

## AGENDA

Notice is hereby given of a meeting of the Board of Commissioners of Burkburnett to be held on **Monday, August 17, 2015 at 7:00 p.m.** at City Hall-Council Chambers, 501 Sheppard Road, Burkburnett, Texas for the purpose of considering the following agenda items. The Board of Commissioners may discuss and take action on any item on this agenda. The Board of Commissioners reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

The public may speak on items listed on the posted agenda. All persons desiring to address a specific agenda item must submit an "Appearance before the City Commissioners" form prior to the reading of the item to the City Clerk, Janelle Dolan. The Mayor will allow comments before each agenda item for which they have requested to be heard. Comments will be limited to three (3) minutes with a maximum two (2) minute extension following approval by a majority of the members of the Board of Commissioners.

**Item 1.** Mayor: Call meeting to order.

**Item 2.** Invocation-

**Item 3.** Pledge of Allegiance.

**Item 4. CONSENT AGENDA:**

- A. Approval of Minutes from July 2, 2015 Special Called Meeting, July 20, 2015 Regular Meeting, July 21, 2015 Special Called Meeting, and July 29, 2015 Special Called Meeting

**Item 5.** Consider and act upon a final plat, Lots 1 & 2 Block 1, Burke NH Addition.

**Item 6.** Mayor to close regular meeting and open "Public Hearing" for the following Planning & Zoning Commission Case:

- A. Case #2015-22, Specific Use Permit for Lots 1 & 2 Block 1, Burke NH Addition formerly known as WINTERS, C Abstract 322 to allow for an assisted nursing facility.

**Item 7.** Mayor to close Public Hearing and reopen the regular meeting and take any action necessary on Planning & Zoning Commission Cases:

- A. Case #2015-22, Specific Use Permit for Lots 1 & 2 Block 1, Burke NH Addition formerly known as WINTERS, C Abstract 322 to allow for an assisted nursing facility.

**Item 8.** Resolution Number 591. A resolution authorizing the City of Burkburnett to sell the following properties by sealed bids pursuant to Sections 34.05(a) and (b) of the Texas Property Tax Code and the Texas Rules of Civil Procedure: 133 N. Ave F, 100 South Red River Expressway, 0 Bishop Road, 0 4<sup>th</sup> Street, 0 W. 6<sup>th</sup> Street, 122 W. 1<sup>st</sup>, 625 E. 3<sup>rd</sup> St., 316 W. 6<sup>th</sup> Street, 0 Floyd Street, and 109 S. Avenue B.

**Item 9.** Discuss and take any action necessary on curbside recycling.

**Item 10.** Discuss and take any action necessary on Veolia Contract.

**Item 11.** Discuss and take any action necessary on setting dates for public hearings for the FY 2016 Budget and proposed tax rate.

**Item 12.** Discuss and take any action necessary on FT Felty Operating Co Oil Well permit.

**Item 13.** Ordinance Number 883. An ordinance superseding Ordinance Numbers 571 and 880 of the City of Burkburnett, Texas presently codified as Chapter 53, Water in the Code of Ordinances, providing penalties, severability and an effective date.

**Item 14.** Discuss and take any action necessary on agreement with Burkburnett NH Realty, LTD., for utility expansion in TIF Zone.

**Item 15.** Discuss and take any action necessary on agreement with Burkburnett NH Realty, LTD., for tax abatements.

**Item 16.** Review of monthly reports.

- A. Public Works
  - Family Aquatic Center
- B. Public Safety
  - Hotter 'n Hell
- C. Economic Development
  - Director Introduction

**Item 17.** Public Comments.

The Board of Commissioners invites citizens to speak on any topic.

Please fill out an "Appearance before City Commissioners" form in order to address the Commissioners and turn the form in prior to 7:00 p.m. to City Clerk, Janelle Dolan.

Public Comments are limited to five minutes. Time limits can be adjusted by the Mayor as to accommodate more or fewer speakers.

**Unless the item is specifically noted on this agenda, the Board of Commissioners is required under the Texas Open Meetings Act to limit its response to one of the following:**

**\*Responding with a statement of specific factual information or reciting the City's existing policy on that issue.\***

**Item 18.** City Manager's report.

- Budget Calendar Dates
- TML Region 5 Meeting/TML Conference
- BDC Director- Meet & Greet, August 25, 2-4 pm

**Item 19.** Commissioner's Comments.

Pursuant to Government Code Section 551.0415, City Commissioner Members may make a report about items of Community interest during a meeting of the governing body without having given notice of the report. Items of community interest include:

- \*Expressions of thanks, congratulations, or condolence;
- \*Information regarding holiday schedules;
- \*An honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of the person's public office of public employment is not an honorary or salutary recognition for purposes of this subdivision;
- \*A reminder about an upcoming event organized or sponsored by the governing body;
- \*Information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; and
- \*Announcements involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

**Item 20.** Adjournment.

I, Janelle Dolan, City Clerk for the City of Burkburnett, Texas do hereby certify that I posted this agenda on the glass front door of the City Hall, facing the outside at 12:00 p.m. on August 13, 2015 in compliance with the Open Meeting Act Chapter 551.



Janelle Dolan, City Clerk

Posted 8/13/15 @ 12:00 P.m.

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 72 hours prior to this meeting. Please contact the City Clerk's office at (940) 569-2263 for further information.

## ***MINUTES***

### ***BOARD OF COMMISSIONERS***

The Board of Commissioners of the City of Burkburnett, Texas met in a special called meeting on July 2, 2015 at 12:00 p.m. in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meetings Act. The following Commissioners were present:

Carl Law	Mayor
Bill Lindenborn	Mayor Pro-Tem
Randy Brewster	Commissioner
Frank Ducos	Commissioner
Don Hardy	Commissioner
Marguerite Love	Commissioner
Michael Tugman	Commissioner

Others present: Mike Whaley, City Manager; Trish Holley, Director of Administration; Gordon Smith, Director of Public Works; Janelle Dolan, City Clerk; Ed Stahr, Police Chief; Rod Ryalls, Fire Chief and Chris Eckert, NewGen Strategies & Solutions.

Item 1. Mayor Law called the meeting to order and welcomed the visitors.

Item 2. Invocation was given by Commissioner Lindenborn.

Item 3. The Pledge of Allegiance was led by Commissioner Ducos.

Item 4. Mike Whaley, City Manager, addressed the Mayor and Commissioners and introduced Chris Eckert, NewGen Strategies & Solutions who discussed the key utility issues for FY 2016 which included degraded financial performance due to drought; delayed capital spending; and uncertain revenue performance for FY-end 2015. Mr. Eckert offered his opinion as to where the City of Burkburnett has been and where we are going as related to the Water Fund. Mr. Whaley then highlighted the Fiscal Year 2016 Water Fund Budget. Mr. Whaley presented a proposed Water Fund budget in the amount of \$3,077,476 expenses and \$2,848,093 in revenues and Wastewater Fund budget in the amount of \$946,228 expenses and \$1,227,615 in revenues. This will leave a projected unappropriated balance of \$34,004. Mr. Whaley stated the City will need to remain conservative and may need to reevaluate the water fund in January.

Item 5. City Manager Comments.

A. Mr. Whaley reported City Hall will be closed on July 3<sup>rd</sup>.

- B. Mr. Whaley reported Freedom Fest will be held at Sheppard Air Force Base. The City is a stage sponsor this year and will have a booth. The Mayor and Commissioners are invited to stop by.
- C. Mr. Whaley stated the EDC Director on-site interviews have been completed. He will be presenting his selection at the July 20<sup>th</sup> meeting.

Item 6. No Commissioner Comments.

Item 7. Motion was made by Commissioner Tugman, seconded by Commissioner Hardy to adjourn. Motion carried unanimously.

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Carl Law, Mayor

**ATTEST:**

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Janelle Dolan, City Clerk

## ***MINUTES***

### ***BOARD OF COMMISSIONERS***

The Board of Commissioners of the City of Burkburnett, Texas met in a regular meeting on Monday July 20, 2015 at 7:00 p.m. in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meetings Act. The following Commissioners were present:

Carl Law	Mayor
Bill Lindenborn	Mayor Pro Tem
Randy Brewster	Commissioner
Frank Ducos	Commissioner
Don Hardy	Commissioner
Marguerite Love	Commissioner
Mike Tugman	Commissioner

Others present: Mike Whaley, City Manager; Trish Holley, Director of Administration; Gordon Smith, Director of Public Works; Janelle Dolan, City Clerk; and Ed Stahr, Police Chief; Lahoma Vaughn, Police Lieutenant; Jonny Zellner, Emergency Management Coordinator; Jeff Krc, Assistant Emergency Management Coordinator; and Rod Ryalls, Fire Chief.

Item 1. Mayor Law called the meeting to order and welcomed the visitors.

Item 2. Invocation was given by Weslie Odom, Pastor of Grace Lutheran Church.

Item 3. The Pledge of Allegiance was led by Commissioner Tugman.

Item 4. Consent Agenda.

A. Approval of Minutes from June 5, 2015 Special Called Meeting and June 15, 2015 Regular Meeting

Motion was made by Commissioner Love, seconded by Commissioner Hardy to approve Consent Agenda 4. Motion carried unanimously.

Item 5. Resolution Number 588 was presented in its entirety. A resolution of gratitude was presented to David Rivers for his courageous act of heroism on June 13, 2015.

Item 6. Gordon Smith, Director of Public Works, addressed the Mayor and the Board of Commissioners stating that a position opened on the Parks and Recreation Board when Curtis Willis declined his appointment. Tiffany King had submitted an application to

serve on this board. Mr. Smith stated that staff recommends approval of the appointment of Tiffany King to the Parks and Recreation Board.

Motion was made by Commissioner Tugman, seconded by Commissioner Brewster to approve the appointment of Tiffany King to the Parks and Recreation Board. Motion carried unanimously.

Item 7. Mike Whaley, City Manager, addressed the Mayor and Board of Commissioners and stated that the City is moving into the next phase of the Gresham Road reconstruction project. TXDOT has completed the Right of Way (ROW) acquisition maps required for the project. Mr. Whaley stated the professional service agreement with HDR Engineering, Inc. details the scope of services, ROW acquisition rates, and terms and conditions of the agreement. Mr. Whaley stated the estimated total cost of the ROW acquisition to be approximately \$155,000.00 - \$175,000.00. In regards to the overall project, once the ROW acquisition is completed, the City would then begin transition into the utility relocation phase of the project. Both of these phases would have to be accomplished prior to TXDOT's awarding of the bid and breaking ground on construction.

Motion was made by Commissioner Love, seconded by Commissioner Ducos to approve the professional agreement with HDR Engineering, Inc. for the Gresham Road ROW acquisition. Motion carried unanimously.

Item 8. Resolution Number 586 was presented in its entirety. A resolution approving the submission of the grant application for an AFIS Latent Fingerprint Station to the Office of the Governor, Criminal Justice Department. Chief Stahr addressed the Mayor and Board of Commissioners and stated that the Police Department submitted and won approval for a grant in the amount of \$23,381.56. The monies will be used to purchase the equipment which will assist in the identification of potential suspects of crimes committed within the City of Burkburnett. Lieutenant Lahoma Vaughn provided more information on the equipment.

Motion was made by Commissioner Lindenborn, seconded by Commissioner Hardy to approve Resolution Number 586 as presented. Motion carried unanimously.

Item 9. Resolution Number 587 was presented in its entirety. A resolution approving the submission of the grant application for a Video Surveillance Project to the Office of the Governor, Criminal Justice Department. Chief Stahr addressed the Mayor and Board of Commissioners and stated that the Police Department submitted and won approval for a grant in the amount of \$18,350.00. The monies will be used to purchase the equipment that will assist in narcotic surveillance activities along with emergency operations of the Police and Fire Department. Jeff Krc, Assistant Emergency Management Coordinator, provided more information about the application process and the equipment that will be purchased.

