

AGENDA

Notice is hereby given of a meeting of the Board of Commissioners of Burkburnett to be held on **Monday, May 20, 2013** 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- Robert Blackmon, Pastor of Valley's Shadow Fellowship, Baton Rouge, Louisiana.

Item 3. Pledge of Allegiance.

Item 4. Canvass the election returns for the Municipal/Bond Election held on May 11, 2013.

Item 5. Resolution 548. A resolution canvassing election results for the Municipal Election held on May 11, 2013.

Item 6. Resolution 549. A resolution canvassing the election results for the Bond Election held on May 11, 2013.

Item 7. Oath of Office for the newly elected Commissioners.

Item 8. Election of Mayor for the ensuing year in compliance with Article 4, Section 7 of the City Charter.

Item 9. Election of Mayor Pro-Tem for the ensuing year in compliance with Article 4, Section 7 of the City Charter.

Item 10. CONSENT AGENDA:

A. Approval of Minutes April 8 Special Called Meeting and April 15, 2013.

Item 11. Mayor to close regular meeting and open "Public Hearing" for the following Planning & Zoning Commission Case:

A. Case #2013-11, Specific Use Permit for 1007 Sheppard Rd., to allow storage rental units.

Item 12. Mayor to close Public Hearing and reopen the regular meeting and take action on Planning & Zoning Commission Case:

- A. Case #2013-11, Specific Use Permit for 1007 Sheppard Rd., to allow storage rental units

Item 13. Discuss and take any action necessary on Alan Plummer Associates Inc. proposal.

Item 14. Ordinance 833. An ordinance approving and adopting rate schedule “RRM-Rate Review Mechanism” for Atmos Energy Corporation for a period of time as specified in the rate schedule.

Item 15. Ordinance 834. An ordinance amending Appendix J of the Water Conservation Plan.

Item 16. Resolution 550. A resolution approving the submission of a grant application for an Audio/ Video Patrol Car Camera System.

Item 17. Discuss and take any action necessary concerning the City’s hiring policies and procedures.

Item 18. Mayor to close regular meeting and open “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 551.072-Deliberation Regarding Real Property
 - a. Tax foreclosure properties

Item 19. Reconvene to regular session and take action, if any, on matters discussed in Executive Session.

Item 20. Review of monthly reports.

- A. Administration
- B. Public Works
- C. Public Safety

Item 21. 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 given in response to the inquiry or a recitation of existing policy on that issue in response to the inquiry.

Item 22. City Manager's report.

- A. Calendar
- B. Water Well project
- C. Family Aquatic Center
- D. Water Conservation

Item 23. 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 salutory 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 salutory 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 24. 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 8:30 a.m. on Friday, May 17, 2013 in compliance with the Open Meeting Act Chapter 551.


Janelle Dolan, City Clerk
Posted 5/17/2013 @ 8:30am

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.

RESOLUTION NUMBER 548
RESOLUTION CANVASSING ELECTION RETURNS

On this the 20th day of May 2013, the City Commissioners of the City of Burkburnett, Texas convened in a special session open to the public at the regular meeting place thereof with the following members present, to wit:

Carl Law	Mayor
Bill Lindenborn	Mayor Pro-Tem
Josh Andrajack	Commissioner
Randy Brewster	Commissioner
Don Hardy	Commissioner
Marguerite Love	Commissioner
Michael Tugman	Commissioner
Tim James	City Manager
Janelle Dolan	City Clerk

There came to be considered the returns of an election held on the 11th day of May, 2013 for the purpose of electing the herein after named officials, and it appearing from said returns, duly and legally made, that there were cast at said election 1408 valid and legal votes (816 Early, 0 Mail, and 592 Election Day); that each of the candidates in said election received the following votes:

	Early	Election Day	Mail	Total
Raymond Holland	276	181		457
Mark G Ewell	116	98		214
Bill Lindenborn	475	344		819
Carl Law	454	335		789
Theophile "Ted" Kwas	331	217		548
Randy Brewster	404	299		703

Therefore, be it resolved by the Board of Commissioners of the City of Burkburnett, Texas that said election was duly called, that said notice of election was given in accordance with law, and the election was held in accordance with law, and that Randy Brewster, Bill Lindenborn and Carl Law were duly elected Commissioners of said City at said election.

Said above named parties are hereby declared duly elected to said respective offices, subject to the taking of their oaths as provided by the laws of the State of Texas.

It is further found and determined that in accordance with the order of this governing body, the City Clerk posted written notice of the date, place and subject of this meeting on the glass front door facing the outside located in the City Hall, a place convenient and readily accessible to the General Public, and said notice having been so posted and remaining posted continuously for at least 72 hours preceding the scheduled time of meeting.

Passed and approved this 20th day of May 2013.

ATTEST:

Carl Law, Mayor

Janelle Dolan, City Clerk

RESOLUTION NUMBER 549

A RESOLUTION CANVASSING THE RETURNS AND DECLARING THE RESULTS OF THE BOND ELECTION HELD MAY 11, 2013.

WHEREAS, an election was held in the City of Burkburnett, Texas on the 11th day of May, 2013, for the purpose of submitting a certain proposition for the issuance of bonds to the resident electors of the City; and

WHEREAS, it is hereby found and determined that notice of the election was duly given in the form, manner and time required by law, and said election was in all respects legally held and conducted in accordance with applicable laws of the State of Texas and the proceedings calling and governing the holding of such election; and

WHEREAS, the returns of said election have been duly and legally made and submitted to the Board of Commissioners for canvassing, and a tabulation of the returns for the polling place and for early voting, as canvassed and tabulated by this governing body and shown in Exhibit A attached hereto, reflect that the total sum of votes counted “FOR” and “AGAINST” the proposition submitted is as follows:

“THE ISSUANCE OF \$4,500,000 GENERAL OBLIGATION BONDS FOR CONSTRUCTING AND EQUIPPING A FAMILY AQUATIC CENTER AND THE LEVYING OF THE TAX IN PAYMENT THEREOF”

“FOR” 766 votes

“AGAINST” 622 votes

THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS:

SECTION 1: All of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its judgment.

SECTION 2: It is further found and determined that the results of the election are as canvassed and tabulated in the preamble hereof and in **Exhibit A** attached hereto, and a majority of the electors voting at said election having voted in favor of the proposition; the Board of Commissioners is hereby declared to be authorized and empowered to issue bonds of the City in the amount and for the purposes stated in said proposition; as more fully set forth and identified above and in the proceedings calling said bond election.

SECTION 3: The City Clerk is hereby authorized and directed to make the appropriate entries of information appearing in the tabulation of precinct results shown in **Exhibit A** attached hereto in the election register maintained by the City in accordance with provisions of Section 67.006 of the Election Code.

PASSED AND APPROVED, this the 20th day of May, 2013.

CITY OF BURKBURNETT, TEXAS

Carl Law, Mayor

ATTEST:

Janelle Dolan, City Clerk

EXHIBIT A

**TABULATION OF VOTES
RE: SPECIAL BOND ELECTION
HELD MAY 11, 2013**

**“THE ISSUANCE OF \$4,500,000 GENERAL OBLIGATION BONDS FOR
CONSTRUCTING AND EQUIPPING A FAMILY AQUATIC CENTER
AND THE LEVYING OF THE TAX IN PAYMENT THEREOF”**

	FOR	AGAINST	TOTAL
POLLING PLACE	<u>332</u>	<u>254</u>	<u>586</u>
EARLY VOTING	<u>434</u>	<u>368</u>	<u>802</u>

MINUTES
BOARD OF COMMISSIONERS

The Board of Commissioners of the City of Burkburnett, Texas met in a Special Called Meeting on Monday, April 8, 2013 at 4:00 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 Meeting Act. The following Commissioners were present:

Carl Law	Mayor
Bill Lindenborn	Mayor Pro-Tem
Josh Andrajack	Commissioner
Randy Brewster	Commissioner
Don Hardy	Commissioner
Marguerite Love	Commissioner

Commissioner Tugman was not present.

Others present: Tim James, City Manager; Trish Holley, Director of Administration; Michael Whaley, Public Works Director; and Janelle Dolan, City Clerk.

Item 1. Mayor Law called the meeting to order.

Item 2. Mr. James, City Manager, addressed the Mayor and Commissioners and stated the City received a request from Oncor for an easement and right-of-way on City property to provide power to the new Cemetery pavilion. Mr. James stated previously there was an overhead line which has now been removed and an easement is needed to provide underground electric supply.

Motion was made by Commissioner Andrajack, seconded by Commissioner Hardy to approve the easement request from Oncor as presented. Motion carried.

Item 3. Mayor Law closed the regular meeting at approximately 4:04 p.m. and opened the “Public Hearing”.

A. SECTION 551.072-Deliberation Regarding Real Property

a. Water Supply

Item 3. Mayor Law closed the “Public Hearing” at approximately 4:44 p.m. and reopened the regular meeting.

April 8, 2013

No action was taken.

Item 4. Council Comments.

Item 5. Motion was made by Commissioner Lindenborn, seconded by Commissioner Love to adjourn. Motion carried unanimously.

Carl Law, Mayor

ATTEST:

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, April 15, 2013 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
Josh Andrajack	Commissioner
Don Hardy	Commissioner
Marguerite Love	Commissioner
Michael Tugman	Commissioner

Commissioner Brewster was not present.

Others present: Tim James, City Manager; Trish Holley, Director of Administration; Mike Whaley, Director of Public Works; Janelle Dolan, City Clerk; and Mike Tracey, Police Chief.

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

Item 2. Invocation was given by Rev. Richard Kirkham, Pastor of St. Jude Catholic Church.

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

The following addressed the Mayor and Commissioners.

Jeri Hutchinson, 1318 Lucille, Burkburnett-Mrs. Hutchinson provided information on Child Abuse Prevention Month.

Item 4. Consent Agenda.

A. Approval of Minutes March 18, 2013

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

Item 5. Tim James, City Manager, addressed the Mayor and Commissioners on the proposal for the installation of a utility payment kiosk. Mr. James stated the proposed

kiosk would be installed at the existing drive-thru window location, there would be no staffing changes. Mr. James stated the payment kiosk would accept cash, checks, credit cards and would be available to citizens 24/7 hrs/day. Mr. James stated the system will interface with the City's current utility billing system and also be able to accept court payments. Mr. James reported the initial cost of the proposed system is \$27,202 and there is an annual support fee of \$4,534 which is included the purchase price for the first year.

Motion made by Commissioner Love, seconded by Commissioner Lindenborn to support the kiosk agreement to benefit citizens that are not available from 8-5 to pay their bill. Motion carried unanimously.

The following addressed the Mayor and Commissioners:
Mark Ewell, 203 S. Holly, Burkburnett

Item 6. Mr. James addressed the Mayor and Commissioners and reported on April 10th, City staff along with Richard Boyd of Corlett, Probst & Boyd, P.L.L.C. opened sealed bids for the rehabilitation of Davey Drive and Bishop Rd., included in the bid as an alternate bid item is the cost to complete the driving surface and parking area for the cemetery pavilion project.

Mr. James provided the following information on the bids submitted:

<u>Bidder</u>	<u>Proposal</u>	<u>Alternate Bid</u>	<u>Total</u>
Barnett Paving	\$238,016.00	\$99,583.00	\$337,599.00
Duke Construction	\$290,078.00	\$130,302.50	\$420,380.50
Bobby Bounds	\$242,512.00	\$100,667.50	\$343,179.50

The City currently has remaining:

- Street Bond - \$361,709
- Cemetery Fund - \$25,533

If the City awards both the base bid and alternate bid using the available funds, the remaining balances would be:

- Street Bond - \$49,598
- Cemetery Fund - \$0

Motion was made by Commissioner Lindenborn, seconded by Commissioner Hardy to award the contract to the lowest bidder, Barnett Paving, for the base bid and the alternate bid. Motion carried unanimously.

Item 7. Mr. James addressed the Mayor and Commissioners and reported Commissioner Brewster had requested discussing the possibility of creating a motorized cart ordinance in the City of Burkburnett. No motion made, no action taken.

Item 8. Mr. James addressed the Mayor and Commissioners and stated terms for Parks and Recreation Board members Don Hardy and Curtis Willis will expire in April. Mr. James stated both members have indicated a desire to continue serving on the Board.

Motion made by Commissioner Tugman, seconded by Commissioner Lindenborn to re-appoint Don Hardy and Curtis Willis to the Parks and Recreation Board.

Ayes: Mayor Law; Commissioners Lindenborn, Andrajack, Brewster, Love, and Tugman

Abstained: Commissioner Hardy

Motion carried.

Item 9. Mr. James addressed the Mayor and Commissioners and stated the Golf Committee recommend the City fund the installation of a sound system for the new pavilion addition at the golf course with a proposed cost of \$2,928.16. Mr. James stated the Golf Course lease agreement defines capital improvements as improvements with a value in excess of \$5,000 with a useful life in excess of 5 years. Mr. James stated City Staff does not believe this meets the definition of capital improvement.

Motion was made by Commissioner Andrajack to approve the funding of \$2,928.16 for the purchase of the sound system. Motion died for lack of a second. No action taken.

Item 10. 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 551.072-Deliberation Regarding Real Property

a. Water Supply

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

(1) Evaluation of City Manager, Tim James.

Item 11. Mayor Law reconvened the regular meeting at 10:22 p.m. No action was taken.

Item 12. Review of monthly reports.

A. Administration-Trish Holley, Director of Public Administration, reported the sales tax decreased 2.47% this month but there is still an overall increase of 8.57% from last year.

B. Public Works- Mike Whaley, Director of Public Works, reported the metal is up on the Cemetery pavilion.

- C. Public Safety- Mike Tracey, Chief of Police, reported the Police Department received a grant of \$17,000 for an Audio/ Video Patrol Car Camera System.

Item 13. Public Comments.

The following addressed the Mayor and Commissioners:

Daniel Hill, 300 E. 7th, Burkburnett

Mark Ewell, 203 S. Holly, Burkburnett

Item 14. City Manager's report.

A. Calendar:

4/18/13- Charter Commission Meeting

4/18/13- Public Meeting @ Library (Family Aquatic Center)

4/25/13-Public Meeting @ City Hall (Family Aquatic Center)

4/25/13-TML Region 5 Quarterly Meeting @ Community Center

4/30/13-Public Meeting @ American Legion (Family Aquatic Center)

5/7/13-Public Meeting @ Park (Family Aquatic Center)

B. Budget Workshop-will be scheduled at the end of next week.

C. Family Aquatic Center-is on the ballot for May 11, 2013. Mr. James thanked the Burkburnett Informer Star for providing information in the newspaper on the Family Aquatic Center.

Item 15. Commission comments.

Item 16. Motion was made by Commissioner Lindenborn, seconded by Commissioner Love to adjourn. Motion carried unanimously.

Carl Law, Mayor

ATTEST:

Janelle Dolan, City Clerk



City Commission Agenda Memo

From: Mike Whaley
Date: 5-20-2013
Item: Specific Use Permit, 1007 Sheppard Rd, Construct Storage Rental Units

Background

Mr. Baber has submitted a site plan to construct storage rental units at 1007 Sheppard Rd which is within a commercial zone. The use charts allow for this type of construction within a commercial zone but require the applicant to apply for a specific use permit. The City Staff has reviewed the site plan as well as preliminary construction details such as, storm drainage, easements, set back, utilities, and parking. The proposed change does meet the future land use plan as set for commercial development. The P&Z voted unanimously to approve Mr. Baber's request for the SUP to allow construction of storage rental units. There was no opposition at the previous public hearing.

Fiscal Impact

N/A

Options

Approve
Approve with additional requirements
Deny

Staff Recommendation

Accept P&Z recommendation for approval.

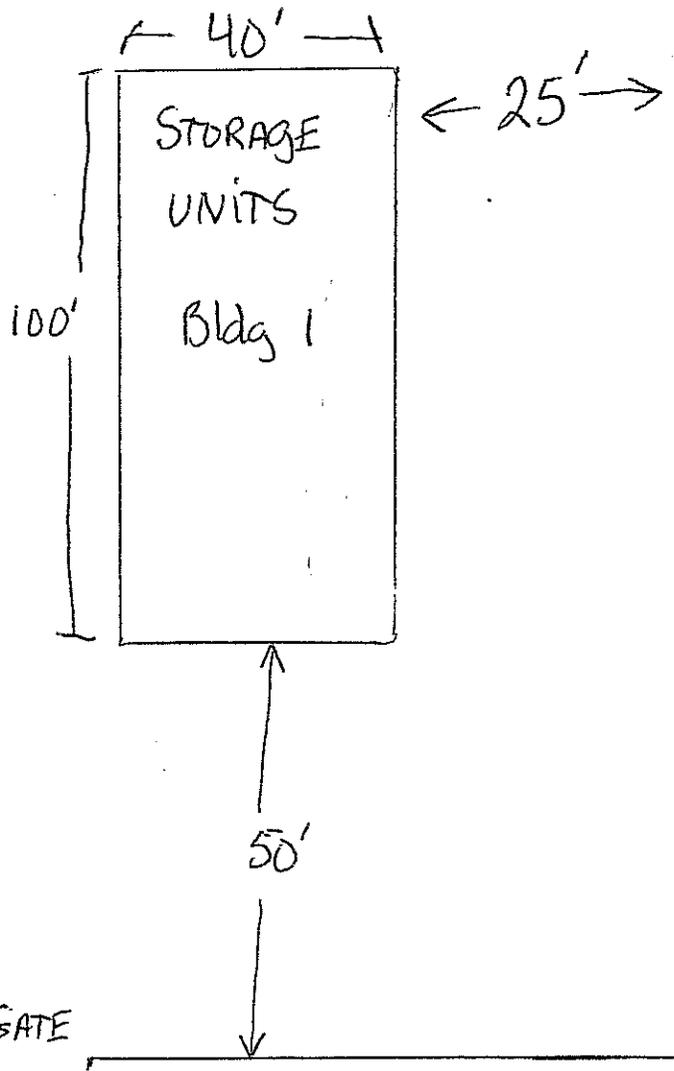
Attachments

Aerial view
Application
Site plan

MAIN BUILDING
Bldg 2

Bldg 1, 8' TALL
40' WIDE
100' LONG
SIGNAGE ON 240 SIDE OF Bldg.

Bldg 2, Existing body Shop



PROPERTY BOUNDARY

Y R A T H M C A

Bldg / COVERED
PARKING

20'

GATE

30' From
curb

PIPE FENCE

SIDE WALK

SYCAMORE DR.



Board of Commissioners Agenda Memo

From: Tim James, P.E. – City Manager

Date: May 20, 2013

Item: Discuss and Take Any Action Necessary on Alan Plummer Associates, Inc proposal

Background

Alan Plummer Associates has provided a proposal for professional engineering services for the design and analysis of the infrastructure needed for the expansion of the City's water supply. The total cost of the proposal is \$217,635.

Fiscal Impact

The funds for the proposed services will come from the existing revenue bonds. Currently there is \$618,312 available.

Options

- Approve Alan Plummer Associates agreement
- Recommend modifications to Alan Plummer Associates agreement
- Take no action

Staff Recommendation

Staff has recommends approval of the Alan Plummer Associates agreement

Attachments

- Alan Plummer Associates proposal

ALAN PLUMMER ASSOCIATES, INC.
AGREEMENT FOR ENGINEERING SERVICES

Project No. _____

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2013, by and between the **City of Burkburnett, Texas**, (hereinafter called "OWNER") and the firm of **ALAN PLUMMER ASSOCIATES, INC.**, a Texas Corporation with its corporate office at 1320 South University, Suite 300, Fort Worth, Tarrant County, Texas, (hereinafter called "Engineer").

OWNER INFORMATION

Name: _____ Contact: _____
 Billing Address: _____ Title: _____
 _____ Telephone: _____

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, Owner and Engineer agree as follows:

SCOPE OF SERVICE:

Owner requests and authorizes Engineer to perform **BASIC ENGINEERING SERVICES** to for the Detailed Engineering Design of raw water pipeline improvements as described in Attachments 1 - 3 and as authorized by the OWNER.

COMPENSATION:

Compensation for **BASIC ENGINEERING SERVICES** shall be paid by the Owner to the Engineer for Services as identified for the following lump sum amounts:

Attachment	Description	Lump Sum
1.	Basic Engineering Design Services for WTP	
	Preliminary Design	\$ 16,550.00
	Detailed Design	\$ 75,085.00
2.	Water System Evaluation	\$ 75,000.00
TOTAL		\$ 166,635.00

Compensation for BASIC ENGINEERING SERVICES shall be paid by the Owner to the Engineer for Services as identified in ATTACHMENT 3 on a cost reimbursable basis in an amount not to exceed the following unless authorized in writing by the Owner:

Attachment	Description	Allowance
3.	Construction Administration	\$ 26,000.00
3.	Construction Meeting Allowance	\$ 10,000.00
NA	Site Surveying for Design (By others, if required)	NA
NA	Geotechnical Investigation (By others, if required)	NA
TOTAL		\$ 36,000.00

When compensation is on a cost reimbursable basis, Engineer's personnel time will be billed at Engineer's hourly rates as attached hereto. All direct non-labor expenses, including mileage, travel and lodging expenses, but excluding subcontract expenses, applied to the BASIC ENGINEERING SERVICES, shall be paid at invoice or internal office cost plus a fifteen percent (15%) service charge. Subcontract expenses shall be paid at direct cost plus a fifteen percent (15%) service charge. All sales, use, value added, business transfer, gross receipts, or other similar taxes will be added to Engineer's compensation when invoicing Owner.

ADDITIONAL SERVICES:

Various ADDITIONAL SERVICES incidental to the Project, but not within the scope of the Basic Engineering Services covered by preceding attachments, which may be performed or arranged for separately by the Owner, or may be added to the Engineer's responsibilities by mutual agreement and written authorization, include, but are not necessarily limited to, the following:

1. Prepare to serve or serve as an expert witness on behalf of the Owner in connection with any public hearings or legal proceedings.
2. Additional meetings beyond the number of meetings listed in the basic services;
3. Assistance with on-site data collection or field services, not defined in the basic services;
4. Conversion of any hard-copy data, specified in the basic services to be provided in electronic format by the CLIENT, to electronic format;
5. Additional modeling and analysis to include conditions that are not listed in the basic services
6. Re-write or provide existing operation and maintenance manual in CAD or WORD- readable format, or writing O&M Manual for any existing facilities.
7. Preparation for or participation in contested case hearings to support discharge permit applications or for public meetings to support U.S. Army Corps of Engineers permits.
8. Assistance with evaluation, permitting, or design of facilities needed for off-site effluent reuse.
9. Provide any other services otherwise excluded in this Agreement but customarily furnished in accordance with generally accepted engineering practices.

Compensation for this work shall be paid on a cost reimbursable basis. Engineer's personnel time will be billed at Engineer's standard hourly rates, a service charge of 15 percent will be added to Direct Expenses. All sales, use, value added, business transfer, gross receipts, or other similar taxes will be added to Engineer's compensation when invoicing Owner.

Attachment	Description	Allowance
NA	Additional Services Allowance	\$ 15,000.00
TOTAL		\$ 15,000.00

Any services desired by the Owner under these Additional Service provisions require advance written authorization, including establishment of a fee ceiling for each task authorized, before Engineer may proceed.

OTHER TERMS:

Engineer shall not commence work without prior written authorization from Owner. Preliminary Design, Detail Design, and Distribution System Evaluation shall be completed within six (6) months of receiving notice to proceed. Construction Administration services begin with the completion of detailed design and continue through the final acceptance by the Owner.

OWNER SERVICES:

The Owner and its representatives will render the following services:

1. Surveying services for the Project.
2. Provide available criteria and full information as to the Owner's requirements for the Project.
3. Assist the Engineer by placing at his disposal all available written or electronic data pertinent to the Project including previous designs, reports or investigations. Furnish or otherwise make available such additional Project related information and data as is reasonably required. Such additional information would generally include:
 - Property Descriptions
 - Zoning, Deeds, and other land use restrictions
 - Property, boundary, easement, right-o-way, and other special surveys or data
 - Exploration and tests of subsurface conditions at or contiguous to the site
 - Environmental assessments, audits, investigations, impact statements, etc.
4. Examine documents submitted by the Engineer and render a decision pertaining thereto promptly, to avoid unreasonable delay in the progress of the Engineer's services.
5. Furnish information required as expeditiously as possible for the orderly progress of the work.
6. The Owner shall appoint, in writing, a representative that the Engineer shall be entitled to rely upon regarding decisions made by the Owner. All subsequent communication to the Owner shall be deemed made when conveyed in writing to the representative at the location specified in this Agreement.
7. The services, information, and reports required by this Attachment, inclusive, shall be furnished at the Owner's expense, and the Owner will use its best efforts to apprise the Engineer of any inaccuracies or inconsistencies in the information provided.

- 8. Provide prompt written notice to Engineer upon Owner observance or otherwise becomes aware of the presence of any constituent of concern or other development that affects the scope or time of performance of Engineer's Services.
- 9. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services.
- 10. Attend any pre-bid conference, bid opening, pre-construction conference, progress or other Project related meetings.

Services covered by this Agreement will be performed in accordance with the Provisions attached to this form and any other attachments or schedules. This Agreement supersedes all prior Agreements and understandings and may only be changed by written amendment executed by both parties.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

Owner:

Alan Plummer Associates, Inc.:

By _____

By _____

Title _____

Title _____

Date _____

Date _____

GENERAL TERMS AND CONDITIONS**1. Authorization to Proceed**

Execution of this Agreement by the Owner will be authorization for ALAN PLUMMER AND ASSOCIATES, INC. ("Engineer") to proceed with the work, unless otherwise provided for in this Agreement.

2. Salary Costs

Engineer's Salary Costs, when the basis of compensation, are the amount of wages or salaries paid Engineer's employees for work directly performed on Owner's Project plus a percentage applied to all such wages or salaries to cover all payroll-related taxes, payments, premiums, and benefits.

3. Per Diem Rates

Engineer's Per Diem Rates, when the basis of compensation, are those hourly or daily rates charged for work performed on Owner's Project by Engineer's employees of the indicated classifications. These rates are subject to annual calendar year adjustments and include all allowances for salary, overheads, and fee, but do not include allowances for Direct Expenses.

4. Direct Expenses

Engineer's Direct Expenses, when part of the basis of compensation, are those costs incurred on or directly for the Owner's Project, including; but not limited to, necessary transportation costs, including Engineer's current rates for Engineer's vehicles; meals and lodging; laboratory tests and analyses; computer services; word processing services, telephone, printing, binding, and reproduction charges; all costs associated with outside consultants, subconsultants, subcontractors, and other outside services and facilities; and other similar costs. Reimbursement for Direct Expenses will be on the basis of actual charges when furnished by commercial sources and on the basis of current rates when furnished by Engineer.

5. Cost Opinions

Any cost opinions or Project economic evaluations provided by Engineer will be on a basis of experience and judgment; but, since it has no control over market conditions or bidding procedures, Engineer cannot warrant that bids, ultimate construction cost, or Project economics will not vary from these opinions.

6. Termination

This Agreement may be terminated for convenience upon 30 days' written notice by either party with or without cause. On termination, Engineer will be paid for all work performed up to the date of notification. If no

notice of termination is given and termination is not for cause, relationships and obligations created by this Agreement, except Articles 8 through 15, will be terminated upon completion of all applicable requirements of this Agreement.

7. Payment to Engineer

Monthly invoices will be issued by Engineer for all work performed under this Agreement. Invoices are due and payable on receipt. Interest at the rate of 1-1/2 percent per month, or that permitted by law if lesser, will be charged on all past-due amounts starting 30 days after date of invoice. Payments will first be credited to interest and then to principal.

In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The Owner will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

8. Independent Consultant

Engineer agrees to perform all services as an independent consultant and not as a subcontractor, agent or employee of the Owner.

9. Engineer's Personnel at the Project Site

The presence or duties of the Engineer's personnel at the Project site, whether as on-site representatives or otherwise, do not make the Engineer or its personnel in any way responsible for those duties that belong to Owner and/or to other contractors, subcontractors, or other entities, and do not relieve the other contractors, subcontractors, or other entities of their obligations, duties, and responsibilities, including, but not limited to, all methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work of those parties in accordance with their contract requirements and any health or safety precautions required by such work. The Engineer and its personnel have no authority to exercise any control over any contractor, subcontractor, or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of any contractor, subcontractor, or other entity or any other persons at the Project site except Engineer's own personnel.

Engineer neither guarantees the performance of any contractors, subcontractors or other entities nor assumes responsibility for their failure to perform their work in accordance with their contractual responsibilities.

10. Litigation Assistance

Unless specifically set forth in the Scope of Services, the Scope of Services does not include costs of the Engineer for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation or administrative proceedings taken or defended by the Owner.

All such services required or requested of the Engineer by the Owner, except for suits or claims between the parties to this Agreement, will be reimbursed as may be mutually agreed, and payment for such services shall be in accordance with Section 7, unless and until there is a finding by a court or arbitrator that Engineer's sole negligence caused Owner's damage.

11. Venue

In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Wichita, County, Texas, and shall be governed by the laws of the State of Texas.

12. Severability and Survival

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of this Agreement for any cause.

13. Interpretation

The limitations of liability and indemnities will apply whether Engineer's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, except for willful misconduct or gross negligence for limitations of liability and sole negligence for indemnification, and shall apply to Engineer's officers, affiliated corporation, employees and subcontractors. The law of the state of Texas shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

14. No Third Party Beneficiaries

This Agreement gives no rights or benefits to anyone other than the Owner and Engineer and has no third party beneficiaries. The Owner will include a provision in each agreement which Owner enters into with any other entity or person that such entity or person shall have no third-party beneficiary rights under this Agreement.

Engineer's services are defined solely by this Agreement, and not by any other contract or Agreement that may be associated with the Project.

15. Liability

- a. Engineer's services shall be governed by the negligence standard for professional services, measured as of the time those services are performed.
- b. The Owner's review, approval, or acceptance of, or payment for, any of these services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performances of this Agreement, and the Engineer shall be and remain liable in accordance with applicable law for all damages to the Owner caused by Engineer's omissions or negligent performance of any of the services furnished under this Agreement.
- c. To the maximum extent permitted by law, Engineer's liability for Owner damages for any cause or combination of causes will, in the aggregate, not exceed the limits of the Engineer's professional liability insurance coverage.
- d. As used herein, Engineer includes the corporation, subcontractors, and any of its or their officers, or employees.
- e. As between the Owner and the Engineer, any contract claim must be brought within two years from the day following the act or omission giving rise to the breach of contract claim.

16. Assignment

Neither Party will assign all or any part of this Agreement without prior written consent to the other party.

ATTACHMENT 1

DESIGN PHASE SERVICES

Alan Plummer Associates, Inc. (APAI) understands that the City of Burburnett (OWNER) has hired a consultant to design a new water well field on property immediately north of the existing water treatment plant. The well field will consist of 32 wells with an anticipated flow rate of 35 GPM per well. APAI's scope of services includes two main elements: 1) Designing a transmission pipeline that connects all the water wells to convey the raw water to the existing water treatment plant, and 2) Designing liquid ammonium sulfate storage and feed facilities at the water treatment plant. The ammonium sulfate system is required to convert the existing disinfection system at the Water Treatment Plant to chloramines. The project will not include design of components of the well system, such as a support slab, enclosure, and discharge piping.

Engineer shall provide DESIGN PHASE services as follows:

I. PRELIMINARY DESIGN:

- A. Process Design for the Ammonium Sulfate System:
 - i. Perform process calculations for sizing the Liquid Ammonium Sulfate storage and feed facilities at the OWNER'S Water Treatment Plant.
 - ii. Determine the maximum, minimum, and design chemical feed dosages, and calculate the sizes and ranges for chemical feed pump and storage facilities.
 - iii. Prepare process drawings and control description.
- B. Hydraulics for the Raw Water Pipeline:
 - i. Determine the hydraulic conditions for the raw water pipeline. The OWNER will provide pump curves and locations of the well pumps as well as the desired capacity of the pipeline.
 - ii. The size of the pipeline is not anticipated to exceed 12-inch diameter.
 - iii. Perform hydraulic calculations at initial and ultimate conditions.
- C. Raw Water Pipeline Preliminary Design
 - i. Determine the pipeline diameter based on the Project's hydraulic conditions.
 - ii. Coordinate pipeline route selection with OWNER'S staff. The design flow rate is anticipated to be 2 MGD.
 - iii. PVC piping will be used for the pipeline. Therefore no soil corrosion evaluation will be performed.
 - iv. Prepare pipeline preliminary opinion of probable construction cost based on the pipeline route selection.
 - v. Based on the pipeline route selection, the OWNER will determine easement requirements and be responsible for preparation of plat and field notes for easements.
 - vi. Prepare preliminary plan drawing of pipe alignment.
- D. Project Management and Documentation
 - i. Conduct a Project initiation meeting at the beginning of the preliminary design. Consult with the Owner to clarify and define the OWNER'S requirements for the Project and review conceptual design information and documents, design criteria, outline specifications, and conceptual opinions of probable project costs.
 - ii. Prepare a draft preliminary design memorandum (PDM) to present the findings of the preliminary design portion of the Project.
 - iii. Conduct a preliminary design review meeting with the OWNER to obtain comments on the PDM and to set the goals for the detailed design phase.
 - iv. Incorporate OWNER'S review comments and provide six (6) copies of the final memorandum for the OWNER.

II. DETAILED DESIGN:

- A. Prepare detailed plans, specifications, contract documents, and layouts for raw water pipeline improvements and a liquid ammonium sulfate feed system. The plans will be provided in AUTOCAD Release 2011. The plan sheets for the raw water pipeline will be prepared at a scale of 1"=100 LF. The ENGINEER'S standard details, specifications, and contract documents will be utilized for this project.
- B. Consult with Owner and gather information relative to the Project including existing design criteria, construction plans and drawings, mapping, reports, hydraulic profiles and models including existing electronic versions if available, user data including historical average and peak demands or flows, any existing projected demands or flows developed by local agencies, population studies, existing pumping data, capacity and age of existing facilities, land use and development data, current land ownership map and topography map, etc. Exhibits of existing systems shall be provided in electronic format if available. Some information may be collected as part of the preliminary design phase.
- C. Based on the Owner's observation of sandy soil at the well sites, geotechnical engineering services to determine subsurface conditions along the pipeline route are not included in this project. In the event that borings are requested by the Owner, the ENGINEER will advise the Owner with respect to the making of all subsurface investigations, including borings, test pits, soil resistivity surveys, and other subsurface explorations; however, the making of such investigations and the interpretations of data and reports by special consultants are not a part of the services to be rendered by the Engineer, and the cost therefore shall be paid by the Owner. The Engineer shall monitor the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, factory testing, etc., for the project, but the cost of such laboratory tests or inspection shall be paid by the Owner.
- D. Facilities to be designed shall consist of the following:
- i. **Connection of new well pumps to a common raw water supply pipeline. The raw water pipeline will connect each well. The water well contractor will extend a 20 foot section of PVC pipe out from each well for the raw water pipeline contractor to connect.**
 - ii. **Raw Water Pipeline from the new well field to the existing Water Treatment Plant raw water supply tank. The pipeline will total up to 20,000 LF of PVC pipe that connects each well together and to the Water Treatment Plant.**
 - iii. **A new liquid ammonium sulfate (LAS) feed system, including drum/tote storage and chemical pump skid installed in a prefabricated building on a concrete slab. LAS piping from the chemical building to the injection point.**
 - iv. **Communication facilities for pump run status and start/stop control of the new well pumps from the water treatment plant SCADA system via radio technology**
 - v. **Miscellaneous site work, yard piping, electrical distribution systems, SCADA communication and other capital facilities necessary to support the proposed improvements.**
 - vi. **Raw water meter to record flow from the new well field. The raw water meter will be located at the Water Treatment Plant.**
 - vii. **Electrical Service and Disconnects for each of the well sites (not including Power Company's design).**
 - viii. **Design of security improvements such as fencing and surveillance systems will be considered an Additional Service.**
- E. Furnish the Owner, when requested, the engineering data necessary for Owner's submittal of applications for routine permits required by local, state and federal authorities. Preparation of detailed applications and supporting documents for government grants, loans, site specific

- 404 permits, storm water permits, wastewater discharge permits, and/or archeological surveys, if required, will be provided as an Additional Service.
- F. Furnish such information necessary to utility companies whose facilities may be affected or services may be required for the project.
 - G. Prepare Technical Specifications and Bid Documents.
 - H. Engineer shall conduct up to two (2) in-house Quality Control (QC) meetings. The Engineer's QC review team shall consist of senior staff members.
 - I. The Engineer shall conduct up to two (2) project review meetings with the Owner at the Owner's facility coinciding with the submittal of the 50 and 90 percent completion points.
 - J. Engineer shall furnish up to six (6) sets of interim plans (half-size), specifications, and contract documents at the 50 and 90 percent completion points. Upon completion, Engineer will furnish three (3) full-size sets and three (3) half-size sets.
 - K. Provided three (3) updated opinions of cost for budget purposes and prepare final opinion of probable construction cost, and bidder's proposal forms (project quantities) for the improvements to be constructed. The Engineer's projections of construction cost will be based on materials and labor prices prevailing at the time of preparation. The Engineer does not warrant the accuracy of the opinion of construction cost.
 - L. Submit plans, specifications, and contract documents to the applicable federal and state agency(s) as well as regulatory and funding agencies for approval, where required.
 - M. Engineer will assist the Owner in the preparation of formal contract documents for the construction Agreement.
 - N. Revisions to the plans, specifications, or bid proposal made after approval by the Owner will be made as an Additional Service.
 - O. Water quality modeling of the distribution system is not included as a basic service. Modeling can be conducted as an Additional Service.
- III. Compensation for this work shall be paid as a lump sum. Engineer will prepare separate monthly invoices for the percent work completed.

ATTACHMENT 2

WATER SYSTEM EVALUATION

Engineer shall provide WATER SYSTEM EVALUATION SERVICES as follows:

I. DISTRIBUTION SYSTEM EVALUATION

ENGINEER will create a new distribution model to accurately represent the existing distribution system and include all pipes within the distribution system. The model will be developed using MWHSoft's INFOWATER software.

A. Develop Hydraulic Model

- i. **Initial review of existing information and field testing.** ENGINEER will review the information provided by the CLIENT and develop recommendations for sampling to obtain additional data necessary for model setup and calibration. The recommended sampling program will include suggested locations, timing, frequency and duration of pressure and flow measurements throughout the distribution system. All data collection and sampling will be performed by the CLIENT.
- ii. **Update water system model.** All known existing pipes will be included in the distribution system model. Electronic files showing distribution system pipe size and location will be provided by the CLIENT.
- iii. **Develop demand distribution.** Metering records provided by the CLIENT will be used to determine demand distributions to each model node under maximum month conditions. Daily records of hourly pumped flow will then be used to define maximum day flow conditions. In absence of hourly pump data, diurnal flow patterns will be estimated using ENGINEER's judgment, with prior CLIENT review.

B. Hydraulic Model Calibration - The objective of this task is to calibrate the hydraulic model so that it provides reliable results for subsequent hydraulic evaluations. The following sub-tasks are to be completed as part of this task:

- i. **Create operational rules in model.** ENGINEER will create system operational rules in the model, including pump trigger rules, minimum and maximum tank levels, etc.
- ii. **Calibrate steady state model.** Model output (flows and system pressures) will be compared to field-measured system data, as provided by Task 10.1. Model physical parameters will be adjusted to calibrate to the field pressure and flow measurements.
- iii. **Perform extended period simulation (EPS) model calibration.** Modeled flows, pressures and tank levels will be compared to measured data at hourly intervals for a 48-72 hour period under maximum day flow conditions. Adjustment of model physical parameters and/or refinements to the demand distribution will be used to calibrate for EPS conditions.

C. Hydraulic Model Runs and Identification of Recommended Improvements - The objective of this task is to use the calibrated hydraulic model to identify improvements required to meet demands and provide adequate pressures to the system for existing and projected future conditions. The following sub-tasks are to be completed as part of this task:

- i. **Define improvement criteria.** In conjunction with Town staff, develop criteria for evaluation of improvements. These criteria may include measures such as maximum allowable velocities, maximum allowable head loss, minimum and maximum pressures, fire flow criteria and fiscal constraints.
- ii. **Develop demand scenarios.** Using information obtained from previous tasks, develop demand scenarios for average day, maximum day, peak hour, and minimum hour steady state conditions. Develop demand scenario for a maximum day EPS condition.
- iii. **Perform model runs.** Steady state model runs will be made for existing demands under maximum day, peak hour and minimum hour demand conditions. In addition, EPS model

runs will be made under maximum day demand conditions in order to evaluate system performance under tank filling and draining conditions.

- iv. **Evaluate improvements and provide improvement rationale.** The distribution model will be used to evaluate recommended improvements for the water distribution system. Improvements will be identified through consultation with City staff and through analysis of the model results and will be included in the Asset Evaluation.

II. GENERAL SERVICES

- A. **Project Meetings** - The objective of this task is to provide time throughout the project period for meetings with the CLIENT to review and discuss the progress of the study. Project meetings with the CLIENT will include a kickoff meeting and up to 3 additional progress meetings throughout the project.

- B. **System Evaluation Report** -

- i. The objective of this task is to prepare draft and final reports describing the water system evaluation. The Report will include planning level phasing, mapping and cost projections for improvements as well as a description of the methodologies employed for each section. Recommendations for piping changes, storage capacity, and pumping capacity will be based on recognized industry standards and State and Federal regulations.
- ii. Five copies of the draft report will be provided to the CLIENT for review. Upon completion, 5 copies of the final report will be provided to the CLIENT. In addition to the five printed copies of the final report, the report, figures, drawings and GIS data will be provided to the CLIENT in electronic format.

- III. Compensation for this work shall be paid on a lump sum basis.

ATTACHMENT 3**CONSTRUCTION ADMINISTRATION SERVICES**

Engineer shall provide CONSTRUCTION ADMINISTRATION SERVICES as follows:

I. BID PHASE

- A. Assist the Owner in securing bids, issuing notice to bidders and notifying construction news publications. The notice to bidders will be furnished to the Owner for publication in the local news media. The Owner shall pay the cost for publications. The Engineer will distribute bidding documents. The income from the sale of the documents will be used to offset a portion of the Engineer's printing and distribution cost. Providing additional documents will be an Additional Service.
- B. Assist the Owner in the opening, tabulation, and analysis of the bids received. Furnish recommendations on the award of the contract or the appropriate actions to be taken by the Owner.
- C. Prepare for, attend, and preside at a pre-bid conference for all interested bidders. It is anticipated that this pre-bid conference will occur at the wastewater treatment plant site. Meeting attendance are included in another allowance item as shown in the Agreement.

II. CONSTRUCTION ADMINISTRATION

- A. Assist the Owner in the preparation of formal contract documents for the construction contract. Prepare Conformed for Construction drawings for distribution by the OWNER. Drawings will be delivered electronically in portable document format (PDF) compatible with Owner's software systems. Engineer will also furnish one 22"x34" reproducible original set of conformed drawings.
- B. Assist the Owner in conducting a pre-construction conference with the Contractor. Meeting attendance is included in another allowance item as shown in the Agreement.
- C. Make an average of one (1) visit every 3 months to the site (as distinguished from the continuous services of a Resident Project Representative) for a 6-month period beginning with the date of execution of the construction contract by the Owner to observe the progress and the quality of work. The Engineer shall become familiar with the progress and quality of the work completed and will determine in general if the work when completed will be in accordance with the contract documents. In addition, on the basis of on-site observations, the Engineer shall keep the Owner informed of the progress and quality of the work, and shall exercise reasonable care and due diligence in discovering and promptly reporting to the Owner any defects or deficiencies in the work of Contractor or any subcontractor. The Owner's approval, acceptance, use of, or payment for all or any part of the Engineer's services hereunder or the Project itself shall in no way alter the Engineer's obligations or the Owner's rights hereunder. Site visits are included in the meeting allowance item as shown in the Agreement.
- D. Consult and advise the Owner during construction and make recommendations to the Owner regarding materials and workmanship.
- E. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill test of material and equipment and other data pursuant to the General Conditions of the Construction Contract.

- F. Interpret the intent of the plans and specifications for the Owner and Contractor. Investigations, analyses, and studies requested by the Contractor and approved by the Owner, for substitutions of equipment and/or materials or deviations from the plans and specifications will be considered an Additional Service.
 - G. Review of estimates for payment to Contractor, pursuant to the General Conditions of the Construction Contract will be primarily conducted by the OWNER unless otherwise requested by the OWNER during months that the Engineer has visited the site.
 - H. Conduct, with the Owner's representative, a final inspection of the Project for conformance with the design concepts of each Project and general compliance with the contract documents, and review and comment on the certificate of completion and the recommendation for final payment to the Contractor. Site visits are included in the meeting allowance item as shown in the Agreement.
 - I. Prepare Record drawings of the constructed work from information provided by the construction contractor(s). Record Drawings will be delivered electronically in portable document format (PDF) compatible with Owner's software systems. Engineer will also furnish one 22"x34" reproducible original set of record drawings.
 - J. Mobile Technology Application – Provide the OWNER with cellular device and mobile application to document the construction with a geo-located device. Photographs captured during the construction phase will be included in a GIS database for record of the construction.
- III. Compensation for this work shall be paid on a cost reimbursable basis. Engineer's personnel time will be billed at Engineer's standard hourly rates, a service charge of 15 percent will be added to Direct Expenses. All sales, use, value added, business transfer, gross receipts, or other similar taxes will be added to Engineer's compensation when invoicing Owner.



Board of Commissioners Agenda Memo

From: Tim James, P.E. – City Manager

Date: May 20, 2013

Item: Ordinance 833 – An ordinance approving and adopting RRM – Rate Review Mechanism for Atmos Energy Corporation.

Background

The City of Burkburnett is a member of the Atmos Cities Steering Committee (ACSC). The ACSC has recommended that member Cities adopt Ordinance 833 providing for a Rate Review Mechanism with Atmos.

Fiscal Impact

N/A

Options

- Approve Ordinance 833
- Recommend modifications to Ordinance 833
- Take no action

Staff Recommendation

Staff has recommends approval of Ordinance 833.

Attachments

- Ordinance 833
- Background information on RRM

MODEL STAFF REPORT

The City, along with 154 other cities served by Atmos Energy Corporation, Mid-Tex Division (“Atmos Mid-Tex” or “Company”), is a member of the Atmos Cities Steering Committee (“ACSC” or “Steering Committee”). In 2007, ACSC and Atmos Mid-Tex agreed to implement an annual rate review mechanism for Atmos Mid-Tex, known as the Rate Review Mechanism (“RRM”), as a temporary replacement for the statutory mechanism known as GRIP (the “Gas Reliability Infrastructure Program”). This first RRM tariff expired in 2011, and although ACSC and Atmos Mid-Tex met many times to attempt to reach an agreement on a renewed or replacement tariff, they were unable to do so. Atmos Mid-Tex filed a full rate case in 2012. The resulting rates were approved by the Railroad Commission in December 2012 in G.U.D. No. 10170.

ACSC and the Company renewed discussions to develop revisions to the RRM tariff, and have reached a tentative agreement on the form of the RRM tariff to be in effect for a four-year period from 2013 to 2017. If the RRM process is to continue to function as a substitute for the GRIP process, cities that exercise original jurisdiction must adopt a tariff that authorizes the process. For the reasons outlined below, the ACSC Executive Committee and ACSC legal counsel recommend approval of the new RRM tariff by all ACSC member cities.

RRM Background:

The RRM tariff was originally approved by ACSC member cities as part of the settlement agreement resolving the Atmos Mid-Tex 2007 system-wide rate filing at the Railroad Commission. The RRM process was created collaboratively by ACSC and Atmos Mid-Tex as an alternative to the legislatively-authorized GRIP rate adjustment process. GRIP, like the RRM, is a form of expedited rate relief for gas utilities that avoids the long and costly process of a full rate filing. However, ACSC strongly opposes the GRIP process because it constitutes piecemeal ratemaking, does not allow any review by cities of the reasonableness of capital expenditures, and does not allow participation by cities in the Railroad Commission’s review of the annual GRIP filings, or recovery by cities of their rate case expenses. The Railroad Commission undertakes only an administrative review of GRIP filings (instead of a full hearing) and the rate increases go into effect without any material adjustments. In ACSC’s view, the GRIP process unfairly raises customers’ rates without any real regulatory oversight. In contrast, the RRM process has allowed for a more comprehensive rate review and annual adjustment as a substitute for GRIP filings.

Purpose of the Ordinance:

The purpose of the Ordinance is to approve the RRM tariff (“Attachment A”) that reflects the negotiated RRM process. For the RRM process to continue, cities exercising original jurisdiction must approve a tariff that authorizes the process.

Reasons Justifying Approval of the Negotiated RRM Tariff:

In the opinion of ACSC's Executive Committee, the RRM process is a better deal for customers than the GRIP process. Atmos Mid-Tex has stated if it were to file for a rate adjustment in 2013 under the GRIP provisions, it would request approximately \$5 million more in rate relief than it plans to request in a filing under this revised RRM tariff. ACSC assumes that is because the GRIP process only evaluates changes to capital investment. The RRM process looks at revenues (that may be increasing) and expenses (that may be declining), as well as capital investment.

Additionally, the statute authorizing the GRIP rate adjustment process allows the Company to place the entirety of any rate increase in the unavoidable monthly customer charge portion of its rates. If the Company were to file for an increase under the GRIP provisions, the entire amount of the increase would be collected through the fixed portion of the bill, rather than the volumetric charge that varies by a customer's usage. Between 2007 and 2012, ACSC was able to negotiate rate design results that constrained residential customer charges to the \$7.00 to \$7.50 range. However, the Railroad Commission has recently raised the residential customer charge to \$17.70.

The Company has agreed that for the first filing under the revised RRM tariff, there will be no increase to the residential customer charge. Thus, some of the primary benefits of the attached RRM tariff are that it moderates the impact of rate adjustments on residential customers by not changing the residential customer charge for the first RRM period. In subsequent years only 40% of the proposed increase in revenues to the residential class will be recovered through the fixed customer charge, and in no event will the residential customer charge increase by more than \$.50 per month. No such constraints exist under the GRIP process.

Additionally, the attached RRM tariff provides a discount as an incentive for cities permitting the Company annual rate relief. The RRM tariff includes an adjustment amount that is a reduction to the Company's requested increase. The adjustment lowers the Company's rate request by at least \$3 million each year. Additional reductions will also be made each year depending on the size of the Company's requested increase. The attached RRM tariff also caps at 55% the percentage of equity that can be used to calculate the Company's capital structure. Railroad Commission policy allows rates to be based on a parent company's actual capital structure, which for Atmos could mean increases in equity above the most recent level of 52%.

Under the RRM tariff, cities are also able to review the Company's annual expenses and capital investments and make adjustments, or disallowances, for any such expenses or investments that are considered to be unreasonable or unnecessary. The cities' costs in reviewing the annual filings, such as fees associated with the hiring of expert consultants and legal counsel, will be reimbursed by the Company on a monthly basis.

If cities do not approve the RRM tariff, the Company has stated that it will reinstitute its annual filings under the GRIP provisions. The anticipated GRIP adjustment for 2013 would be approximately \$5 million higher than the Company anticipates requesting through an RRM filing. Additionally, GRIP rate adjustments would place the entire amount of the Company's

requested increase into the customer charge. The ACSC Executive Committee recommends that ACSC city members take action to approve the Ordinance authorizing the RRM tariff.

Explanation of “Be It Ordained” Paragraphs:

1. This section approves all findings in the Ordinance.
2. This section adopts the attached RRM Tariff (“Attachment A”) and finds the adoption of the tariff to be just, reasonable, and in the public interest. Note that only the new tariff being revised is attached to the Ordinance. The initial RRM Tariff has expired by its own terms, and other existing tariffs not being changed in any way are not attached to the Ordinance.
3. This section repeals any resolution or ordinance that is inconsistent with this Ordinance.
4. This section finds that the meeting was conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.
5. This section is a savings clause, which provides that if any section is later found to be unconstitutional or invalid, that finding shall not affect, impair, or invalidate the remaining provisions of this Ordinance. This section further directs that the remaining provisions of the Ordinance are to be interpreted as if the offending section or clause never existed.
6. This section provides for an effective date upon passage.
7. This section paragraph directs that a copy of the signed Ordinance be sent to a representative of the Company and legal counsel for ACSC.

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL AREAS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS CUSTOMERS	
EFFECTIVE DATE:	Bills Rendered on and after October 15, 2013	PAGE 1 OF 6

I. Applicability

Applicable to Residential, Commercial, Industrial, and Transportation tariff customers in the Mid-Tex Division of Atmos Energy Corporation ("Company") except such customers within the City of Dallas. This Rate Review Mechanism ("RRM") provides for an annual adjustment to the Company's Rate Schedules R, C, I and T ("Applicable Rate Schedules"). Rate calculations and adjustments required by this tariff shall be determined on a System-Wide cost basis.

II. Definitions

"Test Period" is defined as the twelve months ending December 31 of each preceding calendar year.

The "Effective Date" is the date that adjustments required by this tariff are applied to customer bills. The annual Effective Date is June 1. The 2013 filing Effective Date is October 15, 2013.

Unless otherwise noted in this tariff, the term "Final Order" refers the final order issued by the Railroad Commission of Texas in GUD 10170.

The term "System-Wide" means all incorporated and unincorporated areas served by the Company.

"Review Period" is defined as the period from the Filing Date until the Effective Date.

The "Filing Date" is as early as practicable but no later than March 1 of each year with the exception of 2013, which shall have a Filing Date of July 15, 2013. The last annual Effective Date is June 1, 2017.

III. Calculation

The RRM shall calculate an annual, System-Wide cost of service ("COS") that will be used to adjust applicable rate schedules prospectively as of the Effective Date. The annual cost of service will be calculated according to the following formula:

$$\text{COS} = \text{OM} + \text{DEP} + \text{RI} + \text{TAX} + \text{CD} - \text{ADJ}$$

Where:

OM = all reasonable and necessary operation and maintenance expenses from the

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL AREAS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS CUSTOMERS	
EFFECTIVE DATE:	Bills Rendered on and after October 15, 2013	PAGE 2 OF 6

Test Period adjusted for known and measurable items and prepared consistent with the rate making treatments approved in the Final Order. Known and measurable adjustments shall be limited to those changes that have occurred prior to the Filing Date. OM may be adjusted for atypical and non-recurring items. Shared Services allocation factors shall be recalculated each year based on the latest component factors used during the Test Period, but the methodology used will be that approved in the Final Order.

DEP = depreciation expense calculated at depreciation rates approved by the Final Order.

RI = return on investment calculated as the Company's pretax return multiplied by rate base at Test Period end. Rate base is prepared consistent with the rate making treatments approved in the Final Order, except that no post Test Period adjustments will be permitted. Pretax return is the Company's weighted average cost of capital before income taxes. The Company's weighted average cost of capital is calculated using the methodology from the Final Order including the Company's actual capital structure and long term cost of debt as of the Test Period end (adjusted for any known and measurable changes) and the return on equity from the Final Order. However, in no event will the percentage of equity exceed 55%. Regulatory adjustments due to prior regulatory rate base adjustment disallowances will be maintained. Cash working capital will be calculated using the lead/lag days approved in the Final Order. With respect to pension and other postemployment benefits, the Company will record a regulatory asset or liability for these costs until the amounts are included in the next annual rate adjustment implemented under this tariff. Each year, the Company's filing under this Rider RRM will clearly state the level of pension and other postemployment benefits recovered in rates.

TAX = income tax and taxes other than income tax from the Test Period adjusted for known and measurable changes occurring after the Test Period and before the Filing Date, and prepared consistent with the rate making treatments approved in the Final Order.

CD = interest on customer deposits.

ADJ = Downward adjustment to the overall, System-Wide test year cost of service in the amount of \$3,000,000.00, adjusted by a percentage equal to the total percentage increase in base-rate revenue sought pursuant to this tariff.

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL AREAS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS CUSTOMERS	
EFFECTIVE DATE:	Bills Rendered on and after October 15, 2013	PAGE 3 OF 6

IV. Annual Rate Adjustment

The Company shall provide schedules and work papers supporting the Filing's revenue deficiency/sufficiency calculations using the methodology accepted in the Final Order. The result shall be reflected in the proposed new rates to be established for the effective period. The Revenue Requirement will be apportioned to customer classes in the same manner that Company's Revenue Requirement was apportioned in the Final Order. For the Residential Class, 40% of the increase may be recovered in the customer charge. The increase to the Residential customer charge shall not exceed \$0.50 per month in any given year. The remainder of the Residential Class increase not collected in the customer charge will be recovered in the usage charge. The Company will forgo any change in the Residential customer charge with the first proposed rate adjustment pursuant to this tariff. For all other classes, the change in rates will be apportioned between the customer charge and the usage charge, consistent with the Final Order. Test Period billing determinants shall be adjusted and normalized according to the methodology utilized in the Final Order.

V. Filing

The Company shall file schedules annually with the regulatory authority having original jurisdiction over the Company's rates on or before the Filing Date that support the proposed rate adjustments. The schedules shall be in the same general format as the cost of service model and relied-upon files upon which the Final Order was based. A proof of rates and a copy of current and proposed tariffs shall also be included with the filing. The filing shall be made in electronic form where practical. The Company's filing shall conform to Minimum Filing Requirements (to be agreed upon by the parties), which will contain a minimum amount of information that will assist the regulatory authority in its review and analysis of the filing. The Company and regulatory authority will endeavor to hold a technical conference regarding the filing within ten (10) calendar days after the Filing Date.

The 2013 Filing Date will be July 15, 2013.

A sworn statement shall be filed by an Officer of the Company affirming that the filed schedules are in compliance with the provisions of this Rate Review Mechanism and are true and correct to the best of his/her knowledge, information, and belief. No testimony shall be filed, but a brief narrative explanation shall be provided of any changes to corporate structure, accounting methodologies, allocation of common costs, or atypical or non-recurring items included in the filing.

VI. Evaluation Procedures

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL AREAS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS CUSTOMERS	
EFFECTIVE DATE:	Bills Rendered on and after October 15, 2013	PAGE 4 OF 6

The regulatory authority having original jurisdiction over the Company's rates shall review and render a decision on the Company's proposed rate adjustment prior to the Effective Date. The Company shall provide all supplemental information requested to ensure an opportunity for adequate review by the relevant regulatory authority. The Company shall not unilaterally impose any limits upon the provision of supplemental information and such information shall be provided within seven (7) working days of the original request. The regulatory authority may propose any adjustments it determines to be required to bring the proposed rate adjustment into compliance with the provisions of this tariff.

The regulatory authority may disallow any net plant investment that is not shown to be prudently incurred. Approval by the regulatory authority of net plant investment pursuant to the provisions of this tariff shall constitute a finding that such net plant investment was prudently incurred. Such finding of prudence shall not be subject to further review in a subsequent RRM or Statement of Intent filing.

During the Review Period, the Company and the regulatory authority will work collaboratively and seek agreement on the level of rate adjustments. If, at the end of the Review Period, the Company and the regulatory authority have not reached agreement, the regulatory authority shall take action to modify or deny the proposed rate adjustments. The Company shall have the right to appeal the regulatory authority's action to the Railroad Commission of Texas. Upon the filing of an appeal of the regulatory authority's order relating to an annual RRM filing with the Railroad Commission of Texas, the regulatory authority having original jurisdiction over the Company's rates shall not oppose the implementation of the Company's proposed rates subject to refund, nor will the regulatory authority advocate for the imposition of a third party surety bond by the Company. Any refund shall be limited to and determined based on the resolution of the disputed adjustment(s) in a final, non-appealable order issued in the appeal filed by the Company at the Railroad Commission of Texas.

In the event that the regulatory authority and Company agree to a rate adjustment(s) that is different from the adjustment(s) requested in the Company's filing, the Company shall file compliance tariffs consistent with the agreement. No action on the part of the regulatory authority shall be required to allow the rate adjustment(s) to become effective on June 1. To the extent that the regulatory authority does not take action on the Company's RRM filing by May 31, the rates proposed in the Company's filing shall be deemed approved effective June 1. (2013 filing RRM rate will be effective October 15, 2013 if no action is taken). Notwithstanding the preceding sentence, a regulatory authority may choose to take affirmative action to approve a rate adjustment under this tariff. In those instances where such approval cannot reasonably occur by May 31, the rates finally approved by the regulatory authority shall be deemed effective as of June 1.

RATE SCHEDULE:	RRM – Rate Review Mechanism	
APPLICABLE TO:	ALL AREAS IN THE MID-TEX DIVISION EXCEPT THE CITY OF DALLAS CUSTOMERS	
EFFECTIVE DATE:	Bills Rendered on and after October 15, 2013	PAGE 5 OF 6

To defray the cost, if any, of regulatory authorities conducting a review of the Company's annual RRM filing, the Company shall reimburse the regulatory authorities on a monthly basis for their reasonable expenses incurred upon submission of invoices for such review. Any reimbursement contemplated hereunder shall be deemed a reasonable and necessary operating expense of the Company in the year in which the reimbursement is made. A regulatory authority seeking reimbursement under this provision shall submit its request for reimbursement to the Company no later than August 1 of the year in which the RRM filing is made and the Company shall reimburse regulatory authorities in accordance with this provision on or before August 30 of the year the RRM filing is made.

To the extent possible, the provisions of the Final Order shall be applied by the regulatory authority in determining whether to approve or disapprove of Company's proposed rate adjustment.

This Rider RRM does not limit the legal rights and duties of a regulatory authority. Nothing herein shall abrogate the jurisdiction of the regulatory authority to initiate a rate proceeding at any time to review whether rates charged are just and reasonable. Similarly, the Company retains its right to utilize the provisions of Texas Utilities Code, Chapter 104, Subchapter C to request a change in rates. The provisions of this Rider RRM are implemented in harmony with the Gas Utility Regulatory Act (Texas Utilities Code, Chapters 101-105).

The annual rate adjustment process set forth in this tariff shall remain in effect during the pendency of any Statement of Intent rate filing.

VII. Reconsideration, Appeal and Unresolved Items

Orders issued pursuant to this mechanism are ratemaking orders and shall be subject to appeal under Sections 102.001(b) and 103.021, et seq., of the Texas Utilities Code (Vernon 2007).

VIII. Notice

Notice of each annual RRM filing shall be provided by including the notice, in conspicuous form, in the bill of each directly affected customer no later than forty-five (45) days after the Company makes its annual filing pursuant to this tariff. The notice to customers shall include the following information:

- a) a description of the proposed revision of rates and schedules;

RATE SCHEDULE:	RRM – Rate Review Mechanism	
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- b) the effect the proposed revision of rates is expected to have on the rates applicable to each customer class and on an average bill for each affected customer;
- c) the service area or areas in which the proposed rates would apply;
- d) the date the annual RRM filing was made with the regulatory authority; and
- e) the Company's address, telephone number and website where information concerning the proposed rate adjustment be obtained.

The New RRM: How Does It Stack Up?

RRM (2007-2011)

- Negotiated limits to the amount of increase included in customer charge.
- Less money requested from ratepayers, because it considers the Company's entire cost of providing service, including declining expenses.
- Cities can review reasonableness of expenses and negotiate disallowances.
- Reimbursement of Cities' rate case expenses.
- Cities can order reductions to requested increase.
- Better working relationship between Cities and Company.

GRIP

- All increase included in customer charge.
- More costly to ratepayers, because it does not consider the Company's entire cost of providing service, including declining expenses.
- Cities have no input as to reasonableness or recovery of expenses.
- No reimbursement of Cities' rate case expenses.
- No reduction in requested increase.
- Poorer working relationship between Cities and Company.

New RRM Tariff

- Includes limits on percentage of increase to be included in monthly customer charge.
- Shorter turn-around on discovery.
- Technical conference to expedite receipt of information from Company.
- No post-test year adjustments.
- Time limit for O&M known and measurable adjustments.
- Reduction in requested increase of at least \$3 million each year.
- Tracks the methodologies approved by the Railroad Commission in the most recent Mid-Tex rate case.

ORDINANCE NUMBER 833

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT , TEXAS, (“CITY”) APPROVING AND ADOPTING RATE SCHEDULE “RRM – RATE REVIEW MECHANISM” FOR ATMOS ENERGY CORPORATION, MID-TEX DIVISION TO BE IN FORCE IN THE CITY FOR A PERIOD OF TIME AS SPECIFIED IN THE RATE SCHEDULE; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND ACSC LEGAL COUNSEL.

WHEREAS, the City of Burkburnett, Texas (“City”) is a gas utility customer of Atmos Energy Corp., Mid-Tex Division (“Atmos Mid-Tex” or “the Company”), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, the City is a member of the Atmos Cities Steering Committee (“ACSC”), a coalition of cities, most of whom retain original jurisdiction over the rates and services of Atmos Mid-Tex; and

WHEREAS, in 2007 ACSC member cities and Atmos Mid-Tex collaboratively developed the Rate Review Mechanism (“RRM”) Tariff that allows for an expedited rate review process controlled by cities as a substitute for the legislatively-constructed Gas Reliability Infrastructure Program (“GRIP”); and

WHEREAS, the GRIP mechanism does not permit the City to review rate increases, and constitutes piecemeal ratemaking; and

WHEREAS, the RRM process permits City review of requested rate increases and provides for a holistic review of the true cost of service for Atmos Mid-Tex; and

WHEREAS, the initial RRM tariff expired in 2011; and

WHEREAS, ACSC's representatives have worked with Atmos Mid-Tex to negotiate a renewal of the RRM process that avoids litigation and Railroad Commission filings; and

WHEREAS, the ACSC's Executive Committee and ACSC's legal counsel recommend ACSC members approve the negotiated new RRM tariff; and

WHEREAS, the attached Rate Schedule "RRM – Rate Review Mechanism" ("RRM Tariff") provides for a reasonable expedited rate review process that is a substitute for, and is superior to, the statutory GRIP process; and

WHEREAS, the expedited rate review process as provided by the RRM Tariff avoids piecemeal ratemaking; and

WHEREAS, the RRM tariff reflects the ratemaking standards and methodologies authorized by the Railroad Commission in the most recent Atmos Mid-Tex rate case, G.U.D. No. 10170; and

WHEREAS, the RRM Tariff provides for an annual reduction in Atmos Mid-Tex's requested rate increase of at least \$3 million; and

WHEREAS, the RRM Tariff provides for a lower customer charge than if Atmos Mid-Tex pursued GRIP filings; and

WHEREAS, the attached RRM Tariff as a whole is in the public interest;

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

Section 1. That the findings set forth in this Ordinance are hereby in all things approved.

Section 2. That the Board of Commissioners finds that the RRM Tariff, **which is attached hereto and incorporated herein as Attachment A**, is reasonable and in the public interest, and is hereby in force and effect in the City.

Section 3. That to the extent any resolution or ordinance previously adopted by the Board of Commissioners is inconsistent with this Ordinance, it is hereby repealed.

Section 4. That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 5. That if any one or more sections or clauses of this Ordinance is judged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance and the remaining provisions of the Ordinance shall be interpreted as if the offending section or clause never existed.

Section 6. That this Ordinance shall become effective from and after its passage.

Section 7. That a copy of this Ordinance shall be sent to Atmos Mid-Tex, care of Christopher Felan, Vice President of Rates and Regulatory Affairs for Atmos Mid-Tex Division, Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1600, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701.

PASSED AND APPROVED this 20th day of May, 2013.

Carl Law, Mayor

ATTEST:

Janelle Dolan, City Clerk



Board of Commissioners Agenda Memo

From: Tim James, P.E. – City Manager

Date: May 20, 2013

Item: Ordinance 834 – An ordinance amending Appendix J of the Water Conservation Plan

Background

Since the implementation of Stage 3 water restrictions on March 1, 2013, the City has not experienced a decrease in the total consumption of water. The intent of the Stage 3 restrictions is to create a 35% reduction in total consumption. Since there has not been an effective reduction in consumption, Ordinance 834 is being proposed to increase the level of water use reduction. The major addition in Appendix J is surcharges for water usage over specified amounts, the reduction in the number of days allowed for watering from two (2) to one (1), and a reduction in the allowable hours for watering hours from 14 hrs to 4 hrs. The specified amounts for surcharges correspond to the amounts implemented by the City of Wichita Falls and are based on normal consumption for essential purposes.

Fiscal Impact

N/A

Options

- Approve Ordinance 834
- Recommend modifications to Ordinance 834
- Take no action

Staff Recommendation

Staff has recommends approval of Ordinance 834.

Attachments

- Ordinance 834

ORDINANCE NUMBER 834

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, AMENDING APPENDIX J OF THE WATER CONSERVATION PLAN; ESTABLISHING CRITERIA FOR THE DROUGHT CONTINGENCY PLAN; PROVIDING PENALTIES, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Burkburnett, Texas recognizes that the amount of water available to the City and its water utility customers is limited and subject to depletion during periods of extended drought; and

WHEREAS, the City recognizes that natural limitations due to drought conditions and other acts of God cannot guarantee an uninterrupted water supply for all purposes; and

WHEREAS, the City has determined that the Water Conservation Plan should be amended to provide additional measures of water conservation to create reduction in water use; and

WHEREAS, as authorized under law, and in the best interest of the citizens of Burkburnett, Texas the Board of Commissioners deems it expedient and necessary to establish certain polices for the orderly and efficient management of limited water supplies.

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

SECTION 1. That Appendix J - Drought Contingency Plan, of the City of Burkburnett, Texas, Water Conservation Plan be amended to read:

Section I: Declaration of Policy, Purpose, and Intent

In order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, the City of Burkburnett hereby adopts the following regulations and restrictions on the delivery and consumption of water through an ordinance/or resolution.

Water uses regulated or prohibited under this Drought Contingency Plan (the Plan) are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in Section XI of this Plan.

The content of this report is based on Texas Commission on Environmental Quality (TCEQ) rules, minimum requirements, and suggestions for developing of a Drought

Contingency Plan. These rules, requirements, and suggestions are contained in Title 30 Texas Administrative Code (TAC), Subchapter B, Rule §288.2 and the TCEQ Handbook on Drought Contingency Planning for Retail Public Water Suppliers (RG-424, April 2005). A copy of Rule §288.2 is attached to this report.

Section II: Public Involvement

Opportunity for the public to provide input into the preparation of the Plan was provided by the City of Burkburnett by the customary process of passing the ordinance to adopt this Plan. The public is invited to comment at the council meetings. Written notice of this agenda item is posted prior to each meeting.

Section III: Public Education

The City of Burkburnett will periodically provide the public with information about the Plan, including information about the conditions under which each stage of the Plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided by inserts in water bills, by publication in the local weekly newspaper, and by making the plan available on the City of Burkburnett official website (www.burkburnet.org).

Section IV: Coordination with Regional Water Planning Groups

The service area of the City of Burkburnett is located in Wichita County. Wichita County is located in the Region B Water Planning Group. A copy of the Plan has been provided to the Texas Water Planning Area Region B for approval.

Section V: Authorization

The City Manager or his/her designee is hereby authorized and directed to implement the applicable provisions of this Plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The City Manager or his/her designee shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this Plan.

Section VI: Application

The provisions of this Plan shall apply to all persons, customers, and property utilizing water provided by the City of Burkburnett. The terms “person” and “customer” as used in the Plan include individuals, corporations, partnerships, associations, and all other legal entities.

Section VII: Definitions

For the purposes of this Plan, the following definitions shall apply:

Aesthetic water use: water use for ornamental or decorative purposes such as fountains, reflecting pools, and water gardens.

Commercial and institutional water use: water use which is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.

Conservation: those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

Customer: any person, company, or organization using water supplied by City of Burkburnett.

Domestic water use: water use for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry, or institution.

Even number address: street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.

Hand watering: Watering trees, flower beds, plants and gardens only with a handheld hose, soaker hose, bucket (5 gallons or less), watering can, or drip irