Basin

Additionally, Exhibit 1 identifies the Scope of Services for Project No. 7, rehabilitation of the N.B. Davidson WWTP. This facility was not addressed in the 2016 study and report referenced above. City has budgeted up to \$2,500,000. for construction costs to implement improvements to the N.B. Davidson WWTP.

**SCOPE OF SERVICES**

The Engineer agrees to furnish the Owner with the following specific services:

**BASIC ENGINEERING SERVICES**

**TASK 1 CONCEPTUAL PLANNING AND PROJECT MANAGEMENT**

- 1.1 Conduct a Project Kickoff Meeting. Meeting shall include key members of the Engineer's Project Team and the Owner's Project Team. The meeting will focus on the scope of work, schedule, deliverables, protocols for communication throughout the project, and coordination of initial data collection activities.

1.2 Perform Process Performance/Optimization Evaluation for the A.J. Brown WWTP and the N.B. Davidson WWTP:

- 1.2.1 Obtain and review drawings of treatment plant.
- 1.2.2 Obtain and review plant operation data for a three (3) year period. Identify critical areas that may affect plant performance. Include each process unit.
- 1.2.3 Determine and summarize unit process sizes and capacities for current and anticipated discharge requirements. Identify physical barriers limiting process capacities.
- 1.2.4 Evaluate the performance of each process unit and develop strategies to optimize treatment.
- 1.2.5 Prepare Technical Memorandum – Process Performance/Optimization Evaluation.

1.3 Operations Round Table:

Conduct an Operations Round Table with Owner Staff (including plant operators), to review operating procedures, discuss operating problems and to review the operating records/data. Operations Round Table will be conducted during the Process Performance/Optimization Evaluation outlined in Subtask 1.2 above. Input received during the Operations Round Table will be incorporated into the Process Performance/Optimization Evaluation Technical Memorandum.

1.4 Establish treatment recommendations and design considerations for the A.J. Brown WWTP and for the N.B. Davidson WWTP.

- 1.4.1 Develop treatment plant process alternatives for each WWTP. Develop process flow schematics and conceptual site layouts for each process alternative.
- 1.4.2 Visit the Texas Commission on Environmental Quality (TCEQ) to discuss the alternatives and the requirements for approval that the TCEQ may have, such as exceptions/variances, piloting, other data to support the conceptual processes, or discharge permit amendments.
- 1.4.3 Conduct site visits to examine operating plants using proposed treatment process alternatives. Travel expenses for Owner are not included in this scope of work.
- 1.4.4 Provide background documentation on the conceptual treatment processes proposed including installation lists, references, operational requirements, and published capital, operations, and maintenance costs.
- 1.4.5 Conduct Process Alternatives and Technology Review Workshop with the Owner. Based on this meeting, develop specific criteria for plant operations, staffing, instrumentation & control systems, support facilities, and other issues that might impact process design, facility layout and supporting infrastructure.

- 1.4.6 Develop concept level opinions of probable cost for each of the treatment alternatives. Costs will include planning-level operation and maintenance costs. Include a conceptual project development schedule for each alternative.
  - 1.4.7 Conduct Conceptual Plan Review and Process Ranking Development Workshop. During the meeting, develop method for ranking alternatives that includes economic and non-economic factors by defining issues to be considered and weighted importance of each issue. Using this data, develop a ranking of each alternative.
  - 1.4.8 Prepare Technical Memorandum – Process Alternatives and Conceptual Design to document activities conducted under Task 1.4.
- 1.5 Project Management:
- 1.5.1 Conduct monthly project update meetings with the Owner at the Owner's facilities.
  - 1.5.2 Provide project management activities to properly plan the work, sequence, manage, coordinate, schedule, and monitor the scope tasks and completion of the tasks.
  - 1.5.3 Prepare a project management plan including scope, budget, schedule, communication, project team, and file organization.
  - 1.5.4 Conduct internal team coordination meetings as required to accomplish the work.
  - 1.5.5 Provide monthly status updates to the Owner describing and showing the percent complete for scope tasks and the issues, budget status, and schedule.
  - 1.5.6 Coordinate, prepare, and review monthly invoices for payment.
  - 1.5.7 Maintain and update on a monthly basis, an action item log, a decision log, and project change log.
  - 1.5.8 Submit to the City, at identified project milestones established below, an Opinion of Probable Construction Cost which indicates the cost of each category of work involved in construction of the Project. In providing opinions of cost, financial analysis, economic feasibility projections, and schedules for the Project, the Engineer has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, the Engineer makes no warranty that the Owner's actual Project cost, financial aspects, economic feasibility, or schedules will not vary from the Engineer's opinions, analyses, projections, or estimates.

1.6 Deliverables:

- 1.6.1 Kick-off Meeting: Electronic copy of the meeting minutes.
- 1.6.2 Technical Memorandum - Process Performance/Optimization Evaluation: Electronic copy and five (5) "hard" copies for DRAFT review. Final electronic copy.
- 1.6.3 Process Alternatives and Technology Review Workshop: Electronic record of workshop materials, discussions and decisions.
- 1.6.4 Conceptual Plan Review and Process Ranking Development Workshop: Electronic record of workshop materials, discussions and decisions.
- 1.6.5 Technical Memorandum – Process Alternatives and Conceptual Design: Electronic copy and five (5) "hard" copies for DRAFT review. Final electronic copy.

TASK 2 PRELIMINARY DESIGN PHASE

2.1 After acceptance by Owner of the Conceptual Planning Deliverables for the A.J. Brown WWTP and the N.B. Davidson WWTP established under Task 1.6 above, and based on the project descriptions for the trunk line upsizing projects presented in the 2016 Report and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, Engineer shall:

- 2.1.1 Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
- 2.1.2 Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
- 2.1.3 Advise Owner if additional reports, data, information, or services are necessary and assist Owner in obtaining such reports, data, information, or services.
- 2.1.4 Based on the information contained in the Preliminary Design Phase documents, prepare a revised Opinion of Probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
- 2.1.5 Perform or provide the following additional Preliminary Design Phase tasks or deliverables:

**WASTEWATER TREATMENT PLANT REHABILITATION PROJECTS**

- a. Preliminary Design – Schematic Phase
  - 1) Produce these deliverables:

- Process loads and flows.
- Process design parameters list.
- Major process equipment control table.
- Equipment tagging conventions.
- Geotechnical investigation plan.
- Preliminary process schematics.
- Preliminary control systems block diagrams.
- Preliminary major process P&IDs.

b. Preliminary Design - Spatial Design Phase

1) Spatial design shall proceed after submission of schematic phase deliverables to the Owner. Produce these deliverables:

- Equipment list.
- Site utility analysis.
- Architectural program.
- Preliminary Items
  - Initial geotechnical investigation.
  - Process equipment information and data.
  - Site layout.
  - Process structure layouts including main piping and valves.
  - Civil/site and process/civil sections of Basis of Design Memorandum
  - Sketch sections through major process facilities.
  - Facility and building layouts.

c. Preliminary Design – Basis of Design

1) After the Owner has received spatial design criteria, complete preliminary design deliverables including:

- Basis of Design Memorandum.
- Code Classification Table.
- Layouts of process piping and major equipment.
- Hydraulic profile.
- Revised site plan.
- Power distribution functional diagram.
- Process facility sections.
- SCADA communication system block diagram for communication between identified City facilities.
- Conceptual building layouts.
- Architectural elevations.
- Opinion of Probable Construction Cost update.
- Project schedule update.

- Project trend register update identifying changes to scope affecting cost or schedule.
- d. The Basis of Design Memorandum is the most important deliverable from this phase. It is the means to communicate scope, objectives, and details of the project to the Owner, regulatory agencies, and the design team. Information in the Basis of Design Memorandum includes:
- General project scope and background references.
  - Design criteria, including:
    - Flow rates - initial and future.
    - Water quality - physical, chemical and biological.
    - Design objectives, including treated water quality.
  - Sludge quantities and types.
  - Applicable codes and standards, including fire and safety codes, code review and approval process.
  - Local building, planning, and zoning department requirements including code review and approval process.
  - Site considerations, including subsurface conditions, flood elevations, drainage requirements, etc.
  - Primary systems Process and Instrumentation Diagrams (P&IDs) and Process Flow Diagrams.
  - Preliminary site plan, building layouts, and architecture.
  - Preliminary hydraulic profile of treatment facilities.
  - Process and hydraulic systems.
  - Sludge processing systems and handling.
  - Chemical feed and storage.
  - Operational monitoring and control systems.
  - HVAC design criteria.
  - Electrical design criteria.
  - Structural design criteria.
  - Security systems and design criteria.
  - Utility requirements.
- e. Conduct Equipment Piloting (if needed). If the Owner selects wastewater treatment technologies that require completion of a piloting report, or if the Owner finds other compelling reasons to complete a piloting study, the following will be accomplished. In addition to regulatory requirements, piloting may be used to establish operating parameters of the treatment systems. This approach allows for design of equipment at optimized operating conditions developed during piloting and enables competitive bidding by vendors. Piloting will consist of mobilization and start-up, testing, and documentation. Equipment vendors will be responsible for delivering and starting-up equipment, training operational staff, and ongoing support and direction during operation.

- 1) Meet the TCEQ to describe project, define requirements for piloting program, and identify key data or information needed for approval.
- 2) Identify proprietary equipment to be piloted and contact vendors for equipment lease proposals. Engineer will coordinate with vendors, but will not lease equipment. Lease contracts with vendors will be between Owner and vendors selected.
- 3) Develop a written Piloting Protocol Memorandum to identify systems to be evaluated, range of operating conditions, testing schedule, and data to be collected. Review the memorandum at a Piloting Protocol Development Meeting with Owner. Submit final protocol memorandum to TCEQ for approval.
- 4) Design layout for piloting equipment and improvements needed for ancillary equipment to support vendor equipment. Ancillary equipment may be minimal if piloting is performed at an existing treatment plant. Equipment will generally include pumping, pipeline connections, power supply, equipment pad and shelter, water storage, waste disposal, lighting, analytical equipment, phone connection for remote access by vendors, etc. Engineer will assist Owner in securing bids for construction of needed improvements and administer construction.
- 5) Develop detailed test schedule for analytical monitoring during duration of test. Some analytical tests will be performed on-site by operating personnel, and some tests will be sent to an EPA certified lab for completion. Costs for the different tests will be the responsibility of the Owner.
- 6) Provide on-site engineering assistance during start-up of piloting program.
- 7) During the testing period, provide monitoring of equipment, operations and maintenance support, contact with vendors, analytical testing support, and data collection support.
- 8) Provide engineering support on weekly basis to review and summarize data collected and develop recommendations or course corrections during the testing period.
- 9) At the conclusion of the testing period, conduct a Piloting Results Meeting with Owner. Prepare a Pilot Study Report for submission to TCEQ. Meet with TCEQ to discuss piloting results and facilitate acceptance.

2.1.6 Furnish 5 "hard" and 1 "electronic" review copies of the Preliminary Design Phase documents and any other deliverables to Owner as established in the Schedule under Task 3 below. Within 14 calendar days of receipt (21 calendar days for the A.J. Brown WWTP or the N.B. Davidson WWTP Basis of Design Memorandum), Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.

2.1.7 Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner 5 "hard" and 1 "electronic" copies of the revised Preliminary Design Phase documents, revised Opinion of Probable Construction Cost, and any other deliverables within 7 calendar days after receipt of Owner's comments.

2.2 Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised Opinion of Probable Construction Cost, and any other deliverables have been delivered to Owner.

**TASK 3 FINAL DESIGN PHASE**

3.1 After acceptance by Owner of the Preliminary Design Phase documents, revised Opinion of Probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, Engineer shall:

3.1.1 Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. If appropriate, Specifications shall conform to the 16-division format of the Construction Specifications Institute.

3.1.2 Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.

3.1.3 Advise Owner of any adjustments to the Opinion of Probable Construction Cost known to Engineer.

3.1.4 Perform or provide the following additional Final Design Phase tasks or deliverables:

**WASTEWATER TREATMENT PLANT REHABILITATION PROJECTS**

a. Detailed Design – Construction Contract Documents Level 1

- 1) Construction documents will be prepared for independent bidding of the A.J. Brown WWTP and the N.B. Davidson WWTP. The Level 1 deliverables are as follows:

- Contract front-end documents.
- Secondary systems P&ID drawings.
- Equipment control descriptions.
- Chemical feed systems P&ID drawings.
- Site plan.
- Grading plan.
- General site arrangements and yard piping drawings.
- Exterior wall appearance, materials, and construction recommendations.
- Instrumentation input and output lists.
- Instrumentation device schedules.
- Final geotechnical investigation report.
- Major facility plans and sections showing equipment and piping.
- Preliminary structural design.
- Architectural wall sections.
- Process equipment specifications and data sheets.
- Reflected ceiling plans.
- Valve list.
- Opinion of Probable Construction Cost update.
- Project schedule update.
- Project trend register update identifying changes to scope affecting cost or schedule.

b. Detailed Design - Construction Documents Level 2

1) Level 2 design shall commence after Level 1 deliverables have been submitted to the Owner. Level 2 deliverables are as follows:

- Architectural roof plans.
- Sections and details showing major process and sub-process equipment.
- Structural foundation recommendations, framing plans and sections.
- Landscaping and site irrigation plans.
- Plumbing and fire protection system layouts and plans.
- Power and lighting plans.
- Electrical fixture schedules.
- Commodity specifications.
- HVAC system layouts and equipment schedules.
- Architectural schedules.
- Duct bank and roadway lighting arrangements.
- Plumbing schedules.
- Underground utility drawings.

- Erosion control plan.
- Opinion of Probable Construction Cost update.
- Project schedule update.
- Project trend register update identifying changes to scope affecting cost or schedule.

c. Detailed Design - Construction Documents Level 3

1) Level 3 design shall commence after Level 2 deliverables have been submitted to the Owner. Level 3 deliverables are as follows:

- Final review set of CAD drawings.
- Final review set of specifications and construction contract documents.
- Opinion of Probable Construction Cost update.
- Constructability review.
- Project schedule update.
- Project trend register update identifying changes to scope affecting cost or schedule.

d. Equipment Preselection Packages

1) If the Owner selects treatment technologies that must be pre-purchased prior to completion of plant design, Engineer will assist in equipment procurement. Equipment will be bid and a contract awarded by the Owner. Notice to Proceed to the equipment supplier will be given during the Level III design phase, and Engineer will perform submittal reviews to allow fabrication during that phase. The contract will be later assigned to the Construction Contractor for delivery, installation, start-up, and warranty.

- Develop Equipment Procurement Solicitation Documents including equipment specifications, terms, and conditions. Review with Owner's operational and legal personnel in an Equipment Procurement Meeting.
- Assist Owner with extending invitations to bid equipment procurement solicitation.
- Receive inquiries from equipment manufacturers during bidding period and respond as required.
- Review bids after receipt by Owner and develop a recommendation for award.
- Assist Owner in interpretation of procurement solicitation and in making contract award.

**TRUNK LINE UPSIZING**

- a. Detailed Design – Construction Contract Documents Level 1
  - 1) Construction documents will be prepared for independent bidding of the identified trunk line upsizing projects. The Level 1 deliverables are as follows:
    - Contract front-end documents.
    - 30% dimensional layout drawings and typical details.
    - Opinion of Probable Construction Cost update.
    - Project schedule update.
    - Project trend register update identifying changes to scope affecting cost or schedule.
  
- b. Detailed Design - Construction Documents Level 2
  - 1) Level 2 design shall commence after Level 1 deliverables have been submitted to the Owner. Level 2 deliverables are as follows:
    - 60% dimensional layout drawings and typical details.
    - Draft specifications for major equipment and materials.
    - Opinion of Probable Construction Cost update.
    - Project schedule update.
    - Project trend register update identifying changes to scope affecting cost or schedule.
  
- c. Detailed Design - Construction Documents Level 3
  - 1) Level 3 design shall commence after Level 2 deliverables have been submitted to the Owner. Level 3 deliverables are as follows:
    - Final review set of CAD drawings.
    - Final review set of specifications and construction contract documents.
    - Opinion of Probable Construction Cost update.
    - Constructability review.
    - Project schedule update.
    - Project trend register update identifying changes to scope affecting cost or schedule.
  
- 3.1.5 Prepare and furnish 5 “hard” and 1 “electronic” copies of the Bidding and Contract Documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within 14 calendar days of receipt (21 calendar days for the A.J. Brown WWTP or the N.B. Davidson WWTP). Owner shall submit to Engineer any comments and instructions for revisions.
  
- 3.1.6 Revise the Bidding and Contract Documents in accordance with comments and instructions from the Owner, as appropriate, and submit 5 “hard” and 1 “electronic”

final copies of the Bidding and Contract Documents, a revised Opinion of Probable Construction Cost, and any other deliverables to Owner within 14 calendar days after receipt of Owner's comments and instructions.

- 3.2 Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Subtask 3.1 have been delivered to Owner.
- 3.3 Work designed or specified by Engineer is to be performed or furnished under more than one prime contract as follows:

**WASTEWATER TREATMENT PLANT REHABILITATION**

Work related to the Wastewater Treatment Plant Rehabilitation Projects is anticipated to be performed under 2 prime contracts that will have separate notice to proceeds as follows:

- A.J. Brown WWTP.
- N.B. Davidson WWTP.

The Schedule for Performance is established as follows:

**A.J. Brown WWTP \***

**Conceptual Planning / Preliminary Design:** June 30, 2017

**Final Design Level 1:** August 31, 2017.

**Final Design Level 2:** October 31, 2017.

**Final Design Level 3:** December 31, 2017.

\* Assume NTP issued by April 21, 2017.

**N.B. Davidson WWTP**

**Conceptual Planning / Preliminary Design:** 90 days from Owner's Notice to Proceed.

**Final Design Level 1:** 60 days from Owner's acceptance of Conceptual Planning / Preliminary Design.

**Final Design Level 2:** 60 days from Owner's acceptance of Level 1 documents.

**Final Design Level 3:** 60 days from Owner's acceptance of Level 2 documents.

**TRUNK LINE UPSIZING**

Work related to the transmission pipelines is anticipated to be performed under 5 prime contracts. The Schedule for Performance is established as follows:

**Project Number 3:**

**Preliminary Design:** 150 days from Owner's Notice to Proceed.

**Final Design Level 3:** 90 days from Owner's acceptance of Preliminary Design

**Project Numbers 4, 5, 6 and 7:**

**Preliminary Design:** 90 days from Owner's Notice to Proceed.\*\*

**Final Design Level 3:** 90 days from Owner's acceptance of Preliminary Design

\*\*Assumes NTP issued at least 60-days after a NTP is issued for Project No. 3.

TASK 4 BIDDING OR NEGOTIATING (CONTRACTOR PROCUREMENT) PHASE

- 4.1 For traditional bidding of projects after acceptance by Owner of the Bidding Documents and the most recent Opinion of Probable Construction Cost as determined in the Final Design Phase, Engineer shall:
  - 4.1.1 Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
  - 4.1.2 Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
  - 4.1.3 Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the Bidding Documents.
  - 4.1.4 Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- 4.2 For alternative delivery methods: Title 10, Subtitle F, Chapter 2269 of the Texas Government Code establishes contracting and delivery procedures for construction projects. Upon notification to the Engineer by the Owner to proceed with procurement using an alternative delivery method under applicable State law, Engineer will:
  - 4.2.1 Conduct a one-day workshop with the Owner to develop criteria to be used in the selecting of a Contractor using alternative delivery methods in accordance with State law. Support Owner at Council Meeting(s) for Council action necessary to use an alternative delivery method.
  - 4.2.2 Based on the results from the workshop, prepare documents as applicable to the alternative delivery method to be utilized.
  - 4.2.3 Engineer's Technical Director and Project Manager will serve on any Selection Committee established as a part of the alternative delivery method selection process as non-voting members. The other members of the Selection Committee will be appointed by the City Manager. As members of the Selection Committee, Engineer's personnel will:

- a. Review submittals that are received by the Owner in response to the Owner's solicitation.
  - b. Provide the Selection Committee with an independent and experience-based assessment of each submittal, including the identification of items or issues which may impact a selection process.
  - c. Provide an independent opinion as to how the submittal represents the interests of the Owner and which respondents should be asked to interview with the Owner, if applicable.
  - d. Advise and assist the Selection Committee in the preparation of short-listed firm interview questions, if applicable.
  - e. Provide an independent opinion of each short-listed firm's interview information, including project understanding, project approach, responses to questions, and each demonstrated aptitude and attitude toward assuring the interests of the Owner are met.
- 4.3 The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

**TASK 5 CONSTRUCTION PHASE**

- 5.1 Upon successful completion of the Bidding and Negotiating Phase, Engineer shall:
- 5.1.1 *General Administration of Construction Contract.* Consult with Owner and act as Owner's representative as provided in the General Conditions of the Construction Documents. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.
  - 5.1.2 *Selecting Independent Testing Laboratory.* Assist Owner in the selection of an independent testing laboratory to perform construction materials testing services.
  - 5.1.3 *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
  - 5.1.4 *Schedules.* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
  - 5.1.5 *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

5.1.6 *Visits to Site and Observation of Construction.* In connection with observations of Contractor's Work while it is in progress:

- a. Make visits to the Site no less than bi-weekly. Engineer shall also visit the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Engineer are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
- b. The purpose of Engineer's visits to the Site will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

5.1.7 *Defective Work.* Engineer will have the authority to reject Contractor's Work while it is in progress if, on the basis of Engineer's observations, Engineer believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. However, neither Engineer's authority to reject Work nor Engineer's decision to exercise or not exercise such authority shall give rise to a duty or

responsibility of the Engineer to Contractors, Subcontractors, material and equipment suppliers, their agents or employees, or any other person(s) or entities performing any of the Work, including but not limited to any duty or responsibility for Contractors' or Subcontractors' safety precautions and programs incident to the Work.

- 5.1.8 *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.
- 5.1.9 *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
- 5.1.10 *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
- 5.1.11 *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
- 5.1.12 *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
- 5.1.13 *Disagreements between Owner and Contractor.* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor

and shall not be liable in connection with any decision rendered in good faith in such capacity.

5.1.14 *Applications for Payment*. Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
- b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

5.1.15 *Contractor's Completion Documents*. Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds,

certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.

5.1.16 *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company of Contractor and on behalf of Owner, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

5.1.17 *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in written form that the Work is acceptable to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

5.2 *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. Since the Project involves more than one prime contract, Construction Phase services may be rendered at different times in respect to the separate contracts.

5.3 *Limitation of Responsibilities.* Engineer shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

## TASK 6 POST-CONSTRUCTION PHASE

6.1 Engineer, during the Post-Construction Phase, shall:

6.1.1 Provide assistance in connection with the adjusting of Project equipment and systems.

6.1.2 Assist Owner in training Owner's staff to operate and maintain Project equipment and systems.

6.1.3 Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.

6.1.4 Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning

correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.

6.1.5 In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

6.2 The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit 1, will terminate at the end of the Construction Contract's correction period.

#### TASK 7 SPECIAL SERVICES

The following Special Services are agreed to between the Owner and Engineer as essential components for successful completion of the Project. These Special Services shall be provided by the Engineer as a part of the Basic Engineering Services set forth in this Exhibit 1.

##### 7.1 Geotechnical Investigations

7.1.1 Perform soil borings at the A.J. Brown WWTP and the N.B. Davidson WWTP required for design of facility improvements. Perform soil testing and develop foundation design parameters for plant facilities. Provide the results of geotechnical investigations in the bound report, sealed by an engineer licensed to practice in Texas.

7.1.2 Perform soil borings at intervals not to exceed 1,000 feet for trunk line upsizing segments. Perform soil testing and present data in a bound report, sealed by an engineer licensed to practice in Texas.

##### 7.2 Surveying, Easement Preparation, and Utility Locates for Trunk Line Upsizing

Perform surveying for offsite trunk line upsizing segments. Provide boundary surveys of properties that Owner may need to acquire or obtain easements (temporary construction or permanent) and conduct deed research. Assist Owner to obtain rights of entry. Prepare survey plats with legal descriptions of each easement necessary to acquire. Perform subsurface utility locates at critical locations for trunk line upsizing segments.

##### 7.3 Easement Acquisition Assistance for Trunk Line Upsizing Segments

7.3.1 Permission from land owners of affected parcels will be obtained and signed documentation provided to others requiring access to the subject tracts to fulfill specific contractual obligations. If necessary, negotiations for compensation for right-of-entry will be conducted in consultation with the Owner.

7.3.2 Obtain services and develop appraisals and valuations for each parcel, if required.

7.3.3 Contract with qualified property agents to negotiate easements, conditions, terms, and costs as directed by the Owner. Provide title policies for each property for Owner review.

a. A good faith effort will be made to obtain the necessary rights-of-way through the negotiation process, which will generally consist of no less than three contacts with the property owner or authorized representative. Generally, no more than five contacts will be necessary to either reach an agreement or determine if further negotiations would be non-productive and eminent domain actions necessary.

b. If absentee owners are involved, the negotiations may be conducted via telephone, fax, or by mail. If the schedule for acquisition of the right-of-way or other factors arises, which make it expedient, travel outside of the project area to meet with the absentee owners may be conducted.

7.3.4 The initial offer made to the property owner will be based on the value obtained in Subtask 7.3.2. All counter-offers by the property owner along with recommendations will be presented to the Owner for its consideration. Meetings will be held with appropriate Owner staff or the Council as necessary to present negotiation information. Meetings with the Council will be held as scheduled for regular and special sessions. The Owner must approve such counter offers prior to authorizing any requested changes. All monetary offers made to the property owners will be within the limits authorized by the Owner in the various stages of the negotiation.

7.3.5 After reaching an agreement with the landowner on the consideration and all other terms of the transaction, a Memorandum of Agreement (M/A) executed by the property owner will be forwarded to the Owner for ratification. This M/A will set forth the compensation and any other terms and conditions agreed upon. The Owner will be responsible for obtaining the ratification and for returning the ratified M/A. The documents will then be signed and recorded at the County Courthouse. The payment to the property owner and the closing procedures will be in compliance with the procedures defines in Subtask 7.3.6.

In the event these good faith efforts fail to produce a satisfactorily negotiated agreement, Engineer will recommend the Owner use the power of Eminent Domain to acquire the right-of-way.

7.3.6 Coordinate contacts with the Owner and a recognized Title Company to deliver any payments to the property owner and record the documents. The documents will be returned to the Owner after recording at the County Courthouse.

7.4 Discharge Permit Modification Application:

7.4.1 Engineer will prepare a discharge permit modification application for the A.J. Brown WWTP and/or the N.B. Davidson WWTP, if required as a result of the proposed plant rehabilitation project.

- a. Participate in a pre-application meeting with TCEQ staff.
- b. Finalize application forms and attachments that are required to be submitted to the TCEQ for a modified Texas Pollutant Discharge Elimination System permit. Forms and attachments will be revised, as appropriate, based on comments from the Owner after its review of draft application.
- c. Prepare copies of the final application for submittal to TCEQ.
- d. Assist in processing the permit application through the TCEQ. Provide support during the TCEQ administrative review and technical review processes for the development of the draft permit. Prepare responses to the TCEQ review comments. Review draft permit. Identify concerns to provision in the draft permit. Prepare letter for submittal to TCEQ with recommendations for changes to the permit. Communicate with TCEQ during processing of permit application to track status and to obtain TCEQ interoffice technical memorandums that present basis for permit requirements that have been placed in the permit.
- e. Coordinate with Owner legal representation as required regarding the application.
- f. Continue assistance with the application until issuance of permit by TCEQ.

7.5 Authorities Having Jurisdiction and Permits:

7.5.1 The Engineer shall assist the Owner in connection with the Owner's responsibility, if any, for filing documents required for the approval of governmental authorities having jurisdiction over the Project. This coordination shall include submitting to the following agencies, when required:

- Texas Commission on Environmental Quality
- A Registered Accessibility Specialist for the Texas Department of Licensing and Regulatory to verify conformance with the Texas Accessibility Standards
- City Departments
- Texas Parks and Wildlife
- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife
- Texas Historical Commission
- General Land Office

7.5.2 Costs for filing applications, permits, etc. shall be paid directly by the Owner.

- 7.6 Preparing and furnishing to Owner Record Drawings shown appropriate record information based on Project annotated record documents received from Contractor.
- 7.7 Preparation of operations and maintenance manual for the A.J. Brown WWTP and the N.B. Davidson WWTP. Operations and maintenance manuals will be compiled from equipment vendor materials. Develop, for each treatment plant, a Plan of Operations outlining the intent and procedures for plant operation to meet discharge permit parameters.
- 7.8 Resident Project Representative:
  - 7.8.1 Engineer shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Subtask will provide full time representation during construction of the Work.
  - 7.8.2 Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
  - 7.8.3 The duties and responsibilities of the RPR are limited to those of Engineer in the Agreement with the Owner and in the Contract Documents, and are further limited and described as follows:
    - a. *General:* RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
    - b. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
    - c. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and

other project-related meetings, and prepare and circulate copies of minutes thereof.

d. *Liaison:*

- 1) Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent.
- 2) Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-site operations.
- 3) Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

e. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.

f. *Shop Drawings and Samples:*

- 1) Record date of receipt of Samples and approved Shop Drawings.
- 2) Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
- 3) Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been reviewed by Engineer.

g. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.

h. *Review of Work and Rejection of Defective Work:*

- 1) Conduct on-site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
- 2) Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be

made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

i. *Inspections, Tests, and System Startups:*

- 1) Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 2) Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate City's personnel, and that contractor maintains adequate records thereof.
- 3) Observe, record, and report to Engineer appropriate details relative to the test procedures and systems startups.
- 4) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

j. *Records:*

- 1) Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.
- 2) Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- 3) Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 4) Maintain records for use in preparing Project documentation.

5) Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

k. *Reports:*

- 1) Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 2) Draft and recommend to Engineer, proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 3) Furnish to Engineer and Owner copies of all inspection, test, and system startup reports.
- 4) Report immediately to Engineer the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.

l. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submissions and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

m. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

n. *Completion:*

- 1) Before Engineer issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- 2) Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.

- 3) Participate in a final inspection in the company of Engineer, City, and Contractor and prepare a final list of items to be completed or corrected.
- 4) Observe whether all items on final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

7.8.4 Resident Project Representative shall not:

- a. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- b. Exceed limitations of Engineer's authority as set forth in this Agreement or the Contract Documents.
- c. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- d. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
- e. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of Owner or Contractor.
- f. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
- g. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- h. Authorize Owner to occupy the Project in whole or in part.
- i. Be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the work.

7.9 Construction Materials Testing:

- 7.9.1 Engineer shall furnish construction materials testing (CMT) services for the projects.

7.9.2 Testing shall be in conformance with the specifications, drawings, and any local authorities having jurisdiction.

## COMPENSATION FOR SERVICES

Compensation for the services described in the Scope of Services will be as follows:

1. Owner shall pay Engineer for services set forth in Exhibit 1 (Basic Services), Task 1 (Conceptual Planning and Project Management), Task 2 (Preliminary Design Phase), Task 3 (Final Design Phase), Task 4 (Bidding or Negotiating Phase), Task 5 (Construction Phase), and Task 6 (Post-Construction Phase), at a Lump Sum Amount of \$3,742,000, based on the following distribution of compensation:
  - a. Project No. 1 (CIP Project No. 1) - A.J. Brown Wastewater Treatment Plant: \$2,261,000, invoiced at 30%/60%/90%/100% milestones for Tasks 1-3 and monthly for Tasks 4-6, based on the following schedules:
    - Task 1: \$ 285,000
    - Task 2: \$ 263,000
    - Task 3: \$1,077,000
    - Task 4: \$ 43,000
    - Task 5: \$ 474,000
    - Task 6: \$ 119,000
  - b. Project No. 2 - Trunk Line CIP Project No. 3: \$275,000, invoiced at 50%/90%/100% milestones for Tasks 1-3 and monthly for Tasks 4-6, based on the following schedule:
    - Task 1: \$ 7,000
    - Task 2: \$ 58,000
    - Task 3: \$111,000
    - Task 4: \$ 20,000
    - Task 5: \$ 58,000
    - Task 6: \$ 21,000
  - c. Project No. 3 - Trunk Line CIP Project No. 4: \$224,000, invoiced at 50%/90%/100% milestones for Tasks 1-3 and monthly for Tasks 4-6, based on the following schedule:
    - Task 1: \$ 7,000
    - Task 2: \$ 34,000
    - Task 3: \$ 84,000
    - Task 4: \$ 20,000
    - Task 5: \$ 58,000
    - Task 6: \$ 21,000

## COMPENSATION FOR SERVICES

Compensation for the services described in the Scope of Services will be as follows:

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    - Task 4: \$ 43,000
    - Task 5: \$ 474,000
    - Task 6: \$ 119,000
  - b. Project No. 2 - Trunk Line CIP Project No. 3: \$275,000, invoiced monthly, based on the following schedule:
    - Task 1: \$ 7,000
    - Task 2: \$ 58,000
    - Task 3: \$111,000
    - Task 4: \$ 20,000
    - Task 5: \$ 58,000
    - Task 6: \$ 21,000
  - c. Project No. 3 - Trunk Line CIP Project No. 4: \$224,000, invoiced monthly, based on the following schedule:
    - Task 1: \$ 7,000
    - Task 2: \$ 34,000
    - Task 3: \$ 84,000
    - Task 4: \$ 20,000
    - Task 5: \$ 58,000
    - Task 6: \$ 21,000

- d. Project No. 4 - Trunk Line CIP Project No. 5: \$218,000 invoiced at 50%/90%/100% milestones for Tasks 1-3 and monthly for Tasks 4-6, based on the following schedule:
- Task 1: \$ 7,000
  - Task 2: \$ 34,000
  - Task 3: \$ 78,000
  - Task 4: \$ 20,000
  - Task 5: \$ 58,000
  - Task 6: \$ 21,000
- e. Project No. 5 - Trunk Line CIP Project No. 6: \$225,000 invoiced at 50%/90%/100% milestones for Tasks 1-3 and monthly for Tasks 4-6, based on the following schedule:
- Task 1: \$ 7,000
  - Task 2: \$ 34,000
  - Task 3: \$ 85,000
  - Task 4: \$ 20,000
  - Task 5: \$ 58,000
  - Task 6: \$ 21,000
- f. Project No. 6 - Trunk Line CIP Project No. 7: \$242,000 invoiced at 50%/90%/100% milestones for Tasks 1-3 and monthly for Tasks 4-6, based on the following schedule:
- Task 1: \$ 7,000
  - Task 2: \$ 34,000
  - Task 3: \$102,000
  - Task 4: \$ 20,000
  - Task 5: \$ 58,000
  - Task 6: \$ 21,000
- g. Project No. 7 - N.B Davidson Wastewater Treatment Plant \$297,000 invoiced at 50%/90%/100% milestones for Tasks 1-3 and monthly for Tasks 4-6, based on the following schedule:
- Task 1: \$ 30,000
  - Task 2: \$ 52,000
  - Task 3: \$ 90,000
  - Task 4: \$ 19,000
  - Task 5: \$ 89,000
  - Task 6: \$ 17,000
- h. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated into the Lump Sum to account for labor, overhead, profit and direct expenses.

- i. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the monthly billing period to the Lump Sum.
  - j. Owner shall withhold 2% of payment due to Engineer for Tasks 1-3 for all projects. The retainage associated with each project will be released to the Engineer once that project has reached substantial completion of construction.
2. Owner shall pay Engineer for services set forth in Exhibit 1, Task 7 (Special Services) on a time and materials basis not to exceed \$1,869,000 as follows:
- a. For labor on an hourly basis in accordance Schedule of Charges. The hourly rate schedule will be adjusted each January 1<sup>st</sup> beginning January 1, 2018, to reflect cost of living adjustments, limited to a maximum increase of 5% per year.
  - b. Sub-consultants will be billed on the basis of cost times a factor of 1.05.
  - c. Subtask budgets are itemized below. Engineer may alter the distribution of compensation between the identified Subtasks to be consistent with services actually rendered, but shall not exceed the amount of \$1,869,000 for all Special Services provided under Task 7.
    - 7.1 Geotechnical Investigations: \$82,000.
    - 7.2 Surveying, Easement Preparation, and Utility locates for Trunk Line Upsizing: \$120,000.
    - 7.3 Easement Acquisition Assistance for Trunk Line Upsizing Segments: \$140,000.
    - 7.4 Discharge Permit Modification Applications: \$29,000.
    - 7.5 Authorities Having Jurisdiction and Permits: \$44,000.
    - 7.6 Record Drawings: \$130,000.
    - 7.7 O&M Manuals/Plans of Operations: \$32,000.
    - 7.8 Resident Project Representatives: \$987,000.
    - 7.9 Construction Materials Testing: \$305,000.

**CURRENT HOURLY CHARGES FOR PROFESSIONAL SERVICES**

Charges include all salaries, salary expense, overhead, and profit.

Principal.....	\$ 200.00 per hour
Senior Project Manager.....	170.00 per hour
Project Manager.....	145.00 per hour
Senior Engineer / Geologist.....	135.00 per hour
Project Engineer / Geologist.....	125.00 per hour
Staff Engineer I / Geologist.....	115.00 per hour
Staff Engineer II / Geologist.....	95.00 per hour
RPLS I.....	145.00 per hour
RPLS II.....	90.00 per hour
Operations Specialist / Regulatory Compliance Specialist.....	130.00 per hour
Engineering Technician I.....	130.00 per hour
Engineering Technician II.....	105.00 per hour
Engineering Technician III.....	75.00 per hour
CMT Tech I.....	50.00 per hour
CMT Tech II.....	45.00 per hour
Survey Tech I.....	75.00 per hour
Survey Tech II.....	55.00 per hour
CAD I.....	100.00 per hour
CAD II.....	90.00 per hour
CAD III.....	50.00 per hour
Secretarial.....	65.00 per hour
Survey Party Conventional.....	185.00 per hour - 3 man
.....	150.00 per hour - 2 man
GPS Survey Party.....	170.00 per hour
Our survey parties come equipped with surveying equipment appropriate for the job before them. No separate charges are made for use of electronic distance measuring devices, theodolites, vehicles, radios, etc.	
Expense Items	
Consultants, Contractors & Supplies.....	Cost plus 5%
Travel (out of town only).....	Current IRS rate per mile
Lodging and meals (out of town trips).....	Actual cost



## CITY COUNCIL AGENDA

4/18/2017

Agenda Item: 6c

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**Item/Subject:** Consider authorizing the City Manager to enter an agreement with Freese and Nichols, Inc. for professional engineering services for 2016 Bond Proposition #3 Wastewater Infrastructure Project – Relocation of Elkins Lake Dam Lift Station and 30” Sewer Main (17-11-09) and approving associated budget amendment Ordinance 2017-28, second reading.

**Initiating Department/Presenter:** Engineering

**Presenter:** Y. S. “Ram” Ramachandra, City Engineer

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**Recommended Motion:** Move to authorize the City Manager to enter an agreement with Freese and Nichols, Inc. for professional engineering services for 2016 Bond Proposition #3 Wastewater Infrastructure Project – Relocation of Elkins Lake Dam Lift Station and 30” Sewer Main (17-11-09) and approve the associated budget amendment Ordinance 2017-28.

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**Strategic Initiative:** Goal #4 - Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City’s core services can be provided in an effective and efficient manner.

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**Discussion:** This agenda item consists of initiating rehabilitation/relocation of two critical elements in the City’s wastewater collection system:

- a) Rehabilitation/Relocation of Elkins Lake Dam Lift Station is one of the top ranked items identified in the recently completed Citywide Condition and Capacity Assessment study of wastewater collection system. This lift station is the largest among all the lift stations that the City maintains and almost all the raw sewage flow that N. B. Davidson Wastewater Treatment Plant receives passes through this lift station.
- b) Existing 30” sanitary sewer line underneath Camelia Lake (which feeds Elkins Lake Dam Lift Station) has been a maintenance issue for the last several years, resulting in costly repairs. It is not feasible to rehabilitate this 30” sanitary sewer line in its current location; it has to be removed/relocated.

The City staff has obtained a proposal from Freese and Nichols, Inc. for providing professional engineering services for relocation of Elkins Lake Dam Lift Station and 30” Sewer Main. Essentially, the proposed design consists of constructing a new lift station in a new location on the east side of Camelia Lake and installing a new 14” sewer force main, beginning at the new lift station and routing around Camelia Lake, and connecting to the existing 14” sewer force main on the west side of Camelia Lake. The existing 14” sewer force main runs further east to feed N.B. Davidson WWTP.

Freese and Nichols, Inc. successfully completed the Citywide water and wastewater condition and capacity assessment study for the City in 2016. Considering the complexity of the project elements and specialized experience that Freese and Nichols design team carry by successfully completing similar projects to other cities, Freese and Nichols is best suited to provide the professional engineering services on this project for the City.

Negotiated fees for design and construction phase services is \$582,000. Current estimated cost of

construction of the project is in the \$4.1 million range.

The anticipated duration for completion of design is 11 months from the Notice to Proceed date.

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**Previous Council Action:** None

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**Financial Implications:**

**Item is budgeted:** Account 702-7180-62111 for \$360,000, 712-71201-62111 for \$147,000 and see Ordinance 2017-28 and related Exhibit A for an additional \$75,000.

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**Approvals:**     City Attorney             Director of Finance             City Manager

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**Associated Information:**

- Map of Project Locations (page 3)
- Engineering Agreement (pages 4 thru 11)
- Exhibit 1 to Engineering Agreement (Scope of Services and Fees) (pages 12 thru 19)
- Budget Amendment Ordinance 2017-28 (page 20)
- Exhibit "A" of Budget Amendment Ordinance 2017-28 (page 21)



AGREEMENT BETWEEN CITY AND ENGINEER  
FOR PROFESSIONAL SERVICES

THIS AGREEMENT made and entered into by and between CITY OF HUNTSVILLE, hereinafter called the OWNER, and FREESE & NICHOLS, INC., City, Texas, hereinafter called ENGINEER, WITNESSETH that whereas the OWNER intends to construct Relocation of Elkins Lake Dam Lift Station and 30" Sewer Main Project (Project No. 17-11-09) . The effective date of this agreement is \_\_\_\_\_.

NOW, THEREFORE, the OWNER and ENGINEER for the considerations hereinafter set forth, agree as follows:

**SECTION 1- RESPONSIBILITY OF THE ENGINEER**

The ENGINEER shall serve as the OWNER's professional representative in the planning, design, bidding, and construction phases (including observation of construction) of the PROJECT as outlined in Proposal dated March 24, 2017 from Freese & Nichols, Inc. (the proposal is hereinafter referred to as Exhibit 1), and shall give consultation and advice to the OWNER during the performance of his services. In the event of conflict between any provisions in this Agreement and any provisions in Exhibit 1, the provisions in this Agreement will control.

The ENGINEER shall perform services necessary to accomplish the work required to be performed under this AGREEMENT in a competent and professional manner with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license, as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

The OWNER's approval of drawings, design, specifications, reports incidental engineering work or materials furnished hereunder shall not in any way relieve the ENGINEER of liability for the technical adequacy of his work nor shall the OWNER's approval or acceptance of the ENGINEER' s work be construed as a waiver of any rights under this AGREEMENT.

The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions or other deficiencies to the extent attributable to the OWNER or any third party. The ENGINEER shall not be responsible for any time delays in the PROJECT caused by circumstances beyond his control.

**SECTION 2- CHARACTER AND EXTENT OF BASIC SERVICES**

**2.1. General:**

The ENGINEER shall serve as the OWNER's professional representative in the planning, design, bidding and construction phases (including observation of construction) of the PROJECT as outlined in Exhibit 1, and shall give consultation and advice to the OWNER during the performance of his services.

The OWNER and ENGINEER acknowledge and anticipate that the timing and development of any AUTHORIZED WORK may depend on the availability of financing and the needs of the OWNER; therefore, the ENGINEER shall not proceed with any phase of engineering services without specific written authorization by the OWNER.

2.1.1 Copyright or Patent Infringement: The ENGINEER shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by him, and he shall hold harmless the OWNER from loss or damage resulting therefrom, providing however, that the OWNER within five (5) days after receipt of any notice of infringement or of summons in any action therefor shall have forwarded the same to the ENGINEER in writing.

2.1.2 Insurance: The ENGINEER shall secure and maintain such insurance as will protect him from claims under the Workmen's Compensation Acts and from claims for bodily injury, death, or property damage which may arise from the performance of his services under this Agreement and shall provide a certificate of said insurance to the OWNER to attach to this contract. The ENGINEER shall furnish proof of Error and Omissions Professional Liability Coverage for the ENGINEER for this PROJECT in the amount of One Million Dollars to the OWNER within 15 days after this Agreement is executed and shall continue to maintain said insurance for this PROJECT. ENGINEER agrees to maintain both types of insurance during the duration of the PROJECT.

2.2 Planning, Designing, Bidding Support and Construction Support.

Refer to Exhibit 1.

### SECTION 3- ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by the OWNER, the ENGINEER shall provide Additional Services that are not already a part of Exhibit 1 and these will be paid by the OWNER a fee negotiated between the OWNER and the ENGINEER. It is agreed that if any of the additional services listed in this Section 3 are a part of Exhibit 1, then Exhibit 1 controls. Any additional services authorized (including services in addition to the ones listed below) will be in writing and signed by both Parties and attached to this Agreement:

3.1 Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the PROJECT; preparation or review of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the PROJECT.

3.2 Services to perform geotechnical investigations, materials testing, engineering surveys or topographic surveys for design, to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by the OWNER.

3.3 Services resulting from significant changes in general scope of the PROJECT or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond the ENGINEER's control.

3.4 Providing renderings or models for the OWNER's use.

3.5 Preparing documents for alternate bids requested by OWNER for work which is not executed or documents for out of sequence work.

3.6 Investigations involving detailed consideration of operations, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by the OWNER.

3.7 Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, such as consultants for communications, acoustics, and landscaping.

3.8 Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered, and services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

3.9 Services during out of town travel required of the ENGINEER other than visits to the PROJECT site or to regulatory agency offices having jurisdiction over the PROJECT.

3.10 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) prolongation of the contract time of any prime contract by more than sixty (60) days, (4) acceleration of the work schedule involving services beyond normal working hours, and (5) default by any Contractor.

3.11 Construction staking for the PROJECT.

3.12 Land surveys and office computations required to develop plats and metes and bounds descriptions for easement or property acquisition.

3.13 Preparation of operating and maintenance manuals.

3.14 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the PROJECT.

3.15 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the PROJECT.

3.16 Additional services in connection with the PROJECT, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.

3.17 If requested by the OWNER or recommended by the ENGINEER and agreed to in writing by the OWNER, a Resident Project Representative and assistants will be furnished and will act as directed by the ENGINEER in order to provide more extensive representation at the PROJECT site during the Construction Phase.

3.18 Through more extensive on site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if furnished) and assistants, the ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work, but the furnishing of such Resident Project Representation will not make the ENGINEER responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for Contractor(s) failure to perform the construction work in accordance with the Contract Documents.

3.19 Reimbursable Services of the ENGINEER:

Reimbursable services shall include the following items when authorized in writing by the OWNER: transportation and subsistence of principals and employees on special trips to the PROJECT or to other locations; long distance telephone and telegraph calls as required to expedite the work of the Contractor; reproduction of drawings and specifications.

SECTION 4- THE OWNER'S RESPONSIBILITIES

4.1. THE OWNER AGREES to provide the ENGINEER with complete information concerning the requirements of the PROJECT and to perform the following services:

4.2 Access to the Work: The OWNER shall guarantee access to and make all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform such work as surveys and inspections in the development of the PROJECT.

4.3 Consideration of the ENGINEER's Work: The OWNER, or an agent appointed by OWNER, shall give thorough considerations to all reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the ENGINEER, and shall inform the ENGINEER of all decisions within a reasonable time so as not to delay the work of the ENGINEER.

4.4 Legal Requirements: The OWNER shall serve all required public and private notices, receive and act upon all protests and fulfill requirements necessary in the development of the PROJECT.

4.5 Proposals: The OWNER shall advertise for Proposals from Bidders, open the Proposals at the appointed time and place and pay all costs incidental thereto.

4.6 Protection of Markers: The OWNER shall protect to the best of its ability, all stakes and

other markers set by the ENGINEER prior to the assumption of such responsibility by the Contractor. Replacement of markers or stakes which have been damaged, moved or removed shall be paid for by the OWNER as extra services of the ENGINEER.

4.7 Standards: The OWNER shall furnish the ENGINEER with a copy of any design and construction standards it shall require the ENGINEER to follow in the preparation of Contract Documents for the PROJECT.

4.8 OWNER's Representative: The OWNER shall designate in writing, by appendix to this Agreement, a single person to act as the OWNER's Representative with respect to the work to be performed under this Agreement. The person designated as OWNER's Representative shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policy and decisions, with respect to the materials, equipment, elements and systems pertinent to the work covered by this Agreement. The OWNER may also appoint, and will notify the ENGINEER of such appointment, a 3<sup>rd</sup> party to act as the OWNER's agent for consideration of the ENGINEER's work set forth in paragraph 4.3 above.

#### SECTION 5 - THE OWNER'S PAYMENTS TO THE ENGINEER:

5.1 Definitions of Construction Cost of the PROJECT, as herein referred to, means the total cost of all work designed or specified by the ENGINEER but does not include any payments to the ENGINEER or other consultants.

5.2 Payments Withheld from Contractors: No deduction shall be made from the ENGINEER's compensation on account of penalty, liquidated damages, or other amounts withheld from payments to Contractors.

5.3 Abandoned or Suspended Work: If any work performed by the ENGINEER is abandoned or suspended in whole or in part, the ENGINEER shall be paid for services performed on account of it prior to receipt of written notice from the OWNER of such abandonment or suspension.

5.4 The OWNER will make prompt payments in response to the ENGINEER's detailed statements for all categories of completed services rendered under this AGREEMENT, or as provided in an agreed upon schedule which shall be attached to this AGREEMENT. However, the OWNER, in no circumstance, shall be required to make more than one payment a month. It is understood and agreed that the OWNER is not liable for payment of any fees for Basic Services described in this AGREEMENT until funds are available from bond sales or other lawful source of funds.

5.5 Payments for Additional Services of the ENGINEER: The ENGINEER shall be reimbursed according to Attachment Schedule of Charges for the additional services outlined under Section 3. Payments to the ENGINEER for additional services stipulated in Section 3 will be made monthly by the OWNER, upon presentation of monthly detailed statements by the ENGINEER.

SECTION 6 - THE OWNER AND ENGINEER FURTHER AGREE to the following conditions:

6.1 Termination: This Agreement may be terminated by either party by fourteen (14) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one party through no fault of the party. If terminated due to the fault of others than the ENGINEER, the ENGINEER shall be paid for services performed to the date of termination, including reimbursements then due, plus terminal expense. As soon as practicable after receipt of notice of termination, the ENGINEER shall submit a statement, showing in detail the services performed under this AGREEMENT, to the date of termination. The OWNER shall then pay the ENGINEER promptly that proportion of the prescribed charges which the services actually performed under this AGREEMENT bear to total services called for under this AGREEMENT, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, plans and specifications prepared under this AGREEMENT shall be delivered to the OWNER when and if the AGREEMENT is terminated, but subject to the restrictions, as to their use, as set forth in Section 6.3. The Parties agree that neither shall be liable for any consequential damages, loss profits, special damages, or future loss profits if this Agreement is terminated for cause or without cause.

6.2 Disputes: Should a dispute arise during the course of this PROJECT, both parties hereby agree to attempt in good faith to resolve the dispute through mediation prior to seeking relief from any court or through any other legal proceeding.

6.3 Ownership of Documents: Upon execution of this Agreement, the ENGINEER grants to the OWNER a nonexclusive license to reproduce the ENGINEER's completed tracings and master specifications sheets solely for purposes of constructing, using, maintaining, renovating and/or adding onto the PROJECT, provided that the OWNER shall comply with all obligations under this Agreement. The ENGINEER shall obtain similar nonexclusive licenses from the ENGINEER's consultants consistent with this Agreement. Upon termination the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the OWNER to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the PROJECT.

6.4 Except for the licenses granted in Subparagraph 6.3 above, no other license or right shall be deemed granted or implied under this Agreement. The OWNER shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the ENGINEER.

6.5 Successors and Assigns: This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the OWNER and the ENGINEER respectively and his partners, successors, assigns and legal representatives. Neither the OWNER nor the ENGINEER shall have the right to assign, transfer or sublet his interest or obligations hereunder without written consent of the other party. This Agreement and attachments supersedes any previous contracts or oral agreements between the parties and constitutes the entire agreement between the parties.

6.6 **Severability.** Provisions of this AGREEMENT are severable and if any provision or part of this AGREEMENT or the application thereof to any person or circumstance should ever be held in any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of the AGREEMENT and the application of such provisions or part of this AGREEMENT to other persons or circumstances shall not be effected thereby.

6.7 **Jurisdiction and Venue.** The laws of the State of Texas apply to this Agreement. Venue of any civil action will be in the County where the PROJECT is located.

6.8 **Indemnity.** The OWNER, to the fullest extent permitted by law, will require any Contractor or Subcontractor performing work in connection with Drawings and Specifications produced under this Agreement to hold harmless, indemnify and defend, the OWNER and the ENGINEER, their consultants and each of their officers, agents and employees from liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants or their officers, agents, and employees.

6.9 **Written Notice.**

Where written notice is mention in the AGREEMENT, it shall be sent by certified mail return receipt requested, or by personal delivery, or by facsimile, to the attention of and to the following addresses:

<b>OWNER</b> Y. S. Ramachandra, P.E. City Engineer City of Huntsville 448 State Highway 75 North Huntsville, TX 77320	<b>ENGINEER</b> Alan C. Hutson Vice President Freese & Nichols, Inc. 10497 Town and Country Way, Suite 600 Houston, TX 77024
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6.10 **Staffing.** ENGINEER acknowledges that continuity of staffing is important to the OWNER for the duration of the PROJECT. Accordingly, ENGINEER agrees to assign and the following key staff to the PROJECT. No substitution will be made to the assigned key staff without the written consent of the OWNER, provided the identified staff members remain employed by the ENGINEER:

Principal-in-Charge: Jessica Brown  
Project Manager: Alan Hutson  
Water System Modeling: Richard Weatherly

6.11 **Design Delays.** OWNER and ENGINEER agree that time is of the essence in

ENGINEER's work related to the PROJECT. Accordingly, ENGINEER shall have deducted from any amounts owed a sum of \$500.00 per calendar day beyond completion dates for the respective design phases of various PROJECT elements established in the agreed upon schedule attached to this AGREEMENT, as may be amended in writing between both parties. If ENGINEER'S services are delayed through no fault of ENGINEER, ENGINEER shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Owner or regulatory reviews, delays on the flow of information to be provided to FNL, governmental approvals, etc. These delays may result in an adjustment to compensation.

6.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, with such counterparts together constituting one and the same instrument. Alternatively, the Parties acknowledge and agree that this Agreement may be, for convenience, executed in duplicate originals, each of which is intended to be and is as valid as its counterpart original.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the day and year first above written:

OWNER:  
CITY OF HUNTSVILLE

ENGINEER:  
FREESE & NICHOLS, INC.

\_\_\_\_\_  
Matt Benoit - City Manager

\_\_\_\_\_  
Alan Hutson - Vice President

ATTEST:

ATTEST:

\_\_\_\_\_  
Lee Woodward - City Secretary

\_\_\_\_\_  
Jeff Taylor - Vice President

APPROVED AS TO FORM:

Leonard Schneider, City Attorney



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**City of Huntsville**  
**Elkins Lake Dam Lift Station Relocation**  
**Engineering Scope of Services**

FNI will render professional services in connection with the development of the Project as defined in the below Scope of Services:

**BASIC SERVICES:** The Project is described as: **Elkins Lake Dam Lift Station Relocation**. The project will consider relocating the existing Elkins Lake Dam Lift Station to the east side of Camelia Lake. The Project will be broken into four phases, a preliminary engineering phase, final design phase, bid phase, and construction phase.

**PROJECT SCOPE/ASSUMPTIONS:**

**A. New Lift Station Design**

1. Proposed lift station will be located on the east side of Camelia Lake. Land will need to be acquired by the City.
2. Design will include wet well capacity for 6.5 MGD (4511 gpm).
3. Initial (Phase I) firm peak pumping capacity will be 4.0 MGD (2,776 gpm).
4. Lift station will be designed to accommodate additional capacity expansions within the Phase I structure:
  - a) Phase II expansion from 4.0 MGD (2,776 gpm) firm capacity to at least 6.5 MGD (4511 gpm) firm capacity
5. New lift station will be designed in a submersible pump configuration, without dry pit or building superstructure.
6. Lift station will be designed around a maximum of four (4) pump manufacturers.
7. Top of lift station structure will be set two foot above 100-year floodplain elevation.
8. Lift Station will pump into one (1) existing force main to WWTP.
9. Flanged ductile iron pipe will be used for lift station discharge lines and headers.
10. New lift station will be enclosed with an ornamental brick fence designed to meet TCEQ requirements.
11. Landscaping and/or irrigation system is not required at the lift station site.
12. Hazardous waste assessments and abatement, if necessary, are not included.
13. Lift Station Electrical and Controls
  - a) Electrical gear will be installed in weather-proof enclosures mounted on top of the lift station structure or on a separate elevated steel platform as required.
  - b) Project will be designed with an onsite generator that may be required to be elevated on a steel platform.
  - c) Pumps will be equipped with constant speed motors with variable frequency drives.
  - d) Pump controls will be supplied with the pumps by the pump manufacturer as a turnkey system.
  - e) FNI will coordinate controls design with City's SCADA provider.

**B. Site Piping Design at Lift Station**

1. Piping improvements necessary to divert influent flow from existing lift station to new lift station.
2. Project will include construction of new manholes on east side of Camelia Lake for tie-in to existing gravity lines.

3. Project will include the construction of one (1) force main from proposed lift station to the opposite side of Camelia Lake and will connect to the existing Elkins Lake Dam Lift Station 18-inch force main.
- C. Existing Structures and Lift Station
1. Existing lift station will be rehabilitated to be brought up to the current TCEQ regulation. Modifications will be necessary to accommodate the reduced flows.
  2. Rehabilitation will include reducing the wet well capacity to 0.25 MGD (174 gpm).
  3. The firm peak pumping capacity will be 0.25 MGD (174 gpm).
  4. The existing 30-inch influent line will need to be slip-lined and sized for the reduced flow.
  5. City will provide Asbestos/Lead Paint Survey as required for demolition of lift station structure.
- D. Force Main Design
1. HDPE pipe will be used for the 18-inch and 4-inch force mains. The force mains will be horizontally directionally drilled under the Camelia Lake Dam outfall. The intent of the design will be to avoid an Individual Permit with the USACE.
- E. Gravity Sewer Line Design
1. The sewer shall be designed using applicable PVC or FRP pipe materials.
  2. The sewer line shall parallel and share an easement with an existing waterline.
  3. Control of groundwater and surface water required to install the gravity sewer lines around Camelia Lake will be provided by the Contractor.
- F. General
1. Project will be designed, bid and constructed as a single bid package.
  2. Project will utilize FNI standard contract documents and specifications after City review/approval.
  3. Project will be procured using the standard bid process in conformance with City policy and state law. Procurement by other means such as Competitive Sealed Proposal shall be an additional service.
  4. Storm Water Pollution Prevention Plan(s) will be provided by Contractor.
  5. Traffic Control Plan(s) will be provided by the Contractor.
  6. Required "By-Pass" pumping plan(s) will be provided by the Contractor.
  7. City will perform easement/ROW acquisition for both the lift station site and the pipeline route, including preparation and execution of land acquisition documents and platting, Deed and Abstract Records search, right-of-way maps and descriptions of properties to be acquired. All survey information shall be provided to the Engineer in an electronic file, in a format compatible with AutoCAD.
  8. City will acquire any necessary right of entry agreements for survey, geotechnical, and design site work and/or notify residents about the project.
  9. City will provide construction materials testing within a separate contract.
  10. City will provide any required "Special Inspections" required by the International Building Code.
  11. Project includes a tree survey for trees greater than ten (10) inches.
  12. Surveying will be provided by the City of Huntsville.
  13. Construction Phases services will be performed by Freese and Nichols; however, these services and fees will be negotiated at a later date.

**TASK A – PRELIMINARY ENGINEERING PHASE:**

1. Consult with the City: (1) to review the scope of services, (2) to verify City's requirements for the Project, and (3) to review available data.

\\freese.com\m\inc2\Resources\OLCR\H\Huntsville\Elkins Lake Dam LS Relocation\Elkins Lake Dam Lift Station Relocation\_Scope of Work - 03-24-17.docx

2. Geotech Investigation: Provide geotechnical investigation services required to complete the design of the lift station, force main, and gravity sewer. (Sub-consultant Ninyo & Moore)
3. Survey: Survey will be initiated at the start of preliminary design. (Sub-consultant Gorrondona and Associates)
4. Conduct one (1) site visit to Project site, as needed, throughout preliminary phase to investigate and verify information.
5. Environmental Services: Conduct a study to assess whether the Project can be designed and authorized under the terms and conditions of Nationwide Permit (NWP) 12, *Utility Line Activities* without a pre-construction notification (PCN) under Section 404 of the Clean Water Act. FNI will assemble data, conduct a site visit, and prepare a technical memorandum to document the results of the field study, any environmental issues noted, and provide recommendations. Additionally, FNI will prepare a letter to the Texas Historical Commission describing the project for consultation with the Texas Antiquities Committee according to Section 191.0525 (d) of the Antiquities Code of Texas. A detailed wetlands delineation, preparation of a preliminary jurisdictional determination report (PJD) and PCN for submittal to the U.S. Army Corp of Engineers (USACE) can be conducted as an additional service, if required.
6. Prepare a Preliminary Design Report (PDR) containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the considerations involved and up to two (2) alternative solutions available to the City. Alternative 1 analysis will include a gravity sewer around the Camellia Lake Dam to include a new Elkins Lake Dam Lift Station site adjacent to the existing lift station site. Alternative 2 analysis will include a new Elkins Lake Dam Lift Station on the opposite side of the Camellia Lake Dam, new force mains around the Camellia Lake Dam, gravity sewer realignments, and the rehabilitation of the existing Elkins Lake Dam Lift Station. The PDR will establish the pump layout, wet well sizing, and electrical/back-up power requirements, and setting forth FNI's findings and recommendations with opinions of probable construction costs for the Project. Estimates of the cost of land and rights of way, compensation for or damages to properties and interest and financing charges will be provided by City or others so designated by City. Specific items to be included are:
  - a. Pump Selection and Lift Station Sizing:
    - i. Pump Selection: Based on City's preferred operational modes and hydraulic analyses, select pumps for phasing indicated above.
  - b. Odor Control Investigation: Evaluate up to two (2) alternatives for odor control at the lift station. The alternatives evaluated along with FNI's recommendations will be included in the PDR. The final design will incorporate the recommended and approved alternatives.
  - c. Slip-lining of the existing influent 30-inch will be evaluated to determine proper sizing.
  - d. An evaluation of the benefit of using variable frequency drives (VFDs).
  - e. Power Availability Evaluation:
    - i. Purpose: Evaluate power availability, reliability, and cost of power infrastructure at the new Elkins Lake Dam Lift Station site.
    - ii. Coordinate with electrical utility provider and evaluate availability and reliability of power at project site.
    - iii. Develop costs to upgrade electrical service as necessary for the new Elkins Lake Dam Lift Station.
    - iv. Develop costs for alternative/emergency power to the new lift station in accordance with current TCEQ requirements.
7. Submit three (3) copies of the Draft PDR, and present and review it in person with the City.
8. Address comments from the City and submit three (3) copies of the Final PDR.

**Deliverables:**

- Three (3) hard copies of the Draft PDR

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- Three (3) hard copies of the Final PDR
- Three (3) hard copies of the Environmental TM
- Electronic copy of the Final PDR and Environmental TM

**TASK B – FINAL DESIGN PHASE:** After City has accepted the PDR and has issued written authorization to proceed with the Final Design Phase, FNI shall provide professional services in this phase as follows:

1. Overall Project management, contract administration, invoicing, quality control/quality assurance. Included are two (2) in-person progress meetings to report on the project and resolve any design related issues.
2. Conduct one (1) site visit to Project site, as needed, throughout design phase to investigate and ascertain and verify information.
3. Prepare plans, sections, details, specifications, contract documents, designs and layouts of improvements to be constructed. Prepare construction plans including cover sheet, general construction notes, layout sheets, horizontal and vertical control sheets, detailed plan and section views, detailed plan/profile sheets to 1"=20' (H) and 1"=2' (V) scale, appropriate electrical sheets, connection to existing system details, and gathering of standard details.
4. Upon concurrence from the City on the proposed improvements, FNI will prepare and submit five (5) sets of 60%-complete plan sheets for City's review and comment. Meet with the City to discuss comments.
  - a. Deliverables
    - i. Five (5) half-size (11"x17") hard copies of the 60% plans and details
    - ii. Proposed table of contents with list of anticipated specifications
    - iii. Five (5) hard copies of the Draft Geotechnical Report
    - iv. 60% design opinion of probable cost
5. Transient Analysis – A transient analysis will be conducted on the proposed pumping system and appropriate surge mitigation features will be provided within the design of the project.
6. Upon receipt of 60% complete review comments, FNI will complete design and plan sheets to 90% complete level including technical specifications and contract documents and submit five (5) sets for City's final review and comments. Meet with the City to discuss comments.
  - a. Deliverables
    - i. Five (5) half-size (11"x17") hard copies of the 90% plans and details, technical specifications and Construction Contract Documents
    - ii. Five (5) hard copies of the Final Geotechnical Report
    - iii. 90% design opinion of probable cost
7. Prepare details to be used by the Contractor in preparation of a storm water pollution prevention plan.
8. Prepare quantities and Engineer's opinion of probable construction cost for the project at 60%, 90%, and 100% complete levels.
9. Submit plans, specifications, and contract documents to the applicable federal and state agency(s) for approval: Elkins Lake Recreation Corporation, Summary Letter to TCEQ for plan approval
10. Furnish necessary information to utility companies whose facilities may be affected or services may be required for the project.
11. Upon receipt of 90% complete review comments, FNI will finalize design and plan sheets including technical specifications and contract documents to 100% complete level and furnish three copies of plans, specifications, and bid proposals marked "FINAL" for use by the City.
  - a. Deliverables
    - i. Five (5) full-size (22"x34") hard copies of the Final plans and details, technical specifications and Construction Contract Documents

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- ii. Electronic (PDF) copies of the Final plans and details, technical specifications and Construction Contract Documents
- iii. Electronic CAD drawing files of the lifts station and force main alignment
- iv. 100% design opinion of probable cost

**TASK C - BID PHASE:** Upon completion of the design services and approval of "Final" drawings and specifications by City, FNI will proceed with the performance of services in this phase as follows:

1. Assist City in securing bids. Issue a Notice to Bidders to prospective contractors and vendors listed in FNI's database of prospective bidders, and to selected plan rooms. Provide a copy of the notice to bidders for City to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by City.
2. Assist the City in conducting a pre-bid conference for the construction projects and coordinate responses with City. Response to the pre-bid conference will be in the form of addenda issued after the conference. Attend the tour of the project site after the pre-bid conference.
3. Assist City by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.
4. Assist the City in the opening, tabulating, and analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by City.
5. Assist City in the preparation of Construction Contract Documents for construction contracts. Provide ten (10) sets of Construction Contract Documents which include information from the apparent low bidders bid documents, legal documents, and addenda bound in the documents for execution by the City and construction contractor. Distribute five (5) copies of these documents to the contractor with a notice of award that includes directions for the execution of these documents by the construction contractor. Provide City with the remaining five (5) copies of these documents for use during construction. Additional sets of documents can be provided as an additional service.
6. Furnish contractor copies of the drawings and specifications for construction pursuant to the General Conditions of the Construction Contract.

**TASK D - CONSTRUCTION PHASE:** Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. FNI will endeavor to protect the City in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

These services are based on the use of FNI standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures is an additional service. If general conditions other than FNI standards are used, the City agrees to include provisions in the construction contract documents that will require the construction contractor to include FNI and their sub-consultants on this project to be listed as an additional insured on contractor's insurance policies.

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1. Assist the City in conducting pre-construction conference with the Contractor and review construction schedules prepared by the Contractor pursuant to the requirements of the construction contract.
2. Establish communication procedures with the City and contractor. Submit monthly reports of construction progress. Reports will describe construction progress in general terms and summarize project costs, construction schedule, and pending and approved contract modifications.
3. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
4. Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that FNI recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
5. Make up to eight (8) visits appropriate to the stage of construction to the site (as distinguished from the continuous services of a Resident Project Representative) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the City against defects and deficiencies in the work of Contractors and will report any observed deficiencies to City. The number of site visits for projects will be included in the Task Authorizations. Visits to the site in excess of the specified number are an additional service.
6. Notify the contractor of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.
7. Interpret the drawings and specifications for City and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by City, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
8. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the City to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the City. Documentation of field orders, where cost to City is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the City are an additional service. Substitutions of materials or equipment or design modifications requested by the City are an additional service.
9. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the City on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the City if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.
10. Assist in the transfer of and acceptance by the construction contractor of any City furnished equipment or materials.

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11. Conduct, in company with City's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two trips are an additional service.
12. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. One (1) set of prints and one (1) electronic PDF on a CD of "Record Drawings" shall be provided by FNI to City.

**SPECIAL SERVICES:**

1. Surveying - Provide field surveying and mapping required for the preparation of design, plans and details as indicated in the attached proposal from Gorrondona and Associates, Inc. (G&A). The following scope of work will be completed with Task A:
  - a. G&A will recover horizontal and vertical control for the project. The horizontal and vertical control will be based on the City of Huntsville Survey Control monumentation.
  - b. G&A will indicate corners of dam components and slabs on grade within the scope area.
  - c. G&A will locate all buildings and fences within the scope area.
  - d. G&A will provide spot elevations at each intersection of a 50' square grid within the scope area. G&A will provide additional spot elevations as necessary to describe changes in grade and other key points of interest such as high and low points.
  - e. G&A will indicate the property lines within the scope area based on existing monumentation.
    - i. Note: Research regarding the platted or deed properties within the scope area will be provided by the client. If G&A is required to provide the research for these properties, the research time (or reimbursables with receipts, if a third party abstractor is needed), will be billed in accordance with the attached Rate Schedule.
  - f. G&A will provide finished floor location and elevations on the lift station indicated on the "Alignment Exhibit" noted above.
  - g. G&A will provide the location, rim and invert elevations, size, depth and direction of flow of the ten (10) sanitary sewer manholes indicated on "Draft Figure X" noted above.
  - h. G&A will locate and give species of all trees 10" caliper and over (at 36" above ground).
  - i. G&A will show outline of heavy brush and trees.
2. Geotechnical - Conduct geotechnical investigation for the Project as indicated in the attached proposal from Ninyo & Moore (N&M). The following scope of work will be completed with Task A:
  - a. Perform geologic research (reviewing readily available published and in-house geotechnical literature of the site and general site area including geologic maps), and a walking geologic reconnaissance of the project site.
  - b. Conduct a site visit to select and mark out the proposed boring locations. N&M will also contact Texas811 prior to exploration.
  - c. Drill, log, and sample up to two exploratory borings. The borings will be drilled to depths of 15 to 50 feet borings along the planned alignment in areas accessible to an ATV rig.
  - d. Collect geotechnical soil samples continuously through any fill or to a depth of 10 feet (whichever is greater) and at five-foot intervals thereafter. Samples will be taken using conventional split-spoon and/or thin-wall tube sampling techniques for laboratory testing and analysis.

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- e. Perform laboratory testing that will generally consist of moisture content, No. 200 wash, Atterberg limits, and strength tests.
- f. Prepare a geotechnical report to include logs of the exploratory borings and results of the laboratory testing. The report will include a cover letter sealed by a Professional Engineer licensed in the State of Texas. The report will include the following:
  - i. Description of work scope, laboratory, and field procedures;
  - ii. Boring logs and laboratory test results;
  - iii. Subsurface soil and groundwater conditions;
  - iv. Maps and boring plans;
  - v. Excavation characteristics of on-site soils;
  - vi. Utility installation guidelines;
  - vii. Allowable bearing capacity;
  - viii. Lateral earth pressures and groundwater (hydrostatic) pressures; and
  - ix. Dewatering guidelines

**TIME OF COMPLETION:** FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

1. Task A – To be completed within 90 calendar days of NTP for preliminary design
2. Task B – To be completed within 190 calendar days of NTP for final design, inclusive of Special Services
3. Task C – To be completed within 60 calendar days of first advertisement date
4. Task D – Anticipated to be completed within 365 calendar days of contractor NTP

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in CITY or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc.

**COMPENSATION:** Compensation to FNI shall be the lump sum of Five Hundred Eighty-Two Thousand Dollars and no cents (\$582,000). If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services, FNI will notify CITY for CITY's approval before proceeding. The following is a breakdown of the fee:

<b>BASIC SERVICES (Lump Sum)</b>	
Task A: Preliminary Engineering Phase	\$ 90,000
Task B: Final Design Phase	\$ 363,400
Task C: Bid Phase	\$ 14,600
Task D: Construction Phase	\$ 80,000
<b>SUBTOTAL</b>	<b>\$548,000</b>
<b>SPECIAL SERVICES (Lump Sum)</b>	
Task 1: Surveying Services	\$ 26,000
Task 2: Geotechnical Services	\$ 8,000
<b>SUBTOTAL</b>	<b>\$ 34,000</b>
<b>TOTAL</b>	<b>\$ 582,000</b>

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**ORDINANCE NO. 2017-28**

**AN ORDINANCE OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING THE 2016-2017 ANNUAL BUDGET AND CAPITAL IMPROVEMENTS PROJECTS (CIP) BUDGETS, ORDINANCE NO. 2016-28 TO AMEND ADOPTED EXPENDITURES OF THE BUDGET; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the 2016-2017 Annual Budget and CIP Budgets were adopted by Ordinance 2016-40 on September 20, 2016;

**WHEREAS**, various unforeseen circumstances affecting the City have presented themselves during the course of the fiscal year;

**WHEREAS**, the City Council considered the circumstances independently, deliberating appropriately on the associated revenues and expenditures and the overall impact on the general financial status of the City;

**WHEREAS**, pursuant to the laws of the State of Texas and the City Charter of the City of Huntsville, Texas, the City Council has determined that it will be beneficial and advantageous to the citizens of the City of Huntsville to amend the annual budget for fiscal year 2016 – 2017 and the Capital Improvements Projects (CIP) budget as set forth herein; and

**WHEREAS**, this ordinance combines the independent Council actions into one budget amendment document;

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

**Section 1.** The findings set forth above are incorporated into the body of this ordinance.

**Section 2.** The annual budget for fiscal year 2016 – 2017 is hereby amended to include the expenditures and revenues in Exhibit “A” and the Capital Improvements Projects budget is hereby amended to include the expenditures described in Exhibit “A” attached hereto and made a part of this ordinance as if set out verbatim herein.

**Section 3.** All ordinances of the City in conflict with the provisions of this ordinance are hereby repealed, and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

**Section 4.** Should any section, portion, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the force or effect of any other section or portion of this ordinance.

**Section 5.** The necessity for amending the budget for the fiscal year 2016 – 2017 and Capital Improvements Projects, as required by the laws of the State of Texas, requires that this ordinance shall take effect immediately from and after its passage, as the law in such cases provides.

**Section 6.** This ordinance shall take effect immediately after its passage.

PASSED AND APPROVED on this the \_\_\_\_\_ day of \_\_\_\_\_ 2017.

**THE CITY OF HUNTSVILLE, TEXAS**

\_\_\_\_\_  
Andy Brauning, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

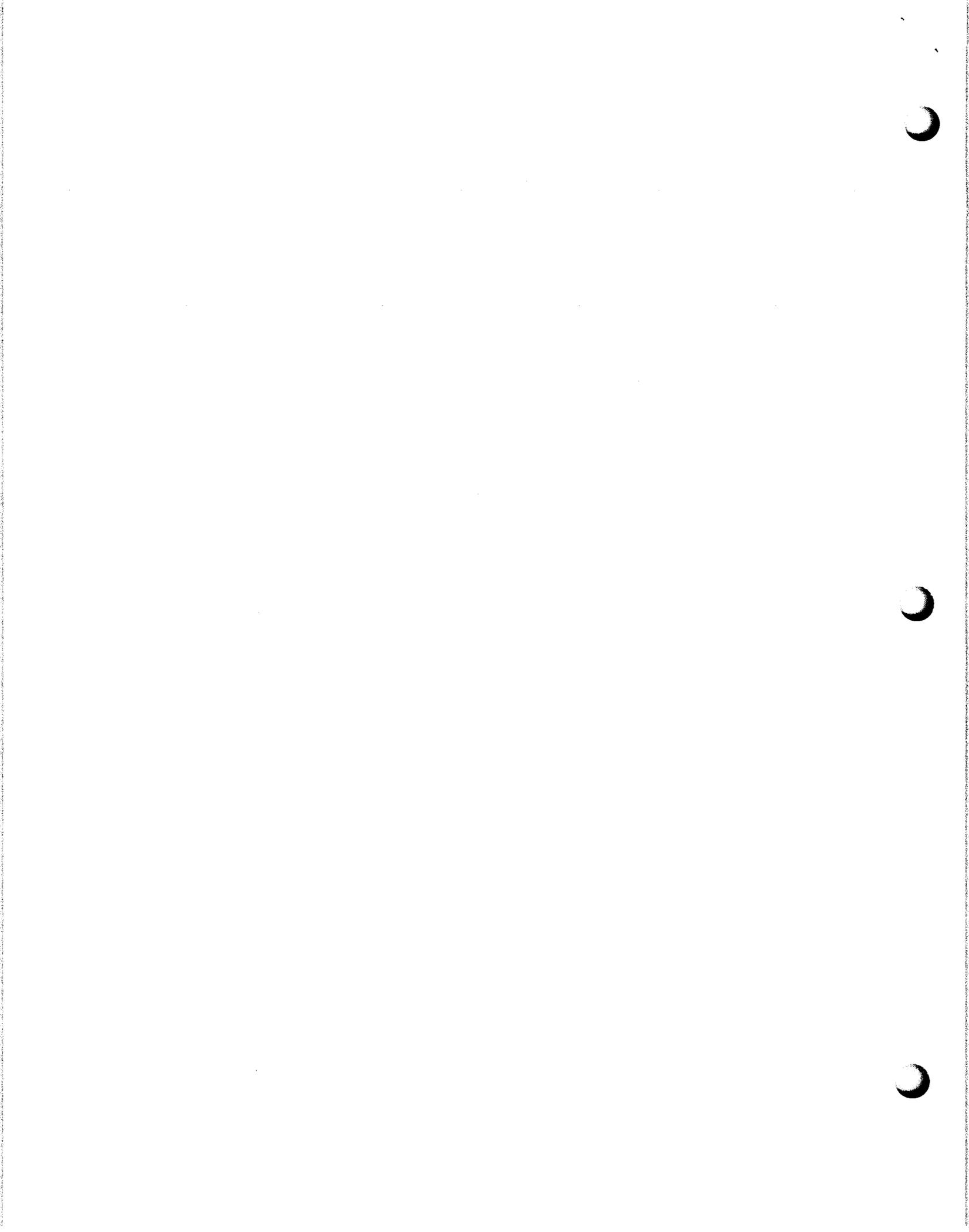
\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney

**Budget Amendments FY 16-17  
April 4, 2017**

**Exhibit  
A**

Increase: Wastewater CIP – Elkins Lake Dam Lift Stn. and lines relocate		\$ 75,000
Decrease: Wastewater CIP – Unallocated Budget		\$ (75,000)
Explanation:	<p>The RFQ process and related negotiations with the selected engineering firm, Freese &amp; Nichols, has resulted in the need for additional budget for engineering cost for the design and construction phase services for the Elkins Dam Lift Station and Lines Relocate project. The project includes an original amount budgeted of \$360,000 which was approved with the FY 2016 – 2017 Budget. The amount submitted by Freese &amp; Nichols for engineering design and construction phase services is \$582,000. This budget amendment requests use of \$75,000 of Wastewater CIP's Unallocated Budget to fund this cost beyond the \$360,000 available in the specific project and \$147,000 available in Wastewater Prop. 3 CIP projects. Wastewater CIP's Unallocated Budget balance after this use (if approved) would be \$586,532.</p>	





## CITY COUNCIL AGENDA

4/18/2017

Agenda Item: 6d

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**Item/Subject:** Consider authorizing the City Manager to enter into a lease agreement with Sealark Investments, LLC for an Oil, Gas, and Mineral Lease covering lands situated in Walker County, Texas.

**Initiating Department/Presenter:** Community & Economic Development

**Presenter:** Aron Kulhavy, CED Director

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**Recommended Motion:** Move to authorize the City Manager to enter into a lease agreement with Sealark Investments, LLC for an Oil, Gas and Mineral Lease covering lands situated in Walker County, Texas.

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**Strategic Initiative:** Goal #5 - Finance - Provide a sustainable, efficient and fiscally sound government through conservative fiscal practices and resource management.

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**Discussion:** The City has been approached by Searlark Investments, a company interested in pursuing an oil and gas lease covering the City's mineral interest in 32 acres located at the northwest corner of the transfer station. Sealark intends to drill a gas well on the property immediately north of the transfer station to tap into a projected pocket of natural gas under several properties in the area. The gas well will not be located on City property and the City's property will not be disturbed during the erection of the well. In exchange for the oil and gas lease, Sealark will provide a \$75/acre bonus and a 1/6<sup>th</sup> royalty.

In addition to the mineral lease, Sealark wishes to acquire an easement for a pipeline parallel to Moffett Springs Road, provided the gas well is successful. This pipeline easement will be located in an existing easement for a gas line located along the western edge of the transfer station property. In exchange for the pipeline easement, Sealark will pay the City \$50 per linear rod (about \$12,000). Sealark will also need a 50' by 50' meter site located on the transfer station property and will compensate the City \$2,500 for this site.

Staff met with Sealark to discuss the lease and potential concerns with the transfer station being the site of the closed City landfill. Staff let Sealark know of the potential hazards in locating on the property and both sides agreed to let Sealark assume all responsibilities for permitting and approval from TCEQ for any work to be completed on the transfer station site.

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**Previous Council Action:** The City of Huntsville previously leased 50 acres that included the subject property in 2005 for oil and gas. The previous lease expired due to lack of use.

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**Financial Implications:**

**Item is estimated to generate additional revenue:** Oil and gas bonus: \$2,400 @ \$75/acre if an economic well is drilled, COH would receive the following

Pipeline ROW: \$12,000 at \$50/rod

Meter Site: \$2500.00

Based on proposed unit size, COH would have 5.3808% Unit Royalty Interest.

If well produces .50MMCF/day

$0.5\text{MMCF/day} \times \$ 2.75 \text{ gas price} = \$41,250 \times 0.053808 = \$2,219.58/\text{month for COH}$

If the well's reserves are 1.0BCF (1 billion cubic feet), thru the life of the well, COH's total production revenue could approach \$150,000.

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**Approvals:**     City Attorney             Director of Finance             City Manager

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**Associated Information:**

- Proposed lease (pages 3-11)
- Map of location (page 12)

**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 DRIVERS LICENCE NUMBER**

**RECORDING MEMORANDUM OF OIL, GAS AND MINERAL LEASE**

**STATE OF TEXAS  
COUNTY OF WALKER**

By Oil, Gas and Mineral Lease (hereinafter referred to as "Lease") dated March 1, 2017, **The City of Huntsville**, as Lessor (whether one or more), whose address is: 1212 Avenue M, Huntsville, Texas 77342, as Lessor, for good and valuable consideration, did grant, lease and let to **Sealark Investments, LLC**, whose address is: 4900 Woodway, Suite 800, Houston, Texas 77056, as Lessee, an Oil, Gas and Mineral Lease covering lands situated in Walker County, Texas, and more fully described as follows, to-wit:

32.0822 acres, more or less, out of the Warren Birdsell Survey, A-6, Walker County, Texas, and being described as the most northwest 32.0822 acres out of that 630-acre tract described in that certain Deed dated November 19, 1945, from the Texas Prison Board to The City of Huntsville, as recorded in Volume 112 at Page 55 of the Deed Records of Walker County, Texas, to which deed and its recorded reference is herein made for all purposes. Said 32.0822-acre tract being more fully described by its metes and bounds as follows:

BEGINNING at a point being the southwest corner of the above referenced 630-acre tract, THENCE North 0° 30' West 3189.73 feet along the west line of said 630-acre tract to a point, said point being the southwest corner of the above mentioned 32.0822-acre tract and the PLACE OF BEGINNING;  
THENCE, continuing North 0° 30' West 750.0 feet to a point, said point being the northwest corner of said 32.0822-acre tract;  
THENCE, South 89° 30' East 1865.31 feet to a point, said point being the northeast corner of said 32.0822-acre tract;  
THENCE, South 01° 12' West 750.0 to a point, said point being the southeast corner of said 32.0822-acre tract;  
THENCE, South 89° 29' 59" West 1861.38 feet to the PLACE OF BEGINNING, containing 32.0822 acres, more or less.

The Oil, Gas and Mineral Lease and all of its terms, conditions, covenants and provisions are incorporated into and made a part of this Memorandum in all respects. Originals of the Oil, Gas and Mineral Lease are in the possession of the parties hereto.

This Memorandum is executed for the purposes of filing this instrument of record in the Official Records of Rusk County, Texas, to give notice to all third parties of the existence of the Oil and Gas Lease with a primary term of three (3) years, or any extension of the primary term as provided in said Oil, Gas, and Mineral Lease and this Memorandum shall be binding upon the parties hereto, their respective heirs, successors, representatives and assigns.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2017.

**LESSOR:**  
**The City of Huntsville**

**LESSEE:**  
**Sealark Investments, LLC**

\_\_\_\_\_  
**Matt Benoit, City Manager**

\_\_\_\_\_  
**John Schwarz, Jr., President**

**Attest:**

\_\_\_\_\_  
**Lee Woodward, City Secretary**

**ACKNOWLEDGMENT**

STATE OF TEXAS  
COUNTY OF WALKER

This instrument was acknowledged before me this \_\_\_\_ day of March, 2017, by Matt Benoit, in his capacity as City Manager for the City of Huntsville.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me this \_\_\_\_ day of March, 2017, by John Schwarz, Jr., President for Sealark Investments, LCC, a Texas corporation, on behalf of said company.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas

## OIL, GAS AND MINERAL LEASE

**THIS AGREEMENT** made this 1<sup>st</sup> day of March, 2017, between **The City of Huntsville**, as Lessor (whether one or more), whose address is: 1212 Avenue M, Huntsville, Texas 77342 and **Sealark Investments, LLC**, as Lessee, whose address is: 4900 Woodway, Suite 800, Houston, Texas 77056, WITNESSETH:

1. Lessor, in consideration of Ten and No/100 Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, and of the covenants and agreements of lessee hereinafter contained, does hereby grant, lease and let unto lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on said land, lay pipelines, establish and utilize facilities for surface, construct roads and bridges, dig canals, build tanks, power stations, telephone lines, and other structures on said land, necessary or useful in lessee's operations in exploring, drilling for, producing, treating, storing and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the **County of Walker, State of Texas**, and is described as follows:

32.0822 acres, more or less, out of the Warren Birdsell Survey, A-6, Walker County, Texas, and being described as the most northwest 32.0822 acres out of that 630-acre tract described in that certain Deed dated November 19, 1945, from the Texas Prison Board to The City of Huntsville, as recorded in Volume 112 at Page 55 of the Deed Records of Walker County, Texas, to which deed and its recorded reference is herein made for all purposes. Said 32.0822-acre tract being more fully described by its metes and bounds as follows:

BEGINNING at a point being the southwest corner of the above referenced 630-acre tract, THENCE North 0° 30' West 3189.73 feet along the west line of said 630-acre tract to a point, said point being the southwest corner of the above mentioned 32.0822-acre tract and the PLACE OF BEGINNING;  
THENCE, continuing North 0° 30' West 750.0 feet to a point, said point being the northwest corner of said 32.0822-acre tract;  
THENCE, South 89° 30' East 1865.31 feet to a point, said point being the northeast corner of said 32.0822-acre tract;  
THENCE, South 01° 12' West 750.0 to a point, said point being the southeast corner of said 32.0822-acre tract;  
THENCE, South 89° 29' 59" West 1861.38 feet to the PLACE OF BEGINNING, containing 32.0822 acres, more or less.

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by Lessor by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which Lessor has a preferential right of acquisition. Lessor agrees to execute any supplemental instrument requested by lessee for a more complete or accurate description of said land. For the purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain **32.0822 acres**, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus as lump sum consideration for this lease and all rights and options hereunder.

2. This lease, which is a "paid-up" lease requiring no rentals, shall be in force for a primary term of **three (3) years** from the date hereof, hereinafter called "primary term", and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than one hundred twenty (120) consecutive days.

3. As royalty, lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which lessee may connect its wells, the equal one-sixth (1/6th) part of all oil produced and saved by lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted market price of such one-sixth (1/6th) part of such oil at the wells as of the day it is run to the pipe line or storage tanks, Lessor's interest, in either case, to bear one-sixth (1/6th) of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when sold by Lessee, one-sixth (1/6th) of the amount realized by lessee, computed at the sales point of the well, or (2) when used by Lessee off said land or in the manufacture of gasoline or other products, the market value, at the sales point of the well, of one-sixth (1/6th) of such gas and casinghead gas; (c) To pay Lessor on all other minerals mined and marketed or utilized by Lessee from said land, one-tenth either in kind or value at the well or mine at Lessee's election, except that on sulphur mined and marketed the royalty shall be one dollar (\$1.00) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing oil or gas, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as said wells are shut-ins, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize, or market the minerals capable of being produced from said wells, but in the exercise of such diligence, Lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to Lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety (90) day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each such payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in the U. S. Mail direct to Lessor at the mailing address provided above, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be, entitled to receive same, Lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereof, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release as provided in paragraph 5 hereof. In the event of assignment of this lease in

whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to acreage owned by each.

4. Lessee shall have the continuing and recurring right, but not the obligation, to pool all or any part of the leased premises or interest therein with any other lands, leases or interest, as to any or all depths or zones, and as to any or all covered mineral, either before or after the commencement or production, whenever Lessee deems it necessary or proper to do so in order to prudently explore, develop or operate the leased premises, whether or not similar pooling authority exists with respect to such other lands, leases or interests. A unit formed by such pooling for an oil well which is not a horizontal completion shall not exceed 80 acres plus a maximum acreage tolerance of 10%, and for an oil well which is a horizontal completion or a gas well shall not exceed 640 acre plus a maximum tolerance of 10%; providing that larger units may be formed for an oil well or a gas well, whether or not horizontally completed, in order to conform to any well spacing or density pattern allowed, permitted or prescribed by any governmental authority having jurisdiction over such matters. Notwithstanding the maximum size limitations set forth above, in the event the Railroad Commission has adopted special field rules applicable to the field in which such well, or wells, is completed which rules require, a larger amount of acreage to obtain a regular drilling permit without exception to the amounts set forth above, the production unit for such well, or wells, may contain such larger amount of acreage. The terms "oil well" and "gas well" shall have the meanings prescribed by applicable law or by regulations of the governmental authority which has jurisdiction over such matters. The term "horizontal completion" shall mean an oil well or a gas well in which the horizontal component of the gross completion interval exceeds 100 feet in length. Lessee may pool or combine land covered by this lease or any portions thereof, as above provided as to oil in any one or more strata and as to gas in any one or more strata. Units formed by pooling as to any stratum or strata need not conform in size or area with units formed as to any other stratum or strata, and oil units need not conform as to area with gas units. To exercise its pooling rights hereunder, Lessee shall file of record a written declaration describing the unit, and the effective date of pooling shall be the date of filing unless provided otherwise in such declaration. Lessee wholly at its option may exercise its authority to pool either before or after commencing operations for or completing an oil or gas well on lands lying within a unit and any unit may include, but is not required to include, lands or leases upon which a well producing or capable of producing oil or gas in paying quantities has theretofore been completed, or upon which operations have theretofore been commenced. Production, drilling or reworking operations anywhere on a unit which includes all or any part of the leased premises, regardless of whether such production was secured or such drilling or reworking operations were commenced before or after the execution of this lease or the instrument designating the pooled unit, shall be treated for all purposes (except the payment of royalties on production from the pooled unit) as if they were production, drilling or reworking operations on the leased premises and references herein to production from or operations on the leased premises shall be deemed to include production from or operations on any portion of such pooled unit; provided that if after creation of a pooled unit a well is drilled on land within the unit area (other than the leased premises) which well is not classified as the type of well for which the unit was created (oil, gas or other minerals as the case may be), such well shall be considered a dry hole for purposes of applying the additional drilling and reworking provision hereof. If a gas well on a gas unit, which includes all or a portion of the leased premises is reclassified as an oil well, with respect to all lands which are included within the unit (other than the lands on which the well is located), the date of such reclassification shall be considered as the date of cessation of production for purposes of applying the provisions of this lease covering additional drilling or reworking. The production on which Lessor's royalty is calculated shall be that proportion of the total unit production which the net acreage covered by this lease and included in the unit bears to the total gross acreage in the unit, but only to the extent that such production of unit production is sold by Lessee. Pooling in one or more instances shall not exhaust Lessee's pooling rights hereunder, and Lessee shall, without joinder of Lessor, have the recurring right, but not the obligation, to revise any unit formed hereunder by expansion or contraction or both, or to conform to any productive acreage determination made by such governmental authority, or court order, or when to do so would, in the judgment of Lessee, promote the conservation of covered minerals in and under and that may be produced from the leased premises, in making such a revision. Lessee shall file of record a written declaration describing the revised unit and the effective date of revision shall be the date of filing unless provided otherwise in such declaration. To the extent any portion of the leased premises is included in or excluded from the unit by virtue of such revision, the proportion of unit production on which royalties are payable hereunder shall thereafter be adjusted accordingly, and such adjustment shall be made effective as of the effective date of the revision. Lessee may at any time dissolve any unit formed hereunder by filing a written declaration describing the unit, and the effective date of dissolution shall be the date of filing unless provided otherwise in such declaration. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in this paragraph with consequent allocation of production as herein provided. As used herein the words "separate tract" mean any tract with royalty ownership differing, nor or hereafter, either as to parties or amounts, from that as to any other part of the leased premises. Pooling hereunder shall not constitute a cross-conveyance of interests.

5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations, as to the released acreage or interest.

6. Whenever used in this lease the word "operations" shall mean operations for and any of the following: drilling, testing, completing, reworking, re-completing, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or other minerals, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than from Lessor's water wells, and surface tanks of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 500 feet to the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations, and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, and assigns, and successive assigns. No change or division in the ownership of said land, royalties, or other moneys, or any part thereof, howsoever effected, shall increase the obligations or diminish the rights of Lessee, including but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof or to Lessee, its successors or

assigns, no change or division in the ownership of said land or of the royalties, or other moneys, or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until thirty (30) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts, or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may, nevertheless pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.

9. In the event Lessor considers that Lessee has not complied with all its obligations hereunder, both expressed and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall then have ninety (90) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of ninety (90) days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder. In the event the matter is litigated and there is a final judgment determination that a breach or default has occurred, this lease shall not be forfeited or cancelled in whole or in part unless Lessee is given a reasonable time after said judicial determination to remedy the breach or default and Lessee fails to do so. Nothing in this instrument or in the relationship created hereby shall be construed to establish a fiduciary relationship, a relationship or trust or confidence or a principal - agent relationship between Lessor and Lessee for any purpose. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than eighty acres), such acreage to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained.

10. Lessor hereby warrants and agrees to defend title to the interests conveyed to Lessee hereunder. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes or other liens, or interest and other charges on said land, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. If this lease covers a less interest in the oil, gas, sulphur, or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring one hundred twenty (120) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

12. This lease covers oil and gas and liquid hydrocarbons, along with the products and by-products thereof, including sulphur produced in conjunction therewith, but this lease does not cover any other minerals of any type.

13. After the expiration of the primary term of this lease, operations on or production from any pooled unit or units created under the terms of this lease shall continue this lease in force only as to that portion or portions of the leased premises included in such unit or units, and upon the expiration of the primary term hereof, this lease shall terminate as to all portions of the leased premises not so unitized and as which the lease is not being maintained in force pursuant to some other provision hereof.

14. It is expressly stipulated that this lease, and production therefrom, is and shall be strictly limited from the surface down to 5,000 feet and all depths below such 5,000 feet are excluded from and are not covered by this lease.

15. Notwithstanding Paragraph 18 herein, it is understood and agreed by and between Lessor and Lessee that the surface of the herein leased premises shall not be used for conducting drilling operations or operations connected therewith; however, nothing herein contained shall deprive Lessee of its right to directionally drill under the leased premises or lands pooled therewith and Lessee is hereby granted the right to drill a directional well, or wells, to be bottomed under the herein leased premises. Lessee is further granted the right to drill a directional well, or wells, to be bottomed on other lands, through and under the herein leased premises.

16. Lessee agrees to indemnify and forever hold Lessor, their heirs, executors, administrators and assigns, harmless against any and all civil, criminal or environmental actions, judgments, suits, claims, demands or other liability arising by virtue of Lessee's activities hereunder or by virtue of any activities hereunder by the Lessee, its agents, employees and licensees, either to the Lessor, its heirs or assigns, or any third party, for damages to person or property. If same be recoverable against them, then Lessee specifically accepts responsibility and liability for any pollution, contamination or toxic damage caused by its operations. Should this Lease terminate for any reason, Lessee shall remain responsible for all accrued liability resulting from operations of Lessee hereunder. Lessee agrees that it has in effect all liability insurance as required by law, and that such insurance is current and is in force and effect and the company is licensed to do business in the State of Texas. If requested by Lessor, Lessee shall provide to Lessor a certificate of insurance indicating current coverages.

17. During the primary term, it is understood and agreed by and between Lessor and Lessee that Lessee is hereby given the option, but not the obligation, to acquire a Meter Station Site and Pipeline Right-of-Way Agreement covering a portion of the herein leased premises and other contiguous and adjacent lands owned by Lessor. This option may be exercised by the Lessee at any time during the original primary term.

As consideration for said Pipeline Right-of-Way, Lessee shall pay Lessor, or the current surface owner, Fifty Dollars (\$50.00) per rod based on its total linear distance. The Meter Station Site shall consist of a tract measuring 0.0574 acres (50' x 50') in area. As consideration for the Meter Station Site, Lessee shall pay Lessor the total amount of Two Thousand Five Hundred Dollars (\$2500.00) for a 5-year term (inclusive of term extension language). Said payment to be mailed or delivered to Lessor, at Lessor's address herein, at any time during the primary term. Said Meter Station Site and Pipeline Right-of-Way Agreement being further described as Exhibit "A" attached hereto and by reference made a part hereof.

18. LESSEE MUST COMPLY WITH ALL VALID LAWS, ORDINANCES, AND REGULATIONS, WHETHER STATE, FEDERAL, OR MUNICIPAL, APPLICABLE TO THE PREMISES. THE USE WHICH LESSEE MAKES AND INTENDS TO MAKE OF THE PREMISES WILL NOT RESULT IN THE DISPOSAL OR OTHER RELEASE OF ANY HAZARDOUS SUBSTANCE OR SOLID WASTE ON OR TO THE PREMISES. IN THE EVENT THAT ANY HAZARDOUS SUBSTANCES, SOLID WASTES OR OTHER POLLUTANTS ARE DISPOSED OR RELEASED ON AND/OR UNDER THE PREMISES, RESULTING IN THE CONTAMINATION OR POLLUTION TO THE PREMISES OR ANY ADJOINING PROPERTY, ARISING OUT OF SAID CONTAMINATION OR POLLUTION, CAUSED BY OR CONSENTED TO BY THE LESSEE, THEN LESSEE SHALL INDEMNIFY AND HOLD HARMLESS THE LESSOR AND LESSOR'S HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS, AND ASSIGNS, FROM AND AGAINST ANY AND ALL LIABILITY FROM THE RULES AND REGULATIONS OF THE TEXAS RAILROAD COMMISSION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, OR ANY OTHER STATE OR FEDERAL STATUTE, RULE OR REGULATION NOW IN EXISTENCE OR HEREINAFTER ENACTED RELATING TO SUCH SUBSTANCES OR WASTE AND LESSEE HAS THE ABSOLUTE RESPONSIBILITY FOR ALL CLEANUP OF SAID POLLUTION OR CONTAMINATION OR RECLAMATION OF THE PREMISES AND ALL COSTS AND EXPENSES THEREOF.

19. Lessee, Lessee's successor and assigns hereby agree to indemnify and hold harmless Lessor, and Lessor's successors and/or assigns, from and against any and all claims, costs, environmental claims and/or damages, demands, suits, causes of action, expenses, including, but not limited to reasonable fees and expenses of attorneys and other persons, arising out of or caused by the operations and/or activities of Lessee, or Lessee's successors and assigns, assume the affirmative covenant to promptly and timely comply with all local, state and/or federal environmental laws, rules and/or regulations, now existing or that may in the future be enacted. The parties agree that the Lessor has not made, does not make, and will not make any representations as to the condition of the surface or subsurface of the real property described herein. Lessee makes the affirmative representation to the Lessor that Lessee has made its own investigation of the real property interest owned by Lessor and is not relying on any statement, representation or warranty of Lessor with respect to any aspect of the property or any condition existing or that may exist on the property whether known or unknown.

20. Lessor shall have reasonable access and the right to inspect and audit the books, records drilling and production data and related information of Lessee that relate to wells drilled on the leased premises or on lands pooled therewith. Lessor shall, at all times, have full right of ingress and egress to the leased premises and Lessee's operations thereon, for the purposes of inspecting drilling or producing operations, at Lessor's sole risk, and for any and all other purposes which Lessor may consider necessary or advisable. Lessee shall, within thirty (30) days after written request, furnish Lessor, free of cost, a true and correct copy of each gas contract, well log, electrical survey, well chart, and Railroad Commission (or other regulatory authority) report made by Lessee in connection with all wells and the Lessee's operations on the leased premises or lands pooled therewith.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

THE CITY OF HUNTSVILLE

\_\_\_\_\_  
By: Matt Benoit

City Manager

Attested By:

\_\_\_\_\_  
Lee Woodward, City Secretary

**ACKNOWLEDGMENT**

STATE OF TEXAS  
COUNTY OF WALKER

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by Matt Benoit, in his capacity as City Manager for the City of Huntsville.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas

EXHIBIT A

METER STATION SITE AND PIPELINE RIGHT OF WAY AGREEMENT

STATE OF TEXAS  
COUNTY OF WALKER

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between THE CITY OF HUNTSVILLE whose address is 1212 Avenue M, Huntsville, Texas 77342, hereinafter referred to as "Grantor", and SEALARK INVESTMENTS, LLC, whose address is 4900 Woodway, Suite 800, Houston, Texas 77056, hereinafter referred to as "Grantee". Grantor and/or Grantee are sometimes referred to hereinafter individually as a "Party" or collectively as the "Parties".

For and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the rents paid and to be paid hereunder, and the mutual covenants herein contained, Grantor does hereby lease, let and demise unto Grantee, its successors and/or assigns, a meter station site and an easement, together with the right of ingress and egress thereon, on, over and across Grantor's lands located in Walker County, Texas (hereinafter called "Subject Lands"), described as follows:

**630 acres, more or less, situated in the Warren Birdsell Survey, A-6, Walker County, Texas, and being described in that certain Deed dated November 19, 1945, from the Texas Prison Board to The City of Huntsville, as recorded in Volume 112 at Page 55 of the Deed Records of Walker County, Texas, to which deed and its recorded reference is herein made for all purposes.**

The Subject Lands are hereby leased, let and demised unto Grantee, its successors and/or assigns, as a pipeline right-of-way and meter station site, for the construction, reconstruction, replacement, operation, maintenance, repair, alter, change the size of and/or removal of one and only one pipeline, along with a meter station site for the necessary metering equipment, to transport oil, petroleum or any of its products, gas, water, and other related substances, or any one thereof, through, under and across Subject Lands for Grantee's operations hereunder. It is understood and agreed by Grantor and Grantee that the operations described herein shall be applicable only to oil, petroleum or any of its products, gas, water, and other related substances, or any one thereof, produced by Grantee, its successors and/or assigns, located in the general vicinity of the Subject Lands. It is further agreed and understood by the parties hereto that all pipelines shall be buried a minimum of 36 inches below the surface of the property. The pipeline right-of-way, being fully identified in Exhibit "A" attached hereto and made a part hereof, shall consist of a strip of land thirty feet (30') wide during construction, reverting to twenty feet (20') wide after completion of the pipeline. As consideration for said pipeline right-of-way, Grantee shall pay Grantor an amount of \$50.00 per linear rod. The linear distance for said pipeline right-of-way shall be \_\_\_\_\_ feet ( \_\_\_\_\_ rods).

The meter station site shall consist of a tract measuring 0.0574 acres (50' x 50') in area. The dimension and location of same, also being fully identified in Exhibit "A" attached hereto and made a part hereof. All surface equipment installed on Subject Lands by Grantee will be maintained in good and workmanlike condition. Grantee hereby agrees, at its sole cost, risk and expense, to maintain Subject Lands in a good and workmanlike and safe manner and shall keep Subject Lands as clean and as free of debris as is reasonably practicable. Grantee agrees to construct, build, install and maintain fences surrounding that portion of Subject Lands containing the equipment described above. Such fences shall be capable of preventing cattle and other livestock from entering such areas so fenced.

Grantee shall fully comply with all laws, rules, regulations and orders of federal, state or municipal agencies having jurisdiction, which are now or may hereafter become applicable to the operations of Grantee on Subject Lands.

It is understood and agreed by and between the Parties that the consideration hereinabove recited, is payment in full to Grantor as liquidated damages for all damages which Grantor may sustain as a result of the initial construction of the pipeline and meter station site on Subject Lands, but is not intended to cover any and all damages that may be caused by maintenance on or operations of the pipeline or meter station on the Subject Lands which may thereafter occur as to crops, buildings, fences, timber, livestock, or any and all other personal property or improvement of any nature or kind owned by Grantor and located on the Subject Lands.

As consideration for said Meter Station Site, Grantee shall pay Grantor an amount of \$2500.00, which represents the total consideration for the primary term. Said primary term of this Agreement shall be for a term of five (5) years beginning on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and ending on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Grantor does hereby give and grant unto Grantee an option, but not the obligation, to lease said lands for additional one (1) year term(s), commencing at the end of the first five (5) year period. Grantee may exercise this option by paying an amount of \$500.00 on or before the anniversary date, which represents the rental for the renewal term(s). It is understood and agreed that Grantee may, at its election and after giving Grantor sixty (60) days notice in writing, on or before any rental due date, terminate this Agreement and thereby be relieved of any and all further liability as to the land abandoned and rentals thereon, except as otherwise provided herein. Failure on Grantee's part to make timely rentals beyond the primary term of this Agreement shall not cause this Agreement to terminate. If any payment of rent shall be delinquent, or Grantee shall be in default in any other particular, Grantor shall not be

entitled to forfeit this Agreement without first mailing written notice by registered mail to Grantee at the address provided herein advising of the alleged default and giving Grantee thirty (30) days after the receipt of said notice to remedy said default in order to avoid forfeiture, and if such default is remedied within said thirty (30) day period, then no forfeiture shall be declared.

Upon final termination of this agreement, Grantee shall, at its sole cost and expense, return and restore the Subject Lands as near as is reasonably practicable to the condition existing prior to its first use by Grantee. Said restoration shall include, but not be limited to, removal of all Grantee's equipment and facilities, and removal and replacement of any contaminated material.

The rights of either Party may be assigned in whole or in part, but no change in ownership shall operate to enlarge the obligations or diminish the rights of either Party. Any assignee shall be expressly bound by and subject to the terms and provisions of this agreement. In the event of a change of ownership of the Subject Lands or of the right to receive any payment hereunder, Grantee shall not be bound by same until thirty (30) days after it has been furnished with satisfactory recorded evidence of said change. In the event the surface of the Subject Lands becomes owned severally by different parties or is otherwise subdivided, all payments or portions thereof that are due and payable hereunder shall be paid to the owner of that portion of the Subject Lands that is burdened with the surface use herein described.

The operations to be conducted under the terms hereof shall be conducted at the sole cost, risk and expense of Grantee. Grantee shall indemnify and hold Grantor harmless from and against any and all claims, actions, liability, loss, damage or expense of every kind and nature, including, but not limited to attorney's fees and costs, for damages to the Subject Land, environmental and otherwise, to property of any person, firm or corporation or for injury to or death of any person, including, but not limited to, the employees of Grantee, its successors, assigns, contractors or subcontractors, which may, in whole or in part, be caused by or arise out of operations conducted hereunder resulting from the construction, drilling, operation, maintenance or continued use of said meter site and pipeline easement.

Grantee must comply with all valid laws, ordinances, and regulations, whether state, federal, or municipal, applicable to the premises. The use which Grantee makes and intends to make of the premises will not result in the disposal or other release of any hazardous substance or solid waste on or to the premises. In the event that any hazardous substances, solid wastes or other pollutants are disposed or released on and/or under the premises, resulting in the contamination or pollution to the premises or any adjoining property, arising out of said contamination or pollution, caused by Grantee, then Grantee shall indemnify and hold harmless Grantor and Grantor's heirs, executors, administrators, successors, and assigns, from and against any and all liability from the rules and regulations of the Texas Railroad Commission, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, or any other state or federal statute, rule or regulation now in existence or hereinafter enacted relating to such substances or waste and Grantee has the absolute responsibility for all cleanup of said pollution or contamination or reclamation of the Subject Land and all costs and expenses thereof.

All notices shall be in writing with postage prepaid, addressed to Grantor or Grantee at the above-mentioned addresses, or to such persons and addresses as may hereafter be designated by the Parties in writing. All notices shall be deemed delivered when deposited in a United States post office by certified mail.

It is the intent of the parties that this Agreement constitutes a present grant and vesting of interests in Grantee with respect to the subject matter hereof, notwithstanding the date Grantee establishes possession of such interests, and tenders payment as provided herein.

The terms and provisions of this Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective heirs, devisees, representatives, successors and assigns.

TO HAVE AND TO HOLD said Agreement and the rights and privileges granted hereunder unto Grantee, its successors and/or assigns, for so long as the same shall be useful, necessary or convenient for the above described purposes.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**GRANTOR**

The City of Huntsville

\_\_\_\_\_  
Matt Benoit, City Manager

Attest

\_\_\_\_\_  
Lee Woodward, City Secretary

**GRANTEE**

Sealark Investments, LLC

\_\_\_\_\_  
John Schwarz, Jr., President

ACKNOWLEDGMENT

STATE OF TEXAS  
COUNTY OF WALKER

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by Matt Benoit, in his capacity as City Manager for the City of Huntsville.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by John Schwarz, Jr., President for Sealark Investments, LCC, a Texas corporation, on behalf of said company.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas





## CITY COUNCIL AGENDA

4/18/2017

Agenda Item: 6e

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**Item/Subject:** **FIRST READING** - Consider adoption of Ordinance 2017-29, amending Section 10.500 Sidewalks in the *Development Code* of the City of Huntsville and setting an effective date, first reading.

**Initiating Department/Presenter:** Community & Economic Development

**Presenter:** Aron Kulhavy, Director of Community and Economic Development

---

**Recommended Motion:** No action necessary, first reading.

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**Strategic Initiative:** Goal #4 - Infrastructure - Ensure the quality of the City utilities, transportation and physical structures so that the City's core services can be provided in an effective and efficient manner.

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**Discussion:** The City of Huntsville Development Code was updated after a lengthy process and became effective on August 31, 2015. The updated code made a significant change to require the construction of sidewalks for all new development. The only exception provided to this requirement is for the construction of a detached house or two-unit house located on a local street unless one or more of the adjacent properties have an existing sidewalk. During the consideration of the 2015 Development Code update, the Planning Commission and City Council did vote on a Decision Package regarding the construction of sidewalks for new development. Of the five (5) options given in the Decision Package the Commission and the Council both voted for the option to require sidewalk construction for all new development with the exception of in-fill single family residential development.

Since the adoption of the updated Development Code, there have been a significant number of variance requests for sidewalk construction. The variances are heard by the Board of Adjustment. The Board of Adjustment has granted all of the variance requests based on a number of factors, some of which includes the distance for connectivity to an existing sidewalk, TxDOT right-of way issues, and topography/ADA compliance, thus prompting a review of the Development Code requirement by the Planning Commission. A joint workshop was held by the Planning Commission and the Board of Adjustment to discuss the sidewalk construction variance issue. The proposed code language as presented is the result of the joint workshop.

In summary, the revision to the code would require sidewalks only on streets with existing curbs and gutters, except for a limited number of open-ditch streets such as Bearkat Boulevard. In-fill single family residences will still be exempt unless sidewalks are within 100' of the property. These proposed changes do not affect new subdivision construction as sidewalks are still required in all major subdivisions as part of the public improvements. The Planning Commission voted unanimously to recommend approval of the amendment of this Development Code Section for the required construction of sidewalks.

The Planning Commission Discussion Form, as attached, details the content of the proposed ordinance to revise the regulatory code language for the construction of sidewalks.

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**Previous Council Action:** The Development Code was adopted in 1986. Since that time, several amendments have been adopted, many of those were minor changes to address specific issues. In April 2013, the City entered into a contract with Duncan and Associates to draft a Development Code update.

In June 2014, Duncan and Associates held a joint workshop with the City Council and Planning and Zoning Commission as an overview to the proposed changes to the code. The City Council adopted the Development Code in its current form in August 2015 with an effective date of August 31, 2015. Since that date, the Council has adopted amendments to the Development Code concerning manufactured homes, trees in the right-of-way, billboards in the ETJ, and signs with dynamic displays.

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**Financial Implications:**

There is no financial impact associated with this item.

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**Approvals:**     City Attorney         Director of Finance         City Manager

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**Associated Information:**

- Planning Commission Discussion Form (pages 3-4)
- Proposed Ordinance 2017-29 (pages 5-7)
- Street Cross-Section Map (page 8)
- Exerpt from Draft Minutes of March 16, 2017 Planning Commission Meeting (page 9)



## PLANNING COMMISSION AGENDA ITEM DISCUSSION FORM

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Prepared by: Aron Kulhavy, AICP, Community & Economic Development Director/City Planner  
Janet Ridley, Planner; Allison Martin, Planning Assistant

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**MEETING DATE:** March 16, 2017

**SUBJECT:** Development Code Revision of *Section 10.500 Sidewalks*

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This discussion form focuses on the proposed changes to the Development Code concerning the required construction of sidewalks for new development.

During the consideration of the Development Code update in 2015, the Planning Commission and City Council did vote on a Decision Package regarding the construction of sidewalks for new development. Of the five (5) options given in the package the Commission and the Council both voted to require sidewalks on all new development projects with the exception of infill single family residential development. Since the adoption of the updated Code there have been a significant number of variance requests to not construct the required sidewalks. The variance cases are heard by the Board of Adjustment, (which has granted all the variances), thus prompting the review and the proposed revision of the code language.

A Joint Workshop with the Board of Adjustment was held on February 16<sup>th</sup> to discuss the sidewalk construction variance issue. A variety of solutions were discussed. A solution based on whether or not the adjacent street to the development has curbs and/or gutters was suggested. It was agreed to explore this option to address the variance issue. Staff provided the Commission with a map of the City which identified non-curbed streets at the March 2, 2017 meeting. The Commission provided staff direction for revision of the Code language to allow for exceptions for some non-curbed streets to require sidewalk construction because of their proximity to schools and or commercial developments.

Staff has drafted code language to revise *Section 10.500 Sidewalks* in *Article 10 Infrastructure and Public Improvements* to state that sidewalk construction is not required for developments adjacent to **existing** non-curb and gutter streets with the exception for some particular specifically identified streets. (See attached map and attached pages 10-10 & 10-11 for language.)

**This provision will only be for infill/single/individual lot new developments and will not apply to major new subdivisions which require submittal of a preliminary plan, (subdivisions of more than four lots or when construction of public improvements is required to service the lots). The Commission will consider the issue of the required construction of sidewalks for new low-density rural subdivisions in the near future.**

### **STAFF RECOMMENDATION:**

*The Comprehensive plan does recommends the improvement of walkability of neighborhoods through the installation of sidewalks concurrent with all new development, plus the rehabilitation or construction of sidewalks in older neighborhoods, particularly adjacent to schools and parks, however there are areas of Huntsville where connectivity to an existing sidewalk network is a matter of ½ mile or more away; there are issues with drainage within TxDOT owned and*

*maintained right-of-way; and topography issues along with several other issues exit. Therefore, Staff recommends the approval of the proposed code language for **Section 10.500 Sidewalks, Article 10 Infrastructure and Public Improvements.***

## ORDINANCE 2017-29

**AN ORDINANCE OF THE CITY OF HUNTSVILLE AMENDING CHAPTER 24 LAND DEVELOPMENT OF THE HUNTSVILLE, TEXAS CODE OF ORDINANCES BY ADOPTING REVISIONS TO THE DEVELOPMENT CODE OF THE CITY OF HUNTSVILLE, TEXAS; REQUIRING THE PUBLICATION OF THIS ORDINANCE; PROVIDING FOR A SEVERABILITY CLAUSE; REPEALING ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR A PENALTY; MAKING OTHER PROVISIONS AND FINDINGS THERETO; AND DECLARING AN EFFECTIVE DATE.**

WHEREAS, the Planning Commission of the City of Huntsville held public hearings prior to consideration of amending the ordinance;

WHEREAS, the Planning Commission recommended adopting the updates to the City of Huntsville Development Code; and

WHEREAS, the City Council held a public hearing at their meeting on \_\_\_\_\_ prior to consideration of amending the Ordinance; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, COUNTY OF WALKER, STATE OF TEXAS:**

### **I. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Huntsville, Texas, and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

### **II. AMENDMENT**

The Development Code of the City of Huntsville, Texas, Article 10 Infrastructure and Public Improvements; Section 10.500 Sidewalks shall be amended as shown in Exhibit 1 attached hereto and incorporated herein.

### **III. REPEALER**

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

### **IV. SEVERABILITY**

Should any paragraph, sentence, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance

as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**V. EFFECTIVE DATE**

This Ordinance shall take effect on \_\_\_\_\_. The City Secretary shall publish the caption of this Ordinance in the official City newspaper at least twice within ten (10) days of its passage.

**VI. PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 1 of the Development Code of the City of Huntsville, Texas.

**PASSED AND APPROVED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

THE CITY OF HUNTSVILLE, TEXAS

\_\_\_\_\_  
Andy Brauningner, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney

## EXHIBIT 1

### 10.500 Sidewalks

#### 10.501 When Required

##### 10.501.A Arterial and Collector Streets

Sidewalks are required to be installed by the owner of the subject property whenever development occurs on a lot with frontage on an arterial street or on a collector street. Unless the subject property is within 100' of an existing sidewalk, sidewalks are not required to be constructed along existing non-curbed streets except as adjacent to the following roadways:

- Bearkat Boulevard, from Highway 19 to Bobby K Marks Drive;
- Martin Luther King Jr. Drive, from Essex Boulevard to FM 2821;
- Avenue M, from 8<sup>th</sup> Street to FM 247;
- University Avenue, from 7<sup>th</sup> Street to FM 247;
- FM247, from Avenue M/University Avenue to FM 2821; and
- Montgomery Road, from IH 45 S to Veterans Memorial Parkway.

##### 10.501.B Local Streets

Sidewalks are required to be installed by the owner of the subject property whenever development occurs on a lot with frontage on a local street, provided that sidewalks are not required for construction of a detached house or two-unit house unless one or more of the adjacent properties have an existing sidewalk. Sidewalks are not required to be constructed along existing non-curbed streets except as adjacent to the following roadways:

- Avenue M, from Josey Street to IH 45 S.

##### 10.501.C Other Areas

The Planning Commission is authorized to require installation of sidewalks in other locations recommended by the City's adopted sidewalk master plan.

**Commentary: Sidewalks are not required whenever development occurs on a lot with frontage on the main travel lanes of an Expressway/Freeway. The construction of a sidewalk for a development with frontage along a curbed roadway owned and maintained by TxDOT, (Texas Department of Transportation), is not required if not approved for a permit by TxDOT.**



## EXCERPT FROM DRAFT MINUTES OF MARCH 16, 2017 PLANNING COMMISSION MEETING

4. **PUBLIC HEARING** to take testimony regarding the amendment of *Section 10.500 Sidewalks* in *Article 10: Infrastructure and Public Improvements* of the *City of Huntsville Development Code*.

*Chairman Woods opened the Public Hearing. [5:32 PM]*

**Charles Smither, Jr.** expressed his opinion regarding the requirements for sidewalks. He does not feel that single family residential property located on local streets should be exempt, (code *Section 10.501.B*). He hopes that there will be different requirements for low and high density residential subdivisions and had question regarding the proposed commentary after code *Section 10.501.C* regarding definition of Expressway/Freeway main lanes of travel.

**Chairman Woods** questioned **Aron Kulhavy** regarding any authority the City may have regarding Federal/State Highways. Kulhavy indicated the City does not have authority of the right-of-way, only the property which have frontage on the highways. He explained that the commentary referred to by Mr. Smither was drafted to address State Highway 19, for which frontage/service roads for the entire length through Huntsville have not been constructed and adjoining property does have access only from the main lanes of the highway.

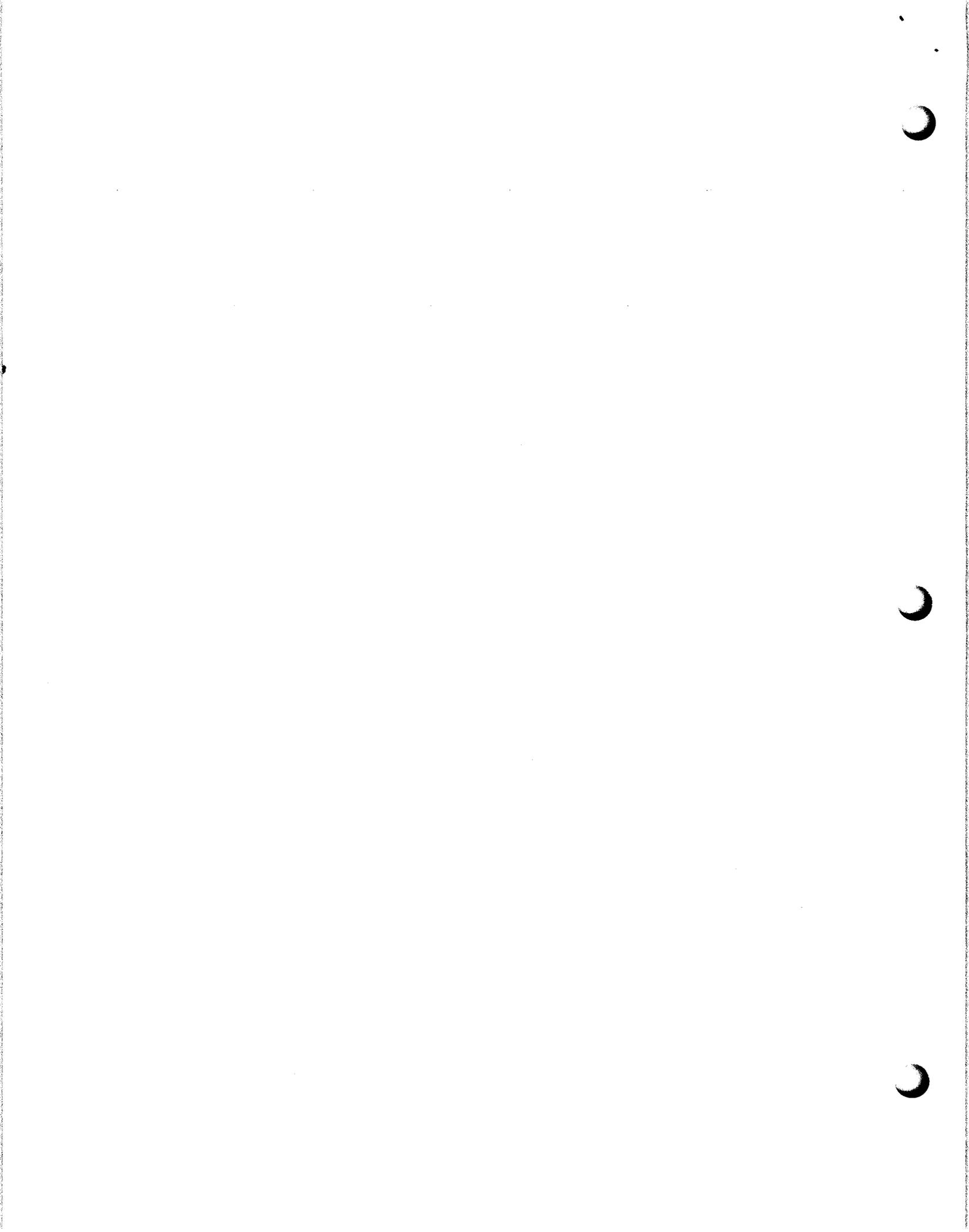
There was additional discussion by the Commissioners regarding the drafted language for the revision of *Section 10.500 Sidewalks* of the *Development Code* with the following being stated/clarified:

- Sidewalks will be required to be constructed along the non-curbed streets listed as exceptions in *Section 10.501.A*;
- The “temporary” variances recently granted by the Board of Adjustments will be voided, and the property owner’s will not have to construct sidewalks in the future;
- The Board of Adjustment was notified of the Public Hearing and invited to come and comment or submit comments to staff prior to this meeting;
- The property adjacent to streets without curbs will not be subject to the requirement to construct sidewalks as a matter of right; and
- A property owner/developer will still have ability to request variance for sidewalk construction if they do not want to construct a sidewalk per code requirement.

*Chairman Woods closed the Public Hearing. [5:46 PM]*

5. **CONSIDER** the amendment of *Section 10.500 Sidewalks* in *Article 10: Infrastructure and Public Improvements* of the *Development Code*.

*Commissioner Garrison moved to recommend approval of the drafted code language, as presented, to revise Section 10.501 Sidewalks in Article 10: Infrastructure and Public Improvements of the Development Code to City Council. Second was by Commissioner Barry. The vote was unanimous.*





## CITY COUNCIL AGENDA

4/18/2017

Agenda Item: 6f

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**Item/Subject:** **FIRST READING** - Consider Ordinance 2017-30, repealing "Smoking" Sections 32-166 through 32-169 of Article III in Chapter 32 of the City Code of Ordinances of the City of Huntsville, Texas, and replacing said sections with 32-166 through 32-176 to enact regulations related to smoking in the city; providing a severability clause, declaring a penalty; making other findings and provisions related thereto: and providing for the publication and effective date hereof, first reading.

**Initiating Department/Presenter:** City Manager

**Presenter:** Matt Benoit, City Manager

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**Recommended Motion:** First reading – no action necessary.

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**Strategic Initiative:** Goal #1 - City Appearance - Provide policies, amenities, and events that enhance the City's already beautiful and historic natural environment.

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**Discussion:** The City Council's adopted 2017 Strategic Plan states, "review and consider various proposals for a smoking ordinance." The City Council has conducted two work sessions on this topic. The City also invited local business owners to attend informal educational meetings to provide their input into this ordinance. Of the estimated 30 business owners who may be affected in some way by this ordinance, three attending a meeting. The input provided by those business owners was positive and supportive of heightened restrictions for smoking in public places.

The attached, recommended ordinance, is modeled after the City of Nacogdoches, and would be characterized as a level "4" (at least by the City staff's informal rating system intended to convey the level of restrictions).

To summarize a few of the more important points:

- Ordinance No. 2017-30 would prohibit smoking in 15 defined areas, and most notably in Bars, Restaurants, Night Clubs and Dance Halls, and furthermore within 20 feet of any public entrance to a business or facility within the city.

Of note, because the definition of the terms, "Restaurant" and "Bar" refer to porches, patios and outside seating areas, these areas would also be prohibited smoking areas.

- Ordinance No. 2017-30 would **not** prohibit smoking in 5 defined areas, including:
  - (1) Private residences, except when used as childcare or health care facilities;
  - (2) A facility operated by a fraternal organization for a charitable, benevolent, or educational function if the premises are controlled by the organization;

(3) Retail tobacco stores that are utilized primarily for the sale of tobacco products, smoking implements, or smoking accessories for on-premises consumption and in which the sale of other products is merely incidental;

(4) A hotel, motel or bed and breakfast room designated as a smoking room and rented to a person, provided the hotel, motel or bed and breakfast may not designate more than 25 percent of its rooms that are rented for temporary overnight occupation by the public as a smoking rooms;

(5) A private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted.

Enforcement of this Ordinance is achieved in four ways:

1. Complaints can be registered with the City Manager.
2. At any mandated inspection (for instance food inspections occur at least twice annually) the owner/operator/manager will be required to complete a self-certification signifying compliance with the smoking ordinance.
3. It is the responsibility of the owner/operator/manager to inform customers/patrons of the restrictions provided in this ordinance.
4. If an owner/operator/manager does not comply with the restrictions of this ordinance or a customer/patron is unwilling to comply, the Police Department is the appropriate place for enforcement.

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**Previous Council Action:** As stated, work sessions conducted on February 15 and April 4, and public meetings on March 20, 21, and 22.

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**Financial Implications:**

There are no known financial impacts associated with this item.

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**Approvals:**     City Attorney         Director of Finance         City Manager

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**Associated Information:**

- Ordinance No. 2017-30 (pages 3-9)

## ORDINANCE NO. 2017-30

**AN ORDINANCE AMENDING THE CITY OF HUNTSVILLE, TEXAS CODE OF ORDINANCES, SPECIFICALLY CHAPTER 32 “OFFENSES AND MISCELLANEOUS PROVISIONS”; MAKING OTHER PROVISIONS AND FINDINGS THERETO; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the Huntsville Code of Ordinances, Chapter 32 “OFFENSES AND MISCELLANEOUS PROVISIONS” provides for the regulations of certain activities for the health, safety and public welfare of the City’s residents, including smoking; and

**WHEREAS**, the City of Huntsville, as a home rule city may regulate this activity pursuant to its broad powers of self-government; and

**WHEREAS**, City Council finds it necessary to amend its existing regulations of these activities to protect the health and public safety; now therefore

**WHEREAS**, the City Council of the City of Huntsville, Texas now wishes to amend Chapter 32 to help promote the health, safety and welfare of its residents;

**WHEREAS**, notice of the agenda for this meeting, was given in accordance with law by posting the same at the place reserved and designated for notices of public meetings and public activities and prior to the adoption of this ordinance.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, that:**

**SECTION 1:** The facts and matters set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed.

**SECTION 2:** Huntsville Code of Ordinances Chapter 32 is hereby amended by replacing Sections 32-166 thru 32-169 of Article III “Smoking” with new Sections 32-166 thru 32-176 as shown in the attached Exhibit “A”.

**SECTION 3:** All ordinances or parts of ordinances that are in conflict or inconsistent with the provisions of this Ordinance shall be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**SECTION 4:** Should any paragraph, sentence, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

**SECTION 5:** This Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Article 4.14 of the Charter of the City of Huntsville, Texas, however enforcement shall not begin until 60 days after its passage.

PASSED AND APPROVED on the this the \_\_\_\_\_ day of \_\_\_\_\_ 2017.

THE CITY OF HUNTSVILLE

\_\_\_\_\_  
Andy Brauninger, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney

# Exhibit A

## Chapter 12- OFFENSES AND MISCELLANEOUS PROVISIONS

### Article III. Smoking

Sec. 32-166. - Purpose.

The purpose of this article is to promote public health by decreasing citizen's exposure to secondhand smoke thereby creating smoke free environments for workers and citizens through regulation in the work place and all public places.

Sec. 32-167. Definitions.

The words, terms, and phrases used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Bar means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, cocktail lounges, and cabarets. This shall include all porch, patio and outside seating areas.

Business means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for nonprofit or profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

Employee means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

Employer means any person, partnership, corporation, including a municipal corporation, or nonprofit entity who employs the services of one or more individual persons.

Enclosed Area means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

Fraternal organization means a nonprofit organization that:

Is chartered by a national organization;

Is tax exempt under section 501(C)(8), (10), or (19) of the Internal Revenue Code;

Operates under a lodge system with a representative form of government; and is organized for the exclusive benefit of the members of the organization and their dependents.

Night club or dance hall means an establishment operated as a place of entertainment, characterized by any of the following as a principal use of the establishment:

- a. Live, recorded or televised entertainment, including, but not limited to performances by magicians, musicians or comedians;
- b. Dancing; or
- c. Any combination of a. and b.

Outdoor venue means city property where seating is provided for spectators by city or its agents.

Park includes neighborhood/community/large urban/natural area and greenways/sports complex parks that are the basic unit of a park system and are recreational and social centers for those living in the nearby service area or from several neighborhoods and possibly may serve a broader community-based recreation need. Parks include areas that preserve unique landscapes and open spaces and include features that emphasize harmony with the natural environment. Parks include areas that accommodate group activities and recreational facilities, consolidated programmed athletic fields, and their associated facilities.

Place of employment means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, and hallways. A private residence used as a permissible home occupation is not considered a place of employment for the purposes of this article unless it is used as a child care, bed and breakfast or health care facility.

Private residence means any household unit or special unit type including but not limited to single-family detached and attached dwellings, two-family dwellings, apartments, condomenia, manufactured homes, or other residential dwelling units.

Public place means any enclosed area to which the public is invited or in which the public is allowed, including but not limited to banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, tattoo parlors, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."

Restaurant means any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. This shall include all porch, patio and outside seating areas.

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products, smoking implements, or smoking accessories for on-premises consumption and in which the sale of other products is merely incidental, which shall include but not be limited to hookah lounges, cigar bars and humidors. In this definition, "primarily" means that the sale of tobacco products, smoking implements or smoking accessories shall be at least 65% of the total sales revenues

Service line means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, including electronic cigarette, pipe, or any other lighted or heated tobacco, nicotine or plant product intended for inhalation, in any manner or in any form, including vaping.

Sports arena means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Sec. 32-168. - Application of article to city-owned facilities.

All enclosed facilities owned by the city and within 20 feet of permanent outdoor venue seating shall be subject to the provisions of this article. The city manager may designate additional no smoking areas at

outdoor venues owned by the city including but not limited to parks and festivals. The posting of signs according to section 32-172 of this article shall denote said areas.

**Sec. 32-169. - Prohibition of smoking in public places.**

(a) Smoking shall be prohibited in all enclosed public places and within 20 feet of any public entrance to a business or facility within the city, including but not limited to the following places:

- (1) Elevators;
- (2) Buses, taxicabs, and other means of public transit under the authority of the city, and ticket, boarding, and waiting areas of public transit depots;
- (3) Restrooms;
- (4) Service lines;
- (5) Retail stores;
- (6) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including but not limited to attorneys offices and other offices, banks, laundromats, hotels, and motels;
- (7) Restaurants;
- (8) Bars, night clubs or dance halls;
- (9) Public areas of aquariums, galleries, libraries, and museums when open to the public;
- (10) Any facility that is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, or other similar performance, except when smoking is part of a stage production, and then only by the actors while performing onstage;
- (11) Sports arenas and convention halls;
- (12) Every room, chamber, place of meeting or public assembly, including school buildings, under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;
- (13) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
- (14) Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, hotels, and other multiple-unit residential facilities; and
- (15) Polling places.

(b) Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

**Sec. 32-170. - Regulation of smoking in places of employment.**

(a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.

(b) Within 60 days of the effective date of this article, each employer having an enclosed place of employment located within the city shall adopt, implement, make known, and maintain a written smoking policy that shall contain the following requirements:

(c) Smoking shall be prohibited in all enclosed areas within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities. Smoking is further prohibited within 20 feet of any public entrance to a building or facility.

(d) The smoking policy shall be communicated by the employer to all employees within three weeks of its adoption.

(d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Sec. 32-171. - Where smoking not regulated.

(a) Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

- (1) Private residences, except when used as childcare or health care facilities;
- (2) A facility operated by a fraternal organization for a charitable, benevolent, or educational function if the premises are controlled by the organization;
- (3) Retail tobacco;
- (4) A hotel, motel or bed and breakfast room designated as a smoking room and rented to a person, provided the hotel, motel or bed and breakfast may not designate more than 25 percent of its rooms that are rented for temporary overnight occupation by the public as a smoking rooms;
- (5) A private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted.

(b) Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment described in this section may declare the entire establishment as a nonsmoking establishment.

Sec. 32-172. - Posting of signs.

(a) A minimum of one "No Smoking" sign or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted at all public entrances in every building or other place where smoking is regulated by this article, by the owner, operator, manager, or other person having control of such building or other place.

(b) Every restaurant, nightclub or dance hall shall have posted at every entrance a conspicuous sign clearly stating smoking is prohibited inside the facility and within 20 feet of any entrance.

Sec. 32-173. - Enforcement.

(a) Enforcement of this article shall be implemented by the city manager.

(b) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the city manager.

(c) The city shall require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager, operator, or other person having control of such establishment that all requirements of this article have been complied with.

(d) It is the responsibility of the owner, manager, operator or employee of any establishment regulated by this article to inform persons violating this article of the appropriate provisions thereof.

(e) It is the responsibility of the owner, manager, operator or employee of any establishment regulated by this article to enforce the regulations of this article at their establishment. Refusal by the owner, manager, operator or employee of the establishment to enforce the regulations of this article shall cause the owner, manager, operator or employee to be guilty of an infraction and subject to penalties consistent with chapter 1, section 1-11 of this Code. In the event patron(s) of an establishment regulated by this article fail to adhere to this article, the owner, manager, operator or employee of the establishment shall contact the city police department.

(f) Notwithstanding any other provision of this article, a private citizen may bring legal action to enforce this article.

Sec. 32-174. - Violations and penalties.

(a) It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.

(b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.

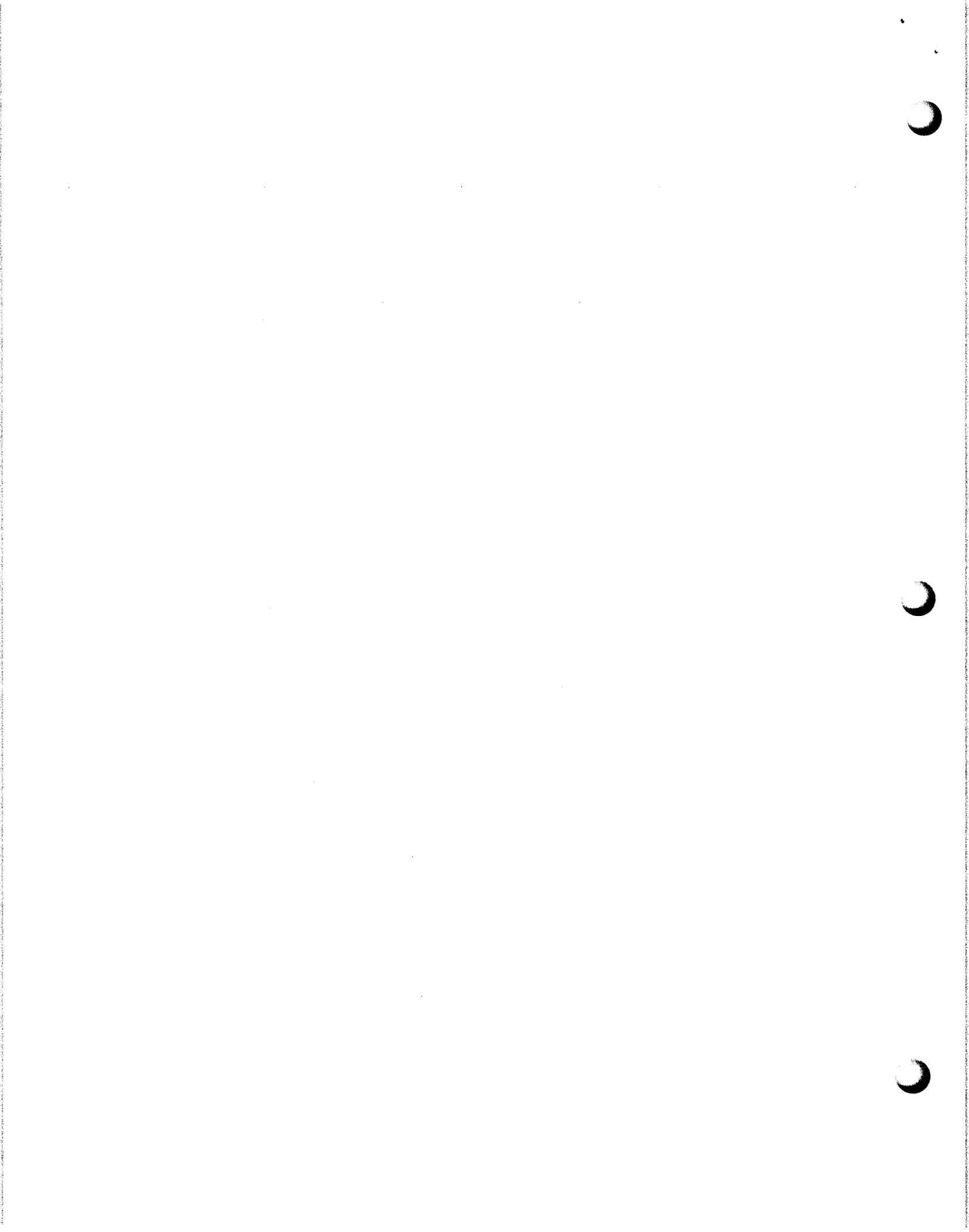
(c) Any person who violates any provision of this article shall be guilty of an infraction and subject to penalties consistent with chapter 1, section 1-11 of this Code.

**Sec. 32-175. - No retaliation.**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smoke-free environment afforded by this article.

**Sec. 32-176. - Other applicable laws.**

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. This article is cumulative of other laws that regulate smoking.



## ORDINANCE NO. 2017-31

**ORDINANCE OF THE CITY OF HUNTSVILLE, TEXAS SUSPENDING THE RATES PROPOSED BY CENTERPOINT ENERGY RESOURCES CORP., d/b/a CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS (“CENTERPOINT” OR “COMPANY”) COMPANY’S GAS RELIABILITY INFRASTRUCTURE PROGRAM (“GRIP”) FILING MADE WITH THE CITY ON MARCH 30, 2017; FINDING THAT THE MEETING COMPLIES WITH THE OPEN MEETINGS ACT; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT, AND DECLARING AN EFFECTIVE DATE**

WHEREAS, on or about March 30, 2017, CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas (“CenterPoint” or “Company”) filed an Annual GRIP adjustment for the Beaumont/East Texas Service Area with the City of Huntsville (“City”) to increase gas rates in the Beaumont/East Texas Service Area pursuant to *Gas Utility Regulatory Act*, TEX. UTIL. CODE (“Gas Utility Regulatory Act”) § 104.301; and

WHEREAS, the Company proposed an effective date of May 29, 2017, for the rate increase; and

WHEREAS, City has exclusive original jurisdiction over the rates, operations and services of a gas utility in areas in the municipality pursuant to Gas Utility Regulatory Act § 103.001; and

WHEREAS, Gas Utility Regulatory Act § 104.301 requires a streamlined process for the recovery of the costs of incremental investment by a gas utility; and

WHEREAS, the City’s reasonable cost for regulatory expenses in ratemaking proceedings shall be reimbursed by the gas utility under Gas Utility Regulatory Act § 103.022; and

WHEREAS, the City will join with other municipalities in a steering committee in order to coordinate the hiring and direction of counsel and/or consultants working on behalf of the steering committee and the City; and

WHEREAS, the City finds the need to suspend the effective date of CenterPoint’s proposed rate increase for 45 days beyond the Company’s proposed effective date until July 13, 2017 in order to review the Company’s filing for compliance with Gas Utility Regulatory Act § 104.301; and

WHEREAS, the City’s review of CenterPoint’s GRIP filing is limited to a ministerial review of the filing for compliance with the statute; and

WHEREAS, the reasonableness of the Company’s investment will be reviewed in CenterPoint’s subsequent base rate case where all costs included in CenterPoint’s GRIP filing will be subject to refund.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, THAT:

Section 1. The statement and findings set out in the preamble to this ordinance are hereby in all things approved and adopted.

Section 2. The effective date of the Company's proposed GRIP rate increase, and the proposed tariffs related thereto, are hereby suspended until July 13, 2017.

Section 3. To the extent the City finds that the rates proposed by CenterPoint's filing comply with Gas Utility Regulatory Act § 104.301, then the rates will become effective by operation of law on July 13, 2017.

Section 4. The City is authorized to join with other municipalities as part of the Beaumont/East Texas Division Steering Committee with the understanding that the Steering Committee will provide direction and guidance to the lawyers who are representing said municipalities.

Section 5. The City employs The Lawton Law Firm, P.C. to represent the City with regard to the proposed rate increase of CenterPoint before local and state regulatory authorities and any court of law and authorizes counsel to employ such rate experts as are recommended by the Steering Committee.

Section 6. The Steering Committee shall review the invoices of the lawyers and/or rate experts for reasonableness before submitting the invoices to CenterPoint for reimbursement.

Section 7. CenterPoint shall reimburse the City, through the designated representative of the Steering Committee, for the reasonable costs of attorneys and consultant fees and expenses related thereto, upon the presentation of invoices reviewed by the Steering Committee.

Section 8. The meeting at which the ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 9. This Ordinance shall become effective from and after its passage.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF HUNTSVILLE, TEXAS

\_\_\_\_\_  
Andy Brauningner, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney

**RESOLUTION 2017-12**

**A RESOLUTION OF THE CITY COUNCIL OF HUNTSVILLE, TEXAS, IN SUPPORT OF A PROPOSAL BY ENTERGY TEXAS, INC. REGARDING THE APPLICATION OF ENTERGY TEXAS INC. TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO CONSTRUCT MONTGOMERY COUNTY POWER STATION IN MONTGOMERY COUNTY IN PUBLIC UTILITY COMMISSION OF TEXAS DOCKET NO. 46416**

WHEREAS, on October 7, 2016, Entergy Texas, Inc. ("Entergy") filed an Application to Amend its Certificate of Convenience and Necessity to Construct Montgomery County Power Station, a new gas-fired generation facility to be located near Willis, Texas with the Public Utility Commission of Texas ("Commission"); and

WHEREAS, Entergy's economic analyses estimate that the Montgomery County Power Station will provide a \$1.7 billion net benefit to customers over 30 years.

WHEREAS additional analyses indicate that the construction of the Montgomery County Power Station will provide significant economic impact to the State of Texas through the creation of new jobs and \$1 billion in economic activity across the state.

WHEREAS, City intervened at the Commission as part of the Entergy Service Area Cities' Steering Committee in Docket No. 46416 to review ETI's proposal; and

WHEREAS, the City of Huntsville is supportive of Entergy's application and finds that the construction of the Montgomery County Power Station is in the public interest; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, THAT:

- Section 1. That the statement and findings set out in the preamble to this resolution are hereby in all things approved and adopted.
- Section 2. The City of Huntsville hereby reaffirms its support for the construction of the Montgomery County Power Station.
- Section 3. The meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.
- Section 4. This resolution shall become effective from and after its passage.

PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2017.

THE CITY OF HUNTSVILLE, TEXAS

\_\_\_\_\_  
Andy Brauning, Mayor

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Lee Woodward, City Secretary

\_\_\_\_\_  
Leonard Schneider, City Attorney





## CITY COUNCIL AGENDA

4/18/2017

Agenda Item: 7c

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**Item/Subject:** Consider adopting Ordinance 2017-32 to amend the Capital Improvement Projects budget.

**Initiating Department/Presenter:** City Council

**Presenter:** Steve Ritter, Finance Director

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**Recommended Motion:** Move to adopt Ordinance 2017-32 to amend the Capital Improvement Projects budget.

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**Strategic Initiative:** Goal #5 - Finance - Provide a sustainable, efficient and fiscally sound government through conservative fiscal practices and resource management.

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**Discussion:** On March 7, 2017, the City Council approved authorization for the City Manager to enter into a contract with HDR Engineering to provide professional services in the development of a TIGER grant application, and adopted Ordinance 2017-22 amending the Capital Improvement Projects budget providing for funds for the contract. Staff received information that it is highly unlikely the Federal Government will fund the TIGER grant this year. As such, the City Manager will not be entering into a contract with HDR Engineering for professional services. The City Manager informed the City Council in his March 24, 2017 "Weekly Update" memo that the budget/funds currently remain in the account/project "TIGER Grant consultant contract." Councilmember Allen requested that an agenda item be placed on the agenda to discuss a budget amendment to return the funds/budget to the projects that were used for budgeting for the contract.

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**Previous Council Action:** None for this agenda item.

**Financial Implications:**

Ordinance 2017-32 with related Exhibit A will reverse what was done with Ordinance 2017-22 on March 7, 2017.

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**Approvals:**     City Attorney             Director of Finance             City Manager

**Associated Information:**

- Ordinance 2017- 32 and related Exhibit A (pages 2 and 3)
- Request from Councilmember Allen (page 4)

**ORDINANCE NO. 2017-32**

**AN ORDINANCE OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING THE 2016-2017 ANNUAL BUDGET AND CAPITAL IMPROVEMENTS PROJECTS (CIP) BUDGETS, ORDINANCE NO. 2016-40 TO AMEND ADOPTED EXPENDITURES OF THE BUDGET; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS**, the 2016-2017 Annual Budget and CIP Budgets were adopted by Ordinance 2016-40 on September 20, 2016;

**WHEREAS**, various unforeseen circumstances affecting the City have presented themselves during the course of the fiscal year;

**WHEREAS**, the City Council considered the circumstances independently, deliberating appropriately on the associated revenues and expenditures and the overall impact on the general financial status of the City;

**WHEREAS**, pursuant to the laws of the State of Texas and the City Charter of the City of Huntsville, Texas, the City Council has determined that it will be beneficial and advantageous to the citizens of the City of Huntsville to amend the annual budget for fiscal year 2016 – 2017 and the Capital Improvements Projects (CIP) budget as set forth herein; and

**WHEREAS**, this ordinance combines the independent Council actions into one budget amendment document;

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

**Section 1.** The findings set forth above are incorporated into the body of this ordinance.

**Section 2.** The annual budget for fiscal year 2016–2017 is hereby amended to include the expenditures and revenues in Exhibit “A” and the Capital Improvements Projects budget is hereby amended to include the expenditures described in Exhibit “A” attached hereto and made a part of this ordinance as if set out verbatim herein.

**Section 3.** All ordinances of the City in conflict with the provisions of this ordinance are hereby repealed, and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

**Section 4.** Should any section, portion, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the force or effect of any other section or portion of this ordinance.

**Section 5.** The necessity for amending the budget for the fiscal year 2016 – 2017 and Capital Improvements Projects, as required by the laws of the State of Texas, requires that this ordinance shall take effect immediately from and after its passage, as the law in such cases provides.

**Section 6.** This ordinance shall take effect immediately after its passage.

PASSED AND APPROVED on this the 18<sup>th</sup> day of April 2017.

**THE CITY OF HUNTSVILLE, TEXAS**

\_\_\_\_\_  
Andy Brauninger, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

**Budget Amendments FY 16-17**  
**April 18, 2017**

**Exhibit  
A**

	Decrease: TIGER Grant consultant contract	\$	229,481
	Increase: Street CIP Unallocated Budget	\$	58,481
	Increase: Street CIP - Bearkat Blvd & Normal Park	\$	171,000
Explanation:	The above returns the funds/budget to the projects that were used for budgeting for the contract for the consultant for writing and developing the TIGER grant application for the City.		

4/11/17 - 3pm

*Presentation, public comment, and discussion on having staff prepare a budget amendment to return funds that were not used to apply for the TIGER grant to their original project.*

Donald Allen