Motion was made by Commissioner Hardy, seconded by Commissioner Lindenborn to approve Resolution Number 587 as presented. Motion carried unanimously.

Item 10. Ordinance Number 882 was presented in its entirety. Caption of same being:

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, AMENDING THE CODE OF ORDINANCES; TITLE IX. GENERAL REGULATIONS, ADOPTING CHAPTER 102: WHICH REGULATES SMOKING IN PUBLIC PLACES IN THE CITY LIMITS OF THE CITY OF BURKBURNETT; PROVIDING A PENALTY FOR THE VIOLATION OF SUCH OFFENSES; PROVIDING FOR THE REPEAL OF ORDINANCE 876; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING THIS ORDINANCE IS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

Mr. Whaley addressed the Mayor and Commissioners and stated that since passing the smoking ordinance, there have been a few concerns that have been brought to the staff's attention. These concerns have been addressed with amendments to the ordinance. First amendment pertains to the availability of smoking rooms for hotels and motels. The City has included an exemption that states "that not more than twenty percent (20%) of the rooms rented to guests in a hotel or motel may be designated as smoking rooms. All smoking rooms must be on the same floor, must be contiguous and must be clearly marked as smoking rooms." The second amendment pertains to fraternal organizations. The City has also included an exemption that states "buildings or portions of buildings owned by fraternal organizations that received the certificate of occupancy prior to July 1, 2015 and are used solely for the use of their members are exempt." The ordinance as presented will resolve concerns for both the hotel/motel industry and fraternal organizations.

Motion was made by Commissioner Brewster, seconded by Commissioner Love to approve Ordinance Number 882 as presented. Motion carried unanimously.

Item 11. Mayor Law closed the meeting at 7:30 p.m. and opened the Executive Session pursuant to the Texas Open Meetings Act, Chapter 551 of the Texas Government Code; the Board of Commissioners may convene in Executive Session regarding the following matters:

A. SECTION 551.074(a)-Deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.

1) Employment of Economic Development Director

Item 12. Mayor Law reconvened the regular meeting at 8:20 p.m.

Motion was made by Commissioner Tugman, seconded by Commissioner Lindemborn to give the City Manager the authority to employ an Economic Development Director. Motion carried unanimously.

Item 13. Review of monthly reports.

A. Public Works:

- Mr. Smith provided an update on the Family Aquatic Center attendance and reported everything is going well.
- Mr. Smith provided the following information on the Gresham Road project: it is a 3 miles in distance, the anticipated construction cost is 4.6 million dollars which includes federal funds. Mr. Smith stated there will also be a sidewalk along the south side of Gresham Rd.
- Mr. Smith reported the City Auction, held on July 25 at the Light Plant, in conjunction with the Fire Department and Wichita County.

B. Public Safety:

- Rod Ryalls, Fire Chief, made a presentation on ISO's Public Protection Classification (PPC) Program. ISO collects information on municipal fire-protection efforts in communities throughout the United States. In each of those communities, ISO analyzes the relevant data using our Fire Suppression Rating Schedule (FSRS). ISO then assigns a Public Protection Classification from 1 to 10. Class 1 being the best and Class 10 indicates that the area's fire-suppression program doesn't meet ISO's minimum criteria. Chief Ryalls reported the ISO rating has improved one grade. The new rating is 4/4X.

Item 14. Public Comments:

- Janie Avey, 1500 Chaparral, left a letter to be presented to the Mayor and Commissioners.

Item 15. City Manager's report.

- Mr. Whaley reported the variance has been approved for the Entryway Signs and we are about 45 days out from awarding bids for the project.
- Mr. Whaley stated Scott Hogue's Retirement Celebration is going to be held on July 24 at 3:30 pm, in the Community Center.
- Mr. Whaley reported the City's party is going to be held on August 8 from 10 am – 12 pm at Boomtown Bay. The Mayor and Commissioners are invited to attend.

Item 16. No Commissioner comments.

Item 17. Motion was made by Commissioner Brewster, seconded by Commissioner Tugman to adjourn. Motion carried unanimously.

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Carl Law, Mayor

**ATTEST:**

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Janelle Dolan, City Clerk

## ***MINUTES***

### ***BOARD OF COMMISSIONERS***

The Board of Commissioners of the City of Burkburnett, Texas met in a special called meeting/workshop on July 21, 2015 at 12:00 p.m. in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meetings Act. The following Commissioners were present:

Carl Law	Mayor
Bill Lindenborn	Mayor Pro-Tem
Randy Brewster	Commissioner
Frank Ducos	Commissioner
Don Hardy	Commissioner
Marguerite Love	Commissioner
Michael Tugman	Commissioner

Others present: Mike Whaley, City Manager; Trish Holley, Director of Administration; Gordon Smith, Director of Public Works; Janelle Dolan, City Clerk; Ed Stahr, Police Chief; Rod Ryalls, Fire Chief and Matthew Garrett, NewGen Strategies & Solutions.

Item 1. Mayor Law called the meeting to order and welcomed the visitors.

Item 2. Invocation was given by Commissioner Love.

Item 3. The Pledge of Allegiance was led by Commissioner Hardy.

Item 4. Mike Whaley, City Manager, addressed the Mayor and Commissioners and introduced Matthew Garrett, NewGen Strategies & Solutions who completed a historical review of the General Fund for the past 10 years. Mr. Whaley then highlighted the Fiscal Year 2016 General Fund Budget. Mr. Whaley presented a proposed General Fund budget in the amount of \$5,736,662 expenses and \$5,423,565 in revenues. This will leave a projected unappropriated balance of (\$313,097). Mr. Whaley stated no decisions need to be made today. Staff is still waiting on the Truth and Taxation rate.

Item 5. City Manager Comments.

- Mr. Whaley stated the next scheduled budget meetings are 7/30 and 8/6 at noon.

Item 6. No Commissioner Comments.

Item 7. Motion was made by Commissioner Tugman, seconded by Commissioner Ducos to adjourn. Motion carried unanimously.

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Carl Law, Mayor

**ATTEST:**

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Janelle Dolan, City Clerk

**MINUTES**

**BOARD OF COMMISSIONERS**

The Board of Commissioners of the City of Burkburnett, Texas met in a special called meeting/workshop on July 29, 2015 at 12:00 p.m. in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meetings Act. The following Commissioners were present:

Carl Law	Mayor
Bill Lindenborn	Mayor Pro-Tem
Randy Brewster	Commissioner
Frank Ducos	Commissioner
Don Hardy	Commissioner
Marguerite Love	Commissioner

Commissioner Tugman was not present.

Others present: Mike Whaley, City Manager; Janelle Dolan, City Clerk; and Ed Stahr, Police Chief.

Item 1. Mayor Law called the meeting to order and welcomed the visitors.

Item 2. Invocation was given by Commissioner Ducos.

Item 3. The Pledge of Allegiance was led by Commissioner Love.

Item 4. Mayor Law closed the meeting at 12:05 p.m. and opened the Executive Session pursuant to the Texas Open Meetings Act, Chapter 551 of the Texas Government Code; the Board of Commissioners may convene in Executive Session regarding the following matters:

SECTION 551.074(a)-Deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.

Employment of Economic Development Director

Item 5. Mayor Law reconvened the regular meeting at 12:58 p.m.

Motion was made by Commissioner Brewster, seconded by Commissioner Hardy for the City to pay \$25,000 of the Economic Development Director's salary for this year and the Burkburnett Development Corporation will pay the remaining \$45,000 of the salary along with other benefits to complete his pay package. Motion carried unanimously.

Item 6. Resolution Number 589. A resolution authorizing an amendment to the Burkburnett Development Corporation bylaws.

Mike Whaley, City Manager, addressed the Mayor and Commissioners and stated this resolution contains the following amendment:

The Executive Director of the Burkburnett Development Corporation shall be an employee of the City and report to the City Manager. The funds for the salary and benefits of the Executive Director shall be provided by the Corporation, the City or both the Corporation and the City. Any Executive Director hired on or after July 29, 2015 shall reside within the City limits of the City of Burkburnett. The Executive Director will be a non-voting member of the Board of Directors and all committees appointed by the Board of Directors.

Motion was made by Commissioner Hardy, seconded by Commissioner Lindenborn to approve Resolution Number 589 as presented. Motion carried unanimously.

Item 7. Resolution Number 590. A resolution amending the City of Burkburnett's Personnel Policy Handbook.

Mr. Whaley addressed the Mayor and Commissioners and reported this resolution contains the following addition to the City's Personnel Policy Handbook:

That a section entitled "Department Heads" be added to the Burkburnett Personnel Policy Handbook and should read as follows:

Department heads for the City of Burkburnett are the positions of Chief of Police, Director of Administration, City Clerk, Director of Public Works and Executive Director of the Burkburnett Development Corporation. Department heads answer to the City Manager. Department heads hired on or after July 29, 2015 must reside in the City limits of the City of Burkburnett.

Motion was made by Commissioner Lindenborn, seconded by Commissioner Love to approve Resolution Number 590 as presented. Motion carried unanimously.

Item 8. City Manager Comments.

- Mr. Whaley reported the Street Department is working on a seal coat project on following streets: Pawhuska, Berry and Cropper.

Item 9. No Commissioner Comments.

Item 10. Motion was made by Commissioner Lindenborn, seconded by Commissioner Hardy to adjourn. Motion carried unanimously.

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Carl Law, Mayor

**ATTEST:**

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Janelle Dolan, City Clerk



## City Commission Agenda Memo

**From:** Gordon Smith, Director of Public Works

**Date:** August 17, 2015

**Item:** Discuss and take any action necessary on a final plat, Burke NH Addition Lots 1 and 2 Block 1

### Background

William Clement and William Campbell, Owners of the property at 1007 South Red River Expressway presented an application request for a Final Plat to construct a skilled nursing facility. The property is zoned Commercial Business and a Specific Use Provision is required for the facility.

The property is 8.894 acres and is presented to be final platted into 2 commercial lots. Lot 1 is 5.626 acres and Lot 2 is 3.268 acres. The skilled nursing facility is proposed to be constructed on Lot 1 and Lot 2 will remain in current status for proposed future development.

The final plat is in compliance with Subdivision Ordinance and Zoning building limit lines per commercial business district requirements of the ordinance. The property was previously zoned commercial and will remain commercial.

The Planning and Zoning Board met on August 11, 2015 and voted unanimously to recommend to City Commissioners approval of the final plat.

### Fiscal Impact

N/A

### Options

- Approve Final Plat
- Not approve Final Plat

### Staff Recommendation

Staff recommends to City Commissioners approval of the final plat of Burke NH Addition Lots 1 and 2 Block 1.

### Attachments

- 1) Final Plat Burke NH Addition Lots 1 and 2 Block 1.

STATE OF TEXAS  
COUNTY OF WICHITA

WHEREAS Burke NH Realty, Ltd and A. P. & C. Development Corporation are the owners of 9.48 acres out of the C. Winters Survey, A-322, Burkburnett, Wichita County, Texas, and more particularly described by metes and bounds as follows:

BEGINNING at an iron rod found at the intersection of the East line of U.S. 287/IH 44 and the South line of a 10 foot alley out of Section Four, Ashton Addition as recorded in Volume 3, Page 180A and 180B, Wichita County Plat Records, for the Northwest corner of this tract;

THENCE N 89° 32' 48" E, with the South line of said 10 foot alley, a distance of 535.63 feet to an iron rod found in the West line of a 20 foot alley out of Section 5, Ashton Addition as recorded in Volume 23, Page 197 and 198, Wichita County Plat Records, for the Northeast corner of this tract;

THENCE S 00° 03' 38" W, with the West line of said 20 foot alley, at 10.00 feet pass a 1/2" iron rod set, at 742.50 feet pass a 1/2" iron rod set in the North right of way line of Merian Drive, and continuing on the same course, a total distance of 792.50 feet to a 1/2" iron rod set in the South right of way line of Merian Drive, for the Southeast corner of this tract;

THENCE N 89° 53' 46" W a distance of 509.90 feet to a 1/2" iron rod set in the East line of U.S. 287/IH 44, for the Southwest corner of this tract;

THENCE N 01° 48' 35" W, with the East line of U.S. 287/IH 44, at 50.03 feet pass a 1/2" iron rod set in the projected North right of way line of Merian Drive, at 777.73 feet pass a 1/2" iron rod set, and continuing on the same course, a total distance of 787.73 feet to the PLACE OF BEGINNING and containing 9.48 acres of land.

THEREFORE, the owners of the land shown on this plat and whose names are subscribed hereto, and in person or through a duly authorized agent hereby dedicates to the use of the public forever all streets, alleys, parks, watercourses, drains, easements and public places thereon shown for the purpose and consideration therein expressed and further warrants that they have lawful authority to make such dedications.

BURKE NH REALTY, LTD  
By: NTF Realty, Inc. General Partner

By: \_\_\_\_\_  
William E. Campbell, President

Howard R. Clement, President  
A. P. & C. Development Corporation

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared Don Miller, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public, \_\_\_\_\_ County, Texas

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared Howard R. Clement, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public, \_\_\_\_\_ County, Texas

This Plat of Lot 1, Block 1, Burke NH Addition, an addition to the City of Burkburnett, Texas, and is hereby approved.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor, City of Burkburnett

This is to certify that all taxes due and collected by the Burkburnett Independent School District on the above described property have been paid up to and including \_\_\_\_\_, with the following exceptions:

This certification is conditional on values certified by the Appraisal District as of this date. Any changes to the certified value made subsequent to the date of the certification are not included.

Tax Collector: \_\_\_\_\_

by Deputy: \_\_\_\_\_

Date: \_\_\_\_\_, 2015

This is to certify that all taxes due and collected by Wichita County, and the City of Burkburnett on the above described property have been paid up to and including \_\_\_\_\_, with the following exceptions:

This certification is conditional on values certified by the Appraisal District as of this date. Any changes to the certified value made subsequent to the date of the certification are not included.

Tax Collector: \_\_\_\_\_

by Deputy: \_\_\_\_\_

Date: \_\_\_\_\_, 2015

I hereby certify that this plat has been prepared from an actual and accurate field survey of the land under my personal supervision on July, 2015; and that all information shown is true and correct; and that all monuments shown thereon were properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Wichita Falls, Texas.



DEVIN G. SMITH  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5849

# FINAL PLAT BURKE NH ADDITION LOTS 1 AND 2 BLOCK 1

BURKBURNETT, TEXAS  
OUT OF  
THE C. WINTERS SURVEY, A-322

JULY, 2015  
SCALE: 1" = 100'

The herein described property does not lie within the Special Flood Hazard Areas inundated by 100 Year Flood as delineated on the Flood Insurance Rate Map for the City of Burkburnett, Wichita County, Texas.

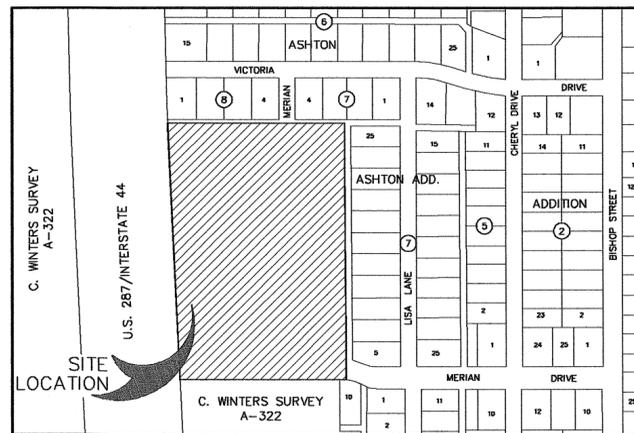
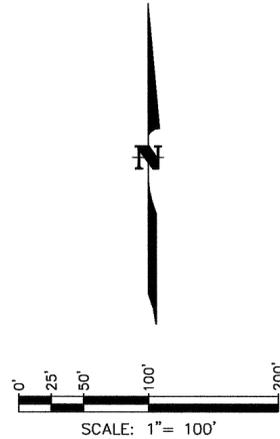
Panel Number: 48485C0185G.

Dated: February 3, 2010

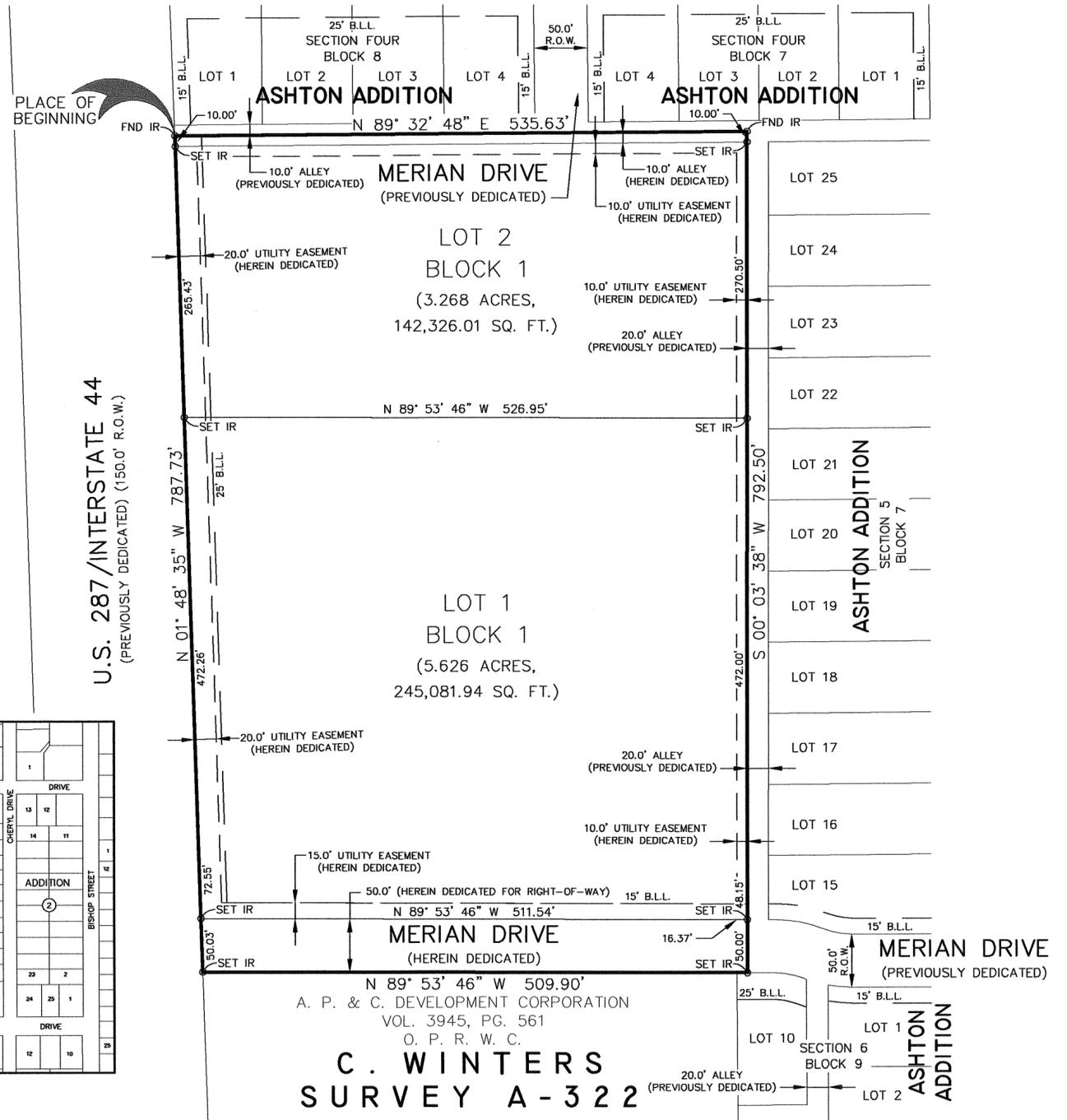
as published by the U.S. Department of Homeland Security, Federal Emergency Management Agency.

Flood Zone designation is Zone X.

BASIS OF BEARING IS THE EAST LINE OF U.S. 287/IH 44 BEING N 01° 48' 35" W



LOCATION MAP  
NO SCALE



**OWNER**  
**BURKE NH REALTY, LTD**  
**NTF REALTY, INC. GENERAL PARTNER**  
**4809 COLE AVENUE STE 347**  
**DALLAS, TEXAS 75205**  
**PHONE (214) 521-9293**

**OWNER**  
**A. P. & C. DEVELOPMENT CORPORATION**  
**P.O. BOX 575**  
**BURKBURNETT, TEXAS 76354**  
**PHONE (940) 569-3333**

**PREPARED BY**  
**CORLETT, PROBST & BOYD, P.L.L.C.**  
**ENGINEERS & SURVEYORS**  
**4605 OLD JACKSBORO HIGHWAY**  
**WICHITA FALLS, TEXAS 76302**  
**PHONE (940) 723-1455**



## City Commission Agenda Memo

**From:** Gordon Smith, Director of Public Works

**Date:** August 17, 2015

**Item:** Discuss and take any action necessary on a Specific Use Provision Application and Site Plan to construct a skilled nursing facility at 1007 South Red River Expressway Burkburnett Texas.

### Background

Don Miller, developer and owner of the proposed nursing facility, presented an application request for a Specific Use Provision (SUP) to construct a skilled nursing facility at 1007 South Red River Expressway Burkburnett Texas. The property is zoned Commercial Business and a Specific Use Provision is required for the Skilled Nursing Facility.

The Facility is 52,000 square feet with a 7-8 million dollar construction value. The facility will have a 130 licensed beds in semi-private rooms. The facility will employ 130 employees with a total 4 million dollar payroll.

The Planning and Zoning Board met on August 11, 2015 and voted unanimously to recommend to City Commissioners approval of the Specific Use Application with the contingency that City Commissioners receive a revised site plan for review prior to the meeting.

Public input was received at the Planning and Zoning meeting a total of 8 residents voiced concerns on lighting, security, maintenance and traffic. All concerns were addressed as the owner and engineer described the new improvements. Public expressed that the development would help current conditions created by the existing field (i.e.; dirt, weeds and rodents).

### Fiscal Impact: Proposed Incentive Agreements

TIF: \$170,000 funded for utility (Developer: \$225,000 funded for Marian Drive Extension)

EDC: \$132,000 funded for utility  
\$90,000 funded for job creation

City: 10 yr. tax abatement

County: 10 yr. tax abatement

### **Options**

- Approve Specific Use application
- Approve with Contingencies
- Deny Application

### **Staff Recommendation**

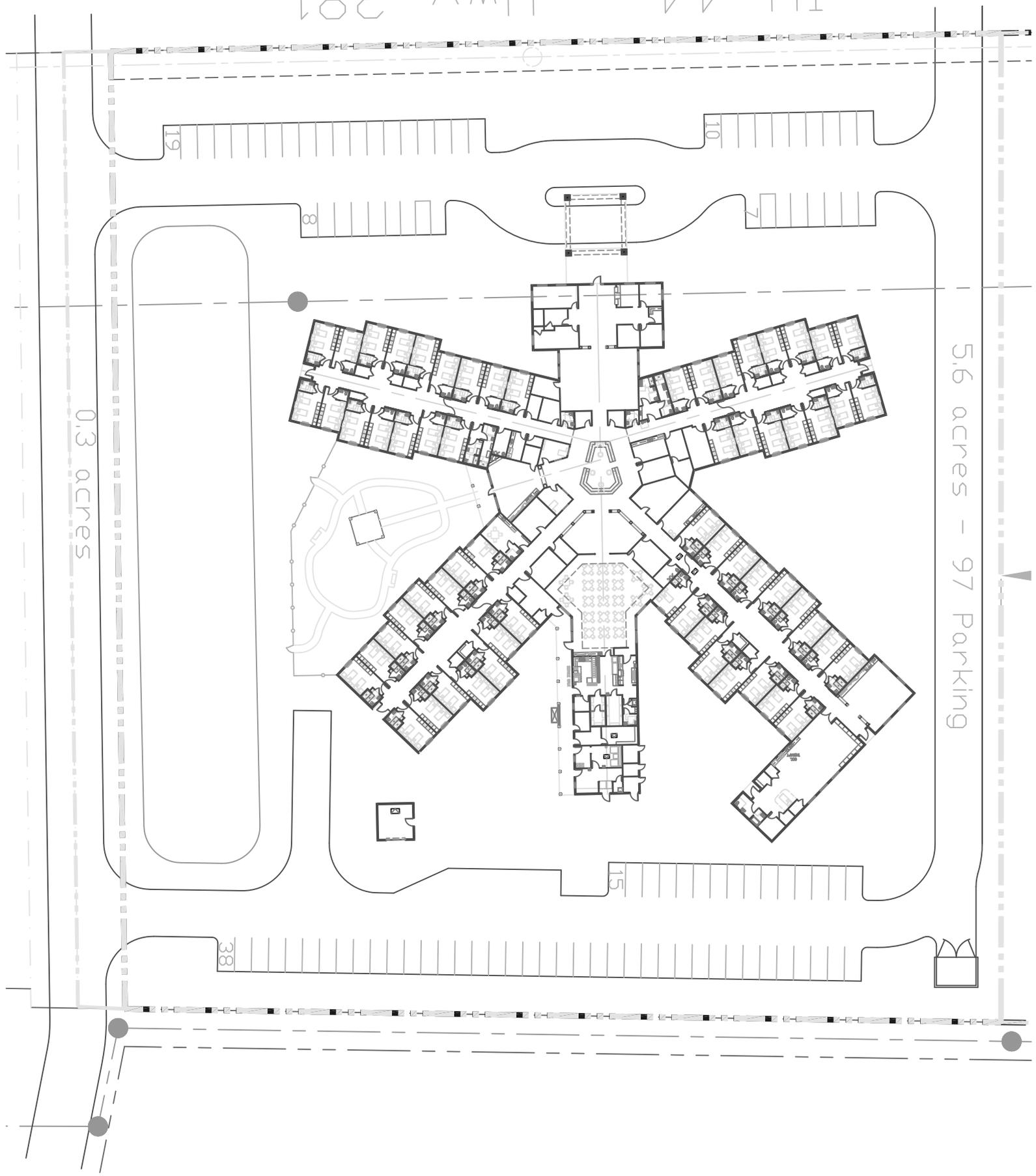
Staff recommends approval of the SUP application with the contingency that a finalized site plan be submitted to staff and all requirements set forth in the zoning ordinance be included in the final site plan prior to the issuance of a building permit.

### **Attachments**

- 1) Specific Use Application.
- 2) Preliminary Site Plan



IH 44 - HWY 281



0.3 acres

5.6 acres - 97 Parking

19

10

8

7

15

38



## City Commission Agenda Memo

**From:** Mike Whaley  
City Manager

**Date:** August 17<sup>th</sup>, 2015

**Item:** Resolution Number 591 – authorizing solicitation of sealed bids for properties in delinquent tax status

### Background

This resolution allows us to solicit sealed bids on properties in delinquent tax status which did not sell in the Sherriff's auction. Notice of resale would be published in the paper on August 20<sup>th</sup> and 27<sup>th</sup>. Deadline for submitting sealed bids would be September 21<sup>st</sup> at 12:00pm and opened at 2:00pm. The bids would then be considered at the regular scheduled meeting on September 21<sup>st</sup> at 7:00pm.

### Fiscal Impact

N/A

### Options

- Approve Resolution 591
- Take no action

### Staff Recommendation

Staff recommends approving Resolution 591 and beginning the bidding process.

### Attachments

Resolution 591

## RESOLUTION NUMBER 591

### **A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS AUTHORIZING THE SOLICITATION OF SEALED BIDS FOR PROPERTIES IN BURKBURNETT, TEXAS PURSUANT TO SECTIONS 34.05(a) AND (b) OF THE TEXAS PROPERTY TAX CODE AND THE TEXAS RULES OF CIVIL PROCEDURE.**

WHEREAS, on the following dates the City of Burkburnett, along with the Burkburnett Independent School District and Wichita County, recovered judgments in the listed District Court of Wichita County, Texas against the listed defendants, in various cause numbers as listed and styled, for delinquent taxes, penalties and interest on the property referred to herein as the "property" and described as follows:

Tract 1: Cause No. 43,198-A; 30<sup>th</sup> District Court of Wichita County;  
Burkburnett Independent School District vs. Dougherty, Chase;  
Judgment date: October 30, 2014;

Lots 2 and 3, Block 2, Musgrave Addition to the City of Burkburnett, Wichita County, Texas as the same appears in the map or plat thereof filed in the office of the County Clerk of Wichita County, Texas; GEO: 120458 (133 N Ave F);

Tract 2: Cause No. 42,022-B; 78<sup>th</sup> District Court of Wichita County;  
Burkburnett Independent School District vs. RGS, Inc.  
Judgment date: June 23, 2009;

4.27 acres, more or less, RRVL Survey, Block 106, to the City of Burkburnett, Wichita County, Texas as more particularly described in a deed recorded in Volume 1926 at Page 608 of the Official Public Records of Wichita County, Texas; GEO: 119386 (100 South Red River Expressway);

Tract 3: Cause No. 41,561-C; 89<sup>th</sup> District Court of Wichita County;  
Burkburnett Independent School District vs. Whaley, Herbert Lee, et ux Edith Whaley;  
Judgment date: August 21, 2007;

0.089 acres, more or less, out of Lots 8 and 9, Mills Subdivision, to the City of Burkburnett, Wichita County, Texas, as more particularly described in a deed Recorded in Volume 1454 at Page 118 of the Deed Records of Wichita County, Texas; GEO: 106083 (0 Bishop Road);

Tract 4: Cause No. 42,388-A; 30<sup>th</sup> District Court of Wichita County  
City of Burkburnett vs. A K Gillis Est.  
Warrant date: July 27, 2010;

120' x 150' SE Qtr of Block 20, Outer Blocks, Burkburnett, Wichita County, Texas, as more particularly described in a Deed recorded in Volume 68 at Page 115 of the Deed Records of Wichita County, Texas; GEO: 120434 (0 4<sup>th</sup> St) (Note: 4<sup>th</sup> Street runs through this lot, leaving approx.. 0.21 acres of useable land)

Tract 5: Cause No. 42,611-B; 78<sup>th</sup> District Court of Wichita County;  
Burkburnett Independent School District vs. Roberts, Troy;  
Judgment date: August 28, 2013;

90' x 100', Abstract 249, Redman Survey, to the City of Burkburnett, Wichita County, Texas as more particularly described in a deed recorded in Volume 2359 at page 843

of the Official Public Records of Wichita County, Texas; GEO: 119442 (0 W 6<sup>th</sup> St);

Tract 6: Cause No. 42,244-B; 78<sup>th</sup> District Court of Wichita County;  
Burkburnett Independent School District vs. Cruz, Santana Juarez, et al;  
Judgment date: October 28, 2010;

Lot 6, and 5 feet of Lot 7, Block 7, Wighams Addition to the City of Burkburnett,  
Wichita County, Texas as more particularly described in a deed recorded in Volume  
1129 at Page 342 of the Deed Records of Wichita County, Texas; GEO: 119838  
(122 W 1<sup>st</sup> St);

Tract 7: Cause No. 43,231-C; 89<sup>th</sup> District Court of Wichita County;  
City of Burkburnett vs. Hill, Tim and Susan Hill;  
Judgment date: December 3, 2014  
Lot 4, Block 1, Canon Addition to the City of Burkburnett, Wichita County, Texas as  
the same appears in the map or plat thereof filed in the office of the County Clerk of  
Wichita County, Texas; GEO: 122425 (625 E 3<sup>rd</sup> St.);

Tract 8: Cause No. 43,197-C; 89<sup>th</sup> District Court of Wichita County;  
Burkburnett Independent School District vs. Hamilton, Zelma;  
Judgment date: December 17, 2014;

50' x 175', Abstract 33t, Dubose Addition, to the City of Burkburnett, Wichita County,  
Texas as more particularly described in a deed recorded in Volume 3339 at Page 377  
of the Official Public Records of Wichita County, Texas; GEO: 118944 (316 W 6<sup>th</sup> St);

Tract 9: Cause No. 43,197-C; 89<sup>th</sup> District Court of Wichita County;  
Burkburnett Independent School District vs. Hamilton, Zelma;  
Judgment date: December 17, 2014;

Lots 18 and 19, Block 1, Jacks Addition to the city of Burkburnett, Wichita County,  
Texas as the same appears in the map or plat thereof filed in the office of the County  
Clerk of Wichita County, Texas; GEO: 121545 (0 Floyd St.);

Tract 10: Cause No. 41,550-A; 30<sup>th</sup> District Court of Wichita County;  
Burkburnett Independent School District vs. Carter, Lola and Timothy Carter;  
Judgment date: April 8, 2009;

200' x 365', Dubose Survey, Abstract 335 to the City of Burkburnett, Wichita County,  
Texas, as more particularly described in a deed recorded in Volume 348 at Page  
366 of the Deed Records of Wichita County, Texas; GEO: 118975 (0 Floyd St.);

Tract 11: Cause No. 42,657-C; 89<sup>th</sup> District Court of Wichita County;  
Burkburnett Independent School District vs. Rangel, Fernando M., et al;  
Judgment date: April 29, 2013;

Lot 7, Block 1, Parsons Addition to the City of Burkburnett, Wichita County,  
Texas as the same appears in the map or Plat thereof filed in the office of  
the County Clerk of Wichita County, Texas; GEO: 120250 (109 S. Ave B).

AND WHEREAS, the District Clerk of the District Courts of Wichita County, Texas issued on Orders of Sale pursuant to the judgments commanding the Sheriff of Wichita County, Texas to seize, levy upon, advertise for sale and sell the property;

AND WHEREAS, on the dates listed below, the Sheriff of Wichita County, Texas, did levy on the

property and thereafter advertised the property for;

AND WHEREAS, on the dates listed below, the Sheriff of Wichita County, Texas, bid the property off to the City of Burkburnett;

	<u>Levy Date</u>	<u>Sale Date</u>
Tract 1:	January 2, 2015	February 3, 2015
Tract 2:	August 31, 2009	October 6, 2009
Tract 3:	December 14, 2007	February 5, 2008
Tract 4:	August 9, 2010	September 7, 2010
Tract 5:	December 9, 2013	January 7, 2014
Tract 6:	December 11, 2010	February 1, 2011
Tract 7:	March 6, 2015	April 7, 2015
Tract 8:	March 6, 2015	April 7, 2015
Tract 9:	March 6, 2015	April 7, 2015
Tract 10:	July 23, 2009	September 1, 2009
Tract 11:	November 4, 2013	December 3, 2013

AND WHEREAS, the City of Burkburnett is currently holding title to the property for itself and for the benefit of the Burkburnett ISD and Wichita County, and desires to have the property offered for resale by sealed bid;

NOW THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the City of Burkburnett hereby authorizes the resale of the property by sealed bid.

Passed, Approved and Adopted this 17<sup>th</sup> day of August, 2015.

ATTEST:

CITY OF BURKBURNETT

\_\_\_\_\_  
Janelle Dolan, City Clerk

\_\_\_\_\_  
Carl Law, Mayor

CERTIFICATION

I hereby certify that the above and foregoing copy of the Resolution is a true and correct copy of the above indicated Resolution.

Signed the 17th day of August, 2015.

\_\_\_\_\_  
Janelle Dolan, City Clerk



## City Commission Agenda Memo

**From:** Mike Whaley  
City Manager

**Date:** August 17<sup>th</sup>, 2015

**Item:** Curbside Recycling Proposal/Progressive

### Background

**Option 1:** Add curbside residential recycling is \$4.40 per home

Requirements:

- ▶ Reduce franchise fee by \$16,807 annually (approximately 3%)
- ▶ Reduce free roll offs from 144 to 36 annually
- ▶ Increase commercial rates 10% (include CPI at 2%)

In addition: If the City purchases ploy carts at the approximate cost of \$175,000, the rate can be reduced from \$4.40 per home to \$3.40 per home.

**Option 2:** Add curbside residential recycling is \$4.15 per home

Requirements:

- ▶ Reduce franchise fee by \$16,807 annually (approximately 3%)
- ▶ Reduce free roll offs from 144 to 0 (close Citizen Collection Station)
- ▶ Increase commercial rates 10% (include CPI at 2%)

In addition: If the City purchases ploy carts at the approximate cost of \$175,000, the rate can be reduced from \$4.15 per home to \$3.15 per home.

### Fiscal Impact

N/A

### Options

- Take No Action
- Instruct staff to proceed with implementing program

### Staff Recommendation

Staff has no specific recommendation

### Attachments

N/A



## City Commission Agenda Memo

**From:** Mike Whaley  
City Manager

**Date:** August 17<sup>th</sup>, 2015

**Item:** Amend Contract Agreement for Operation and Maintenance Services of the WWTP with Veolia Water North America

### Background

We currently are contracted with Veolia Water for the operations and maintenance service of our Waste Water Treatment Plant. The original contract was signed March 16<sup>th</sup>, 1998. We have had four previous amendments to the contract. The current contract amendment expired July 31<sup>st</sup>, 2015. We are presenting amendment number five which would effectively extend the contract for an additional five years. This amendment sets the current cost of service and makes additional amendments to the existing insurance coverage terms. I have had our attorney do a full review of the contract and amendment five. He has approved of the amendment as presented. We have had a strong partnership with Veolia Water and have not had significant increases in the costs of services over the duration of the contract. The current contract cost is \$439,909.69. Our current cost is \$440,281.

### Fiscal Impact

\$440,000 dedicated form water fund budget to pay for WWTP operations and maintenance contract.

### Options

- Approve contract
- Take no action

### Staff Recommendation

Staff recommends approval of amended contract as presented with 5 year extension.

### Attachments

Contract amendment number 5

**Amendment Five  
To the  
Agreement for Operation and Maintenance Services**

This Fifth Amendment to the Agreement (as defined below) is entered into on the \_\_\_\_ day of August, 2015, by and between:

The City of Burkburnett, with its principal address at 501 Sheppard Road, Burkburnett, Texas 76354 (hereinafter "CITY");

And

Veolia Water North America–West, LLC, a Delaware limited liability company, as successor in interest to Professional Services Group, Inc. and Veolia Water North America Operating Services, LLC, with offices at 200 E. Randolph Street, 79<sup>th</sup> Floor, Chicago, IL 60601 (hereinafter "VWNA-WEST");

and

Veolia Water North America-Central, LLC, a Delaware limited liability company, with offices at 200 E. Randolph Street, 79<sup>th</sup> Floor, Chicago, IL 60601 (hereinafter "VWNA");

WHEREAS, CITY and Professional Services Group, Inc. entered into a certain Agreement for Operations and Maintenance Services of the City of Burkburnett Wastewater Treatment Facilities dated March 16, 1998, as amended by Amendment Number One dated June 29, 1998 ("PSG Agreement");

WHEREAS, PSG assigned to its affiliate, U.S. Filter Operating Services, Inc. all rights, title and interest in and claims and rights under the Agreement pursuant to that certain Assignment Agreement dated June 23, 2000 by and between PSG, USFOS and CITY ("PSG Assignment");

WHEREAS, CITY and USFOS entered into Amendment Number Two dated July 10, 2000 to the PSG Agreement ("Second Amendment");

WHEREAS, USFOS changed its name to Veolia Water North America Operating Services, Inc. on January 29, 2004;

WHEREAS, on July 6, 2004, pursuant to the laws of the State of Delaware, Veolia Water North America Operating Services, Inc. changed its corporate structure to a limited liability company named Veolia Water North America Operating Services, LLC ("VWNAOS");

WHEREAS, CITY and VWNAOS and VWNA-WEST entered into Amendment Number Three dated July 17, 2006, assigning the agreement from VWNAOS to VWNA-WEST ("Third Amendment");

WHEREAS, CITY and VWNA-WEST entered into Amendment Number Four dated August 20, 2007 and a term extension letter dated January 18, 2011 ("Fourth Amendment")(the PSG Agreement, PSG Assignment, Second Amendment, Third Amendment and Fourth Amendment are collectively referred to as the "Agreement");

WHEREAS, VWNA-WEST's regional management structure has changed and VWNA is the operating unit for central region projects;

WHEREAS, VWNA-WEST now wishes to assign the Agreement to VWNA, and VWNA wishes to accept such assignment pursuant to the terms of the Agreement; and

WHEREAS, the Agreement is set to expire July 31, 2015 and the parties mutually wish to extend the term of the Agreement and certain other portions as contemplated herein;

NOW THEREFORE, in mutual consideration herein described and other good and valuable consideration, receipt of which is acknowledged, the parties agree as follows:

1. Novation. VWNA-WEST does hereby grant, bargain, sell, convey, transfer and assign onto VWNA and its successors and assigns all of VWNA-WEST's right, title and interest in and to all claims and rights and obligations under the Agreement. VWNA does hereby accept such transfer and assignment and agrees that VWNA shall duly observe and perform all of those obligations impose upon VWNA-WEST under the Agreement. VWNA-WEST's transfer and assignment of the Agreement to VWNA is a full novation of the obligations of VWNA-WEST from and after the effective date of this Amendment. CITY does hereby approve such transfer and assignment to VWNA from VWNA-WEST pursuant to Section 1.4 of the Agreement and the novation of VWNA-WEST as of the effective date hereof.

2. Delete Section 4.1 in its entirety and replace with the following:

"4.1 VWNA's compensation under this Agreement shall consist of an Annual fee. VWNA's Annual Fee for the period of July 1, 2015 to June 30, 2016 shall be four hundred thirty-nine thousand nine hundred nine dollars and sixty-nine cents (\$439,909.69). The Maintenance and Repair Limit in the Annual fee is twenty five thousand dollars (\$25,000)."

3. Section 7.5 is amended by deleting the second sentence and replacing it with the following:

"VWNA shall name CITY as an additional insured Commercial General Liability insurance with respect to VWNA's duties and activities under the scope of this Agreement. CITY shall name VWNA as an additional insured for Property Insurance. Both parties shall provide the other party with satisfactory proof of insurance in the form of a certificate of insurance."

4. Delete Section 7.6 and replace it with the following:

"7.6 TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER VWNA, NOR CITY SHALL BE LIABLE TO THE OTHER IN ANY ACTION OR CLAIM FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, PUNITIVE DAMAGES, LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF PRODUCT OR LOSS OF USE. THIS SECTION SHALL APPLY WHETHER ANY SUCH INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE IS BASED ON A CLAIM BROUGHT OR MADE IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER ANY WARRANTY, OR OTHERWISE. TO THE

EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES, WHICH ARE INCONSISTENT WITH THESE TERMS, ARE WAIVED.”

5. Add a new Section 7.7 to the Agreement as follows:

“7.7 TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, VWNA’S LIABILITY FOR PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATION ARISING UNDER THE AGREEMENT (WHETHER ARISING UNDER BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY) INCLUDING, BUT NOT LIMITED TO ITS INDEMNITY OBLIGATIONS, SHALL NOT EXCEED: (I) ANY AVAILABLE AND RECOVERED PROCEEDS FROM INSURANCE REQUIRED BY THIS AGREEMENT UP TO THE SPECIFIED LIMITS (WITHOUT REGARD TO THE AMOUNT OF ANY DEDUCTIBLE WHICH MAY BE APPLICABLE UNDER ANY SUCH GENERAL LIABILITY POLICY), PLUS (II) TO THE EXTENT PROCEEDS OF INSURANCE ARE NOT RECEIVED AND SUCH GENERAL LIABILITY INSURANCE IS NOT APPLICABLE, THE AVERAGE ANNUAL FEE UNDER THIS AGREEMENT, CUMULATIVELY FOR THE DURATION OF THE AGREEMENT (“LIABILITY CAP”). THE FOREGOING LIMITATION IN THIS SECTION 7.7 SHALL NOT APPLY TO ANY LOSSES RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF VWNA. THE LIABILITY LIMITATIONS EXPRESSED IN THIS SECTION 7.7 SHALL APPLY TO ANY CLAIM, INCLUDING BUT NOT LIMITED BY CLAIMS OR LIABILITY ASSERTED AGAINST CITY BY ANY THIRD PARTY. IN THE EVENT THAT INSURANCE PROCEEDS ARE NOT AVAILABLE SOLELY AS A RESULT OF VWNA’S FAILURE TO MAINTAIN THE INSURANCE COVERAGE REQUIRED UNDER THIS AGREEMENT, THE LIABILITY CAP SHALL BE ADJUSTED TO INCLUDE THE AMOUNT OF INSURANCE PROCEEDS THAT WOULD OTHERWISE HAVE BEEN MADE AVAILABLE.”

6. Delete Section 8.1 in its entirety and replace with the following:

“8.1 The term of this Agreement shall expire on June 30, 2020. Thereafter, this Agreement shall be renewed by annual budget appropriation action of CITY for a second term of five (5) years unless cancelled in writing by either party no less than one hundred and twenty (120) days prior to the expiration of the initial term hereof.”

7. Delete Appendix F Insurance Coverage in its entirety and replace with the revised Appendix F attached hereto, which is incorporated by reference herein.
8. This Amendment shall take effect upon the date first written above.
9. All terms of the Agreement not specifically amended or modified by this instrument shall remain unmodified and in full force and effect.

[SIGNATURE PAGE FOLLOWS]

The parties indicate their approval of this Fifth Amendment to the Agreement by their signatures below, and the parties represent all corporate or governmental actions, approvals and consents necessary to bind the parties to the terms of this Fifth Amendment to the Agreement have been taken.

CITY OF BURKBURNETT

VEOLIA WATER NORTH AMERICA-WEST, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: John M. Wood  
Name: John M. Wood  
Title: Authorized Representative, SVP - Central Region  
Date: August 6, 2015

VEOLIA WATER NORTH AMERICA-CENTRAL, LLC

By: John M. Wood  
Name: John M. Wood  
Title: Sr. Vice President  
Date: August 6, 2015

APPENDIX F  
INSURANCE COVERAGE

VWNA shall maintain:

1. Maintain worker's compensation insurance in accordance with the legal requirements in the State of Texas.
2. Commercial general liability insurance, insuring VWNA's negligence, in an amount of \$2,000,000 per occurrence and \$5,000,000 general aggregate combined single limits for bodily injury and/or property damage. CITY will be added as an additional insured with respect to VWNA's duties and activities under the scope of this Agreement.

CITY shall maintain:

1. Property damage insurance for all property including vehicles owned by CITY and operated by VWNA under this Agreement. Any property, including vehicles not properly or fully insured shall be the financial responsibility of the CITY.



## City Commission Agenda Memo

**From:** Mike Whaley  
City Manager

**Date:** August 17<sup>th</sup>, 2015

**Item:** Set dates for the public hearing for the FY 2016 budget and proposed tax rate

### Background

- August 27<sup>th</sup> – Notice of Proposed Tax Rate in Paper
- September 10<sup>th</sup> – First Public Hearing @ 6:00 PM
- September 15<sup>th</sup> – Second Public Hearing @ 6:00 PM
- September 18<sup>th</sup> – Adopt Tax Rate

### Fiscal Impact

N/A

### Options

- Accept dates as presented
- Set alternate dates

### Staff Recommendation

Staff recommends setting dates as presented

### Attachments

Hearing Date Information



## City Commission Agenda Memo

**From:** Gordon Smith, Director of Public Works

**Date:** August 12, 2015

**Item:** Discuss and take any action necessary on permit request to drill proposed Oil Well Malone #2- F.T. Felty Operating Co.

### Background

F.T. Felty Operating Company presented an application for drilling an oil well within the City limits. The proposed location is Gresham Rd.- 20 acres of section 816 of the Redman survey within City limits.

- The permit fee of \$250.00 is paid.
- A copy of the approved permit by the Railroad Commission , Oil & Gas Division was received
- Site plan was received and approved by City Staff
- Letters were mailed out to adjacent property owners notifying them of a hearing that was held by the Director of Public works on August 12, 2015 at 3:00 pm at City Hall (per ordinance). No attendance from the public was at that hearing.

### Fiscal Impact

None

### Options

- Approve Oil Well Drilling Permit
- Not Approve Oil Well Drilling Permit

### Staff Recommendation

Staff recommends to City Commissioners approval of the oil well drilling permit for Oil Well Malone #2. Owner to provide copy of insurance prior to final permit issuance.

### Attachments

- 1) Site plan
- 2) Railroad Commission Permit

**RAILROAD COMMISSION OF TEXAS  
OIL & GAS DIVISION**

PERMIT TO DRILL, DEEPEN, PLUG BACK, OR RE-ENTER  
ON REGULAR OR ADMINISTRATIVE EXCEPTION LOCATION

PERMIT NUMBER 804597	DATE PERMIT ISSUED OR AMENDED 6/09/2015	DISTRICT 09
API NUMBER 42 485 45868	FORM W-1 RECEIVED 3/12/2015	COUNTY WICHITA
TYPE OF OPERATION DRILL		ACRES 20.00
OPERATOR 265585  FELTY, F. T. OPERATING COMPANY P O BOX 365 BURKBURNETT TX 76354		NOTICE  This permit and any allowable assigned may be revoked if payment for fee(s) submitted to the Commission is not honored. District Office Telephone No.: 940 723-2153
LEASE NAME MALONE ✓	WELL NUMBER 2	
LOCATION 1.00 MILES WITHIN FROM BURKBURNETT	TOTAL DEPTH 1,800	
SECTION, BLOCK and/or SURVEY SECTION => 816                      BLOCK =>                      ABSTRACT => 250  SURVEY ==> REDMAN, T I		
DISTANCE--LEASE LINES 150.00 F WEST                      -                      450.00 F NORTH		DISTANCE--NEAREST WELL ON LEASE 300.0
DISTANCE--SURVEY LINES 5,375.00 F SOUTH                      -                      1,170.00 F EAST		

**READ IMPORTANT CONDITIONS AND INSTRUCTIONS ON THE BACK OF THIS FORM**

FIELD(S) AND LIMITATIONS

WICHITA COUNTY REGULAR

\*\* LIMITATIONS \*\*

THE FOLLOWING RESTRICTIONS APPLY TO ALL FIELDS

THIS WELL SHALL BE COMPLETED AND PRODUCED IN COMPLIANCE WITH APPLICABLE SPECIAL FIELD OR STATEWIDE SPACING AND DENSITY RULES. IF THIS WELL IS TO BE USED FOR BRINE MINING, UNDERGROUND STORAGE OF LIQUID HYDROCARBONS IN SALT FORMATIONS, OR UNDERGROUND STORAGE OF GAS IN SALT FORMATIONS, A PERMIT FOR THAT SPECIFIC PURPOSE MUST BE OBTAINED FROM ENVIRONMENTAL SERVICES PRIOR TO CONSTRUCTION, INCLUDING DRILLING, OF A WELL IN ACCORDANCE WITH STATEWIDE RULES 81, 95, AND 97.

JUN 15 2015

1 450 1 01 20

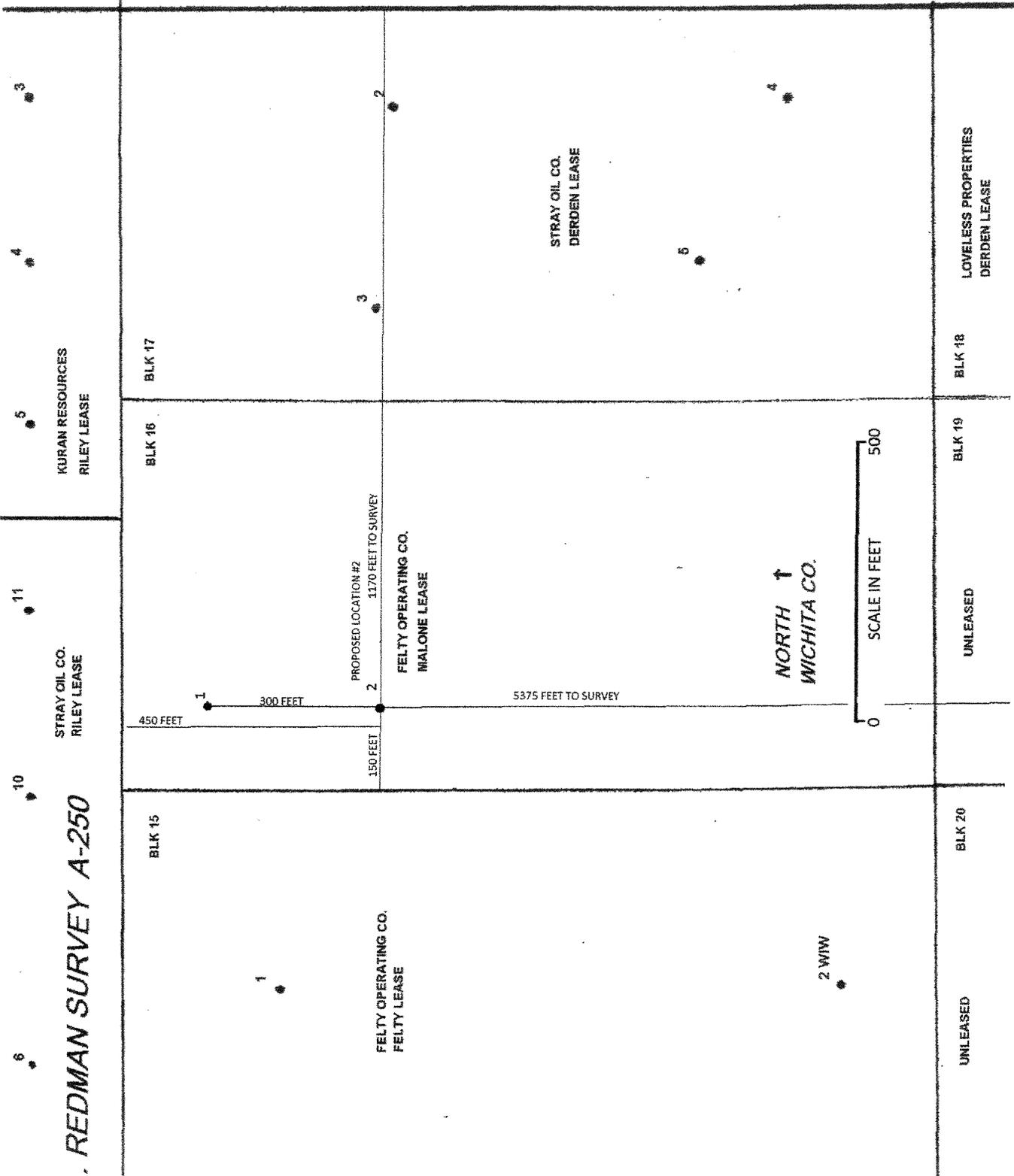
McLone # 1 & 2.



McLone # 1 & 2.

W. ERP SURVEY

REDMAN SURVEY A-250







## City Commission Agenda Memo

**From:** Mike Whaley  
City Manager

**Date:** August 17<sup>th</sup>, 2015

**Item:** Ordinance Number 883 Adjusting Water Rates

### Background

As previously discussed in our budget workshops, this ordinance proposes an increase of \$2.00 in our base charge from \$22.50 to \$24.50. An increase in the first rate block from 6.47 to 6.61 and an increase of .10 cents to the remaining four rate blocks. Also, included in the ordinance is a change of the late fee from \$2.00 to 10% of bill.

Minimum First 2,000 Gallons	\$24.50
2,000-10,000 gallons	\$6.61 per 1,000 gallons
10,000-15,000 gallons	\$7.57 per 1,000 gallons
15,000-20,000 gallons	\$8.86 per 1,000 gallons
20,000-25,000 gallons	\$10.54 per 1,000 gallons
25,000 + gallons	\$12.75 per 1,000 gallons

### Fiscal Impact

N/A

### Options

- Approve Ordinance as presented
- Approve Ordinance with modifications
- Take no Action

### Staff Recommendation

Staff recommends approving ordinance as presented

### Attachments

Ordinance Number 883

**ORDINANCE NUMBER 883**

**AN ORDINANCE SUPERSEDING ORDINANCE NUMBERS 571 AND 880 OF THE CITY OF BURKBURNETT, TEXAS PRESENTLY CODIFIED AS CHAPTER 53, WATER IN THE CODE OF ORDINANCES, SPECIFYING THE EFFECTIVE DATE; DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS; THAT:**

**Section 1.** That Chapter 53 of the Code of Ordinances of the City of Burkburnett be as follows:

**SECTION 53.20-RATES; BILLING**

(A) That the water rates to be charged and collected per month by the City of Burkburnett, Texas, from all customers within the city limits obtaining service from said Waterworks System of said City, shall be and are hereby fixed as follows:

Minimum First 2,000 Gallons	\$24.50
2,000-10,000 gallons	\$6.61 per 1,000 gallons
10,000-15,000 gallons	\$7.57 per 1,000 gallons
15,000-20,000 gallons	\$8.86 per 1,000 gallons
20,000-25,000 gallons	\$10.54 per 1,000 gallons
25,000 + gallons	\$12.75 per 1,000 gallons

(B) That all customers outside the city limits of Burkburnett obtaining service from the Waterworks System of said City, shall pay double the above fixed rates.

**SECTION 53.28 - LATE CHARGE FEE**

A late charge fee of 10% of the total amount of the bill will be added to a customer's water bill if paid after the due date posted on the bill.

**Section 2.** This ordinance shall be in full force and effect immediately upon passage and publication.

**Section 3.** This Ordinance shall take effect immediately and all other ordinances and resolutions and parts of thereof in conflict with any part of this Ordinance are hereby expressly repealed to the extent of such conflict.

**Section 4.** In the event any one or more of the provision of this Ordinance should be declared to be invalid, unenforceable or illegal; such invalidity, unenforceability or illegality shall not affect the validity, enforcement, or legality of the remaining portions of this Ordinance.

**Section 5.** It is hereby officially found and determined that said meeting at which this Ordinance is passed is open to the public as required by law and that notice of said time, place and purpose of said meeting was given.

**PASSED AND APPROVED** on this 17<sup>th</sup> day of August, 2015.

\_\_\_\_\_  
Carl Law, Mayor

**ATTEST:**

\_\_\_\_\_  
Janelle Dolan, City Clerk



## City Commission Agenda Memo

**From:** Mike Whaley  
City Manager

**Date:** August 17<sup>th</sup>, 2015

**Item:** TIF Escrow Agreement Proposed Nursing Facility

### Background

Don Miller, owner of Foursquare Healthcare approached the City of Burkburnett about the development of a skilled nursing facility and possible incentives available for the development. Here are some of the details of the proposed development: 52,000 square foot building, 7-8 million dollar investment, approximately 130 employees, 4 million dollar payroll, wage structure from \$9.00 per hour up to salary of \$125,000 annual salary. The site selection of the development is located within the TIF Zone. The proposed agreement consists of funds totaling \$170,000. \$50,000 for the extension of a three-phase electric line from ONCOR and \$120,000 for the extension of an eight inch water main. Included in the packet are a plat of the site and the preliminary site plan. Both have been approved by the Planning and Zoning Commission and will seek final approval from Board of Commissioners on the 17<sup>th</sup> at 7:00pm. Current balance of the TIF fund is \$271,295 with an estimated revenue of \$95,000 for fiscal year 2016. Mike Guevara penned the agreement and will be present for further discussion if needed.

### Fiscal Impact

\$120,000

### Options

Approve agreement  
Deny agreement

### Staff Recommendation

Staff recommends approving agreement as presented

### Attachments

Escrow Agreement/Nursing Facility  
Plat  
Site Plan

**ESCROW AGREEMENT**  
(City of Burkburnett)

THIS ESCROW AGREEMENT (this "Agreement") is entered into effective as of \_\_\_\_\_, 2015 by and between the **CITY OF BURKBURNETT, TEXAS**, a Texas home rule municipality ("City") and **BURKBURNETT NH REALTY, LTD.**, a Texas limited partnership ("Purchaser") and **FIRST WESTERN TITLE COMPANY** ("Escrow Agent").

RECITALS

**AP&C Development Corporation** ("Seller") and Purchaser have entered into a Real Estate Contract with an effective date of May 27, 2015 (as amended from time to time, the "Contract") regarding the purchase and sale of the certain real property more particularly described in the Contract (the "Property"); and

The City has agreed to pay for the construction of certain improvements to the Property through funds from the Tax Increment Fund, as detailed hereinbelow; and

NOW, THEREFORE, in consideration of the foregoing, the covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Purchaser and City hereby agree as follows:

ARTICLE 1

DEFINED TERMS

Section 1.1 The Utility Extension Escrow.

(a) Concurrently with closing and the execution of this Agreement, the City **will deposit** with Escrow Agent the cash sum of ONE HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$170,000.00) (the "Utility Extension Escrow Funds"). The Utility Extension Escrow Funds shall be deposited in an interest bearing account with interest accruing thereon being paid into the fund and forming a part of such fund, and such fund shall be governed by an escrow agreement. The use of the Utility Extension Escrow Funds shall be to complete the work (the "Extension Work") at the estimated cost, as follows:

ONCOR 3 Phase Extension	\$50,000.00
8" Water Line Extension	\$120,000.00

(b) Under the supervision of Purchaser or Purchaser's agents, certain utility contractors (each a "Utility Contractor") shall construct, erect, undertake and complete or cause to be fully constructed, erected, undertaken and completed Extension Work to the

Property. The City shall not be responsible for the quality of the Extension Work, but only for the payment in full thereof pursuant to this Agreement.

(c) Except as otherwise expressly set forth herein, the Utility Extension Escrow Funds shall be used to reimburse the Purchaser for the amount paid to each Utility Contractor for their respective approved costs and expenses incurred by same in completing the Utility Extension Work.

(d) Escrow Agent shall release to Purchaser the applicable portion of the Utility Extension Escrow Funds as and when requested by the Purchaser upon receipt of (i) a Request for Release specifying the amount requested and the Extension Work to be paid for with the requested Utility Extension Escrow Funds; and (ii) City's written authorization for release of the requested Utility Escrow Funds.

(e) Subject to the other terms and conditions contained in this Agreement, Escrow Agent shall not be obligated to release any Utility Extension Escrow Funds to pay for the cost of any improvement or item other than the Extension Work listed in Section 1.1(a) hereto.

Section 1.2 Start / Completion Dates. The Parties anticipate that the construction of the Extension Work, being the Work described in Section 1.1(a) will be completed no later than 365 days (plus industry standard "rain days" and delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, floods, hurricanes, tornadoes, earthquakes and other severe weather conditions or any other causes of any kind whatsoever which are beyond the reasonable control of a Utility Contractor), from the Extension Work start date, which time period is herein called the "Outside Work Completion Date." The Extension Work start date shall be the date upon which the Contract closes (the "Work Start Date"). Any Work performed after the Outside Work Completion Date will not be paid from the Escrow Funds.

Section 1.3 Cost Overruns / Excess Escrow Funds. The City shall not be responsible for the payment of any and all costs and expenses in completing any Utility Extension Work in excess of the Extension Escrow Funds set forth in Section 1.1(a). In the event that, upon final completion of the Extension Work, the amount of Extension Escrow Funds is not completely expended, then Escrow Agent shall disburse the remaining Extension Escrow Funds to the City within 10 days of receipt of the City's written request and Purchaser's written acknowledgement that the Extension Work has been completed.

## ARTICLE 2

### MISCELLANEOUS

Section 2.1 Remedies Cumulative. No right or remedy conferred upon or reserved to Purchaser under this Agreement is intended to be exclusive of any other right or remedy, and each and every such right and remedy shall be cumulative and concurrent and may be enforced separately, successively or together, and may be exercised from time to time as often as may be deemed necessary by Purchaser.

Section 2.2 Notices. All notices hereunder shall be given in writing to the following addresses:

City of Burkburnett  
Attn.: City Manager  
501 Sheppard Road  
Burkburnett, Texas 76354

Section 2.3 Assignments. This Agreement shall be binding upon the City and its heirs, devisees, representatives, successors and assigns, including successors in interest of the City in and to all or any part of the Property, and shall inure to the benefit of and may be enforced by Purchaser and its successors, legal representatives, substitutes and assigns. The City shall not assign any of its rights or obligations under this Agreement. Purchaser may assign any of its rights or obligations under this Agreement upon written consent from the City.

Section 2.4 Benefits. This Agreement is intended solely for the benefit of the City, Purchaser and Escrow Agent, and no third party shall have any right or interest in this Agreement, nor any right to enforce this Agreement against any party hereto.

Section 2.5 Waiver. This Agreement may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Purchaser and Escrow Agent, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 2.6 No Relationship. Nothing herein is intended to create, nor creates, nor shall be deemed to create, a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between the City and Purchaser.

Section 2.7 Conflicting Provisions. If any provisions of this Agreement shall conflict with any provisions of the Contract regarding the Utility Extension Funds, the provisions contained in this Agreement shall control.

Section 2.8 Severability. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

Section 2.9 Governing Law and Venue. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THE VENUE FOR ANY ACTION, CONTROVERSY, DISPUTE OR CLAIM ARISING UNDER THIS AGREEMENT SHALL BE IN A COURT OF APPROPRIATE JURISDICTION IN WICHITA COUNTY, TEXAS EXCLUSIVELY.

Section 2.10 LIABILITY OF ESCROW AGENT. THE ESCROW AGENT HEREBY CONSENTS AND AGREES TO ALL OF THE PROVISIONS HEREOF, AND AGREES TO ACCEPT, AS ESCROW AGENT HEREUNDER, ALL CASH AND DOCUMENTS DEPOSITED HEREUNDER, AND AGREES TO HOLD AND DISPOSE OF SAID CASH

AND DOCUMENTS DEPOSITED HEREUNDER IN ACCORDANCE WITH THE TERMS AND PROVISIONS HEREOF. IT IS AGREED THAT THE ESCROW AGENT SHALL HAVE NO OBLIGATION OR LIABILITY HEREUNDER EXCEPT AS A DEPOSITARY TO RETAIN THE CASH WHICH MAY BE DEPOSITED WITH IT HEREUNDER AND TO DISPOSE OF THE SAME IN ACCORDANCE WITH THE TERMS HEREOF. THE ESCROW AGENT SHALL BE ENTITLED TO RELY AND ACT UPON ANY WRITTEN INSTRUMENT RECEIVED BY IT, AND IF A CORPORATION, PURPORTING TO BE EXECUTED BY AN OFFICER THEREOF, AND IF A PARTNERSHIP, PURPORTING TO BE EXECUTED BY A GENERAL PARTNER THEREOF AND SHALL NOT BE REQUIRED TO INQUIRE INTO THE AUTHORITY OF SUCH OFFICER OR PARTNER OR THE CORRECTNESS OF THE FACTS STATED IN SAID INSTRUMENT. BY ACCEPTANCE OF THIS AGREEMENT, ESCROW AGENT AGREES TO USE ITS BEST JUDGMENT AND GOOD FAITH IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS AND DUTIES UNDER THIS AGREEMENT AND SHALL INCUR NO LIABILITY TO ANY PERSON FOR ITS ACTS OR OMISSIONS HEREUNDER, EXCEPT FOR THOSE ACTS OR OMISSIONS WHICH MAY RESULT FROM ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. UPON DISPOSITION BY THE ESCROW AGENT, IN ACCORDANCE WITH THE TERMS HEREOF, OF THE CASH DEPOSITED WITH THE ESCROW AGENT HEREUNDER, THE ESCROW AGENT SHALL BE FULLY AND FINALLY RELEASED AND DISCHARGED FROM ANY AND ALL DUTIES, OBLIGATIONS, AND LIABILITIES HEREUNDER.

Section 2.11 Disputes. In the event of a dispute between any of the parties hereto as to their respective rights and interests hereunder, the Escrow Agent shall be entitled to hold any and all Extension Escrow Funds then in its possession hereunder until such dispute shall have been resolved by the parties in dispute and the Escrow Agent shall have been notified by instrument jointly signed by all of the parties in dispute, or until such dispute shall have been finally adjudicated by a court of competent jurisdiction.

*The remainder of this page is left blank. The signature page(s) follow.*

All parties have executed this Agreement to be effective as of the date first above written.

PURCHASER:

CITY:

BURK NH REALTY, LTD.,  
a Texas limited partnership

THE CITY OF BURKBURNETT, TEXAS  
a Texas home rule municipality

By: NTF REALTY, INC., a Texas corporation,  
its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ESCROW AGENT:

FIRST WESTERN TITLE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## City Commission Agenda Memo

**From:** Mike Whaley  
City Manager

**Date:** August 17<sup>th</sup>, 2015

**Item:** Tax Abatement Agreement Proposed Nursing Facility

### Background

Don Miller, owner of Foursquare Healthcare approached the City of Burkburnett about the development of a skilled nursing facility and possible incentives available for the development. Here are some of the details of the proposed development: 52,000 square foot building, 7-8 million dollar investment, approximately 130 employees, 4 million dollar payroll, wage structure from \$9.00 per hour up to salary of \$125,000 annual salary. The original terms we were negotiating were set for a five year tax abatement and a request from developer of \$225,000 to extend Marian Drive to the service road. I asked Mr. Miller to assume the cost of the Marian extension in trade for extending the tax abatement to a ten year abatement. That is the current agreement that is before you for consideration. Mike Guevara, our city attorney penned the agreement and will be present for further explanation

### Fiscal Impact

Based upon valuation of the property

### Options

Approve agreement  
Deny agreement

### Staff Recommendation

Staff recommends approving agreement as presented

### Attachments

Tax Abatement Agreement/Nursing Facility

## ECONOMIC DEVELOPMENT AGREEMENT

This ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is effective as of August 17, 2015, by and between the CITY OF BURKBURNETT, TEXAS (the "City"), a Texas general law city, and Burkburnett NH Realty, LTD, a Texas Limited Company (the "Developer").

### RECITALS

WHEREAS, the Developer has purchased a certain parcel of real property within the City's city limits and intends to develop the "Facility" (defined below) to create a nursing and rehabilitation facility; and,

WHEREAS, Developer intends to invest funds, in significant amounts, for the development of the "Project" (defined below); and

WHEREAS, the City desires such investment and continued economic growth within its City limits and Extraterritorial Jurisdiction and understands that such development requires public assistance; and

WHEREAS, the Project will result in development with little or no additional cost to the City while producing a positive economic impact, as well as stimulate job growth; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City Council has implemented economic development programs to promote economic development as more fully described therein (the "Program"); and

WHEREAS, the City Council has determined that the Developer's project and proposed investment is consistent with the Program, and that the development of the Facility would not likely go forward in the manner best anticipated to promote economic development within the City without economic development program assistance from the City under the Program; and

WHEREAS, the City and the Developer wish to set out the terms and conditions and in exchange the Developer will receive economic development incentives under this Agreement, as more fully set out herein.

NOW THEREFORE, for and in consideration of the mutual covenants set forth herein, the City and the Developer agree as follows:

ARTICLE 1  
GENERAL TERMS

1.1 Definitions. The terms defined in the preamble hereto shall have the meanings provided for them therein. The following capitalized terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement the words "shall" and "will" are mandatory, and the word "may" is permissive.

“Abatement” or “Tax Abatement” means the full or partial exemption from ad valorem taxes on eligible taxable real property for a specified period on the difference between (i) the amount of increase in the appraised value (as reflected on the certified tax roll of the Wichita County Appraisal District) resulting from improvements begun after this Agreement and (ii) the appraised value of such real estate effective January 1, 2016 (as reflected on the 2016 certified tax roll of the Wichita County Appraisal District).

“Improved Property Value” means the value of the Facility, as it is determined by the Wichita County Appraisal District ~~beginning January 1~~ [for](#) the year immediately following the date the facility receives its Certificate of Occupancy, and continuing January 1 of each year following, for a period of ten (10) years.

“Pre-Improvement Property Value” means the value of the Facility, as it is determined by the Wichita County Appraisal District effective ~~January 1,~~ [for](#) 2016.

“Facility” means the nursing and rehabilitation facility, as further described in the attached Exhibit “A”.

1.2 Singular and plural; gender. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa. Likewise, any masculine references shall include the feminine, and vice versa.

ARTICLE 2  
REPRESENTATIONS

2.1 Representations of the Developer. The Developer hereby represents that:

(a) It is duly authorized, created and existing in good standing under the laws of the State of Texas and is duly qualified and authorized to carry out its obligations described in this Agreement.

(b) It has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed and delivered by the Developer and, constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

(d) The execution, delivery and performance of this Agreement by the Developer do not require the consent or approval of any person which has not been obtained.

2.2 Representation of the City. The City hereby represents that:

(a) The City is duly authorized, created and existing under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(b) The City has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

(d) The execution, delivery and performance of this Agreement by the City do not require the consent or approval of any person which has not been obtained.

2.3 No partnership or agency created. Each party agrees and represents that the City and the Developer are not agents, partners or venturers of the other with respect to the Project, and that nothing in this Agreement shall be construed to create any such relationship.

### ARTICLE 3

#### THE PROJECT

3.1 Description of the Project. The Project is the construction of a nursing and rehabilitation facility within the City of Burkburnett, more specifically identified in Exhibit A.

3.2 Development of the Project. In consideration of the benefits of this Agreement, the Developer agrees to develop the Project and to complete improvements necessary for the operation of the Project.

3.3 Monitoring progress. The City may, but is not required to, monitor the progress of the Project to determine the Developer's compliance with this Agreement. City personnel shall have reasonable access to the Facility, and such other information as they may reasonably determine is relevant to the Developer's compliance with this Agreement, provided such information is not confidential. City personnel shall give the Developer a minimum of five (5) business days notice prior to visiting the Facility. In the event City requests documentation, Developer shall have ten (10) business days to provide such documents. In the event Developer cannot produce the requested documentation within ten (10) business days, Developer shall provide City with a written explanation as to why the document(s) cannot be produced within the time provided, and a reasonable explanation as to when and if the documentation can be produced.

### ARTICLE 4

#### TAX ABATEMENT

4.1 Abatement. City agrees to a tax abatement schedule for a period of ten (10) years beginning the date the facility obtains its Certificate of Occupancy. The Developer will be entitled

under this Agreement to abate of ad valorem taxes begin the first calendar year after the Developer receives the Certificate of Occupancy for the nursing and rehabilitation facility as follows:

Year 1: Developer will receive a tax abatement for 100% of the difference between the Improved Property Value and the Pre-Improvement Property Value; Developer will only be responsible for taxes based on Pre-Improvement Property Value.

Year 2: Developer will receive a tax abatement for 90% of the difference between the Improved Property Value and the Pre-Improvement Property Value; Developer will be responsible for taxes on the Pre-Improvement Property Value, plus taxes on 10% of the difference between the Improved Property Value less the Pre-Improvement Property Value.

Year 3: Developer will receive a tax abatement for 80% of the difference between the Improved Property Value and the Pre-Improvement Property Value; Developer will be responsible for taxes on the Pre-Improvement Property Value, plus taxes on 20% of the difference between the Improved Property Value and the Pre-Improvement Property Value.

Year 4: Developer will receive a tax abatement for 70% of the difference between the Improved Property Value and the Pre-Improvement Property Value; Developer will be responsible for taxes on the Pre-Improvement Property Value, plus taxes on 30% of the difference between the Improved Property Value and the Pre-Improvement Property Value.

Year 5: Developer will receive a tax abatement for 60% of the difference between the Improved Property Value and the Pre-Improvement Property Value; Developer will be responsible for taxes on the Pre-Improvement Property Value, plus taxes on 40% of the difference between the Improved Property Value and the Pre-Improvement Property Value.

Year 6: Developer will receive a tax abatement for 50% of the difference between the Improved Property Value and the Pre-Improvement Property Value; Developer will be responsible for taxes on the Pre-Improvement Property Value, plus taxes on 50% of the difference between the Improved Property Value and the Pre-Improvement Property Value.

Year 7: Developer will receive a tax abatement for 40% of the difference between the Improved Property Value and the Pre-Improvement Property Value; Developer will be responsible

for taxes on the Pre-Improvement Property Value, plus taxes on 60% of the difference between the Improved Property Value and the Pre-Improvement Property Value.

Year 8: Developer will receive a tax abatement for 30% of the difference between the Improved Property Value and the Pre-Improvement Property Value; Developer will be responsible for taxes on the Pre-Improvement Property Value, plus taxes on 70% of the difference between the Improved Property Value and the Pre-Improvement Property Value.

Year 9: Developer will receive a tax abatement for 20% of the difference between the Improved Property Value and the Pre-Improvement Property Value; Developer will be responsible for taxes on the Pre-Improvement Property Value, plus taxes on 80% of the difference between the Improved Property Value and the Pre-Improvement Property Value.

Year 10: Developer will receive a tax abatement for 10% of the difference between the Improved Property Value and the Pre-Improvement Property Value; Developer will be responsible for taxes on the Pre-Improvement Property Value, plus taxes on 90% of the difference between the Improved Property Value and the Pre-Improvement Property Value.

Years 11+: Developer will be responsible for 100% of all taxes assessed.

## ARTICLE 5

### DEFAULT; REMEDIES

5.1 Default. A party to this Agreement shall be in "Default" if the party has failed to perform a duty or obligation required by this Agreement and does not cure the failure within thirty (30) calendar days (if the obligation involves a monetary obligation) or within a reasonable time (if the obligation involves a non-monetary obligation) after receiving written notice from the other party setting forth in reasonable detail the nature of the alleged failure, subject to Section 6.5 herein. If a monetary obligation is not cured within thirty (30) calendar days, the defaulting party shall have additional time to cure if, prior to the expiration of the thirty (30) calendar days, it can show a cure is actively being pursued and full cure of the default will occur within a reasonable time.

5.2 Remedies.

(a) If the Developer is in Default, the City may pursue any one or more of the following remedies: (1) specific performance of this Agreement; (2) damages incurred by the City as a result of the Default; (3) recapture of previously abated taxes, retroactive to the effective date of this Agreement; or (4), termination of this Agreement and refusal to abate future tax assessments.

(b) If the City is in Default, the Developer may seek damages for the City's failure to abate any tax under this Agreement, plus accrued interest at the rate of five percent per annum (5%). Interest will begin accruing after the 30 day period specified in Section 5.1 of this Agreement. The Developer shall have no recourse against the tax base of the City or any other funds of the City other than as specified herein or damages relating to nonpayment thereof. The Developer shall be further entitled to a writ of mandamus to compel compliance of officials relating to this Agreement, except that the Developer may not compel the City to issue bonds or other tax supported debt in order to make the payments required under this Agreement.

## ARTICLE 6

### GENERAL

6.1 Inspections, audits. The parties agree to keep such records with respect to the activities contemplated by this Agreement as may be reasonably required.

6.2 Developer operations and employees. All personnel supplied or used by the Developer in the performance of this Agreement or with respect to the Project shall be deemed contractors or subcontractors of the Developer and will not be considered employees, agents, contractors or subcontractors of the City for any purpose whatsoever. The Developer shall be solely responsible for the compensation of all such contractors or subcontractors.

6.3 Personal liability of public officials, legal relations. To the extent permitted by state law, no director, officer, employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Agreement.

6.4 Indemnity. DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER, TYPE, OR DESCRIPTION BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY INJURY OR DAMAGES RECEIVED OR SUSTAINED BY ANY

PERSON OR PERSONS OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, THE ACTS OF DEVELOPER OR ITS AGENTS OR EMPLOYEES. DEVELOPER SHALL PROVIDE A DEFENSE OF SUCH CLAIMS AT ITS OWN EXPENSE WITH LEGAL COUNSEL WHO SHALL REPORT TO THE CITY.

6.4 Force Majeure. Neither the City nor the Developer shall be liable for failure to perform their duties if such failure is caused by a catastrophe, riot, war, fire, flood, landslide, lightning, act of God, or similar contingency beyond the reasonable control of the parties to this contract.

6.5 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following addresses:

Developer:

Burkburnett NH Realty, LTD  
Attn: \_\_\_\_\_  
Address  
Burkburnett, Texas 76354  
Fax: \_\_\_\_\_

City:

CITY OF BURKBURNETT, Texas  
501 Sheppard Road  
Burkburnett, Texas 76354  
Attention: City Manager

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for by, or actually received by the other party.

6.6 Amendments and waivers. No provision of this Agreement may be amended or waived unless such amendment or waiver is in writing and is signed by all the parties. No course

of dealing on the part of the parties, nor any failure or delay by one or more of the parties, with respect to exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, except as otherwise provided in this section.

6.7 Invalidity. If any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement, except to the extent of a complete failure of consideration.

6.8 Successors and assigns. All covenants and agreements contained by or on behalf of a Party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other Parties, their successors and assigns. The Parties may assign their rights and obligations under this Agreement or any interest herein, only with the prior written consent of the other Party, and any assignment without such prior written consent, including an assignment by operation of law, is void and of no effect. The non-assigning party shall have sixty (60) calendar days from receipt of an assignment request to issue written consent of the assignment or withhold consent; consent shall not be unreasonably withheld. At its discretion, the assigning party may grant the non-assigning party additional time to issue its consent.

6.9 Titles of articles, sections and subsections. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated.

6.10 Construction. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas; as such laws are now in effect. Venue for and all suits or causes of action shall be exclusive in Wichita County, Texas.

6.11 Entire Agreement. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

6.12 Term. The term of this Agreement shall commence upon the issuance of the Certificate of Occupancy for the Facility and shall continue in full force and effect for ten (10) years (the “Term”).

6.13 Time of the essence. Time is of the essence with respect to the obligations of the Parties to this Agreement.

6.14 Further assurances. Each Party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed as of the date first written above.

*[Signature Page to Follow]*

**Burk NH Realty, Ltd.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF BURKBURNETT, TEXAS**

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

Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

City Secretary

\_\_\_\_\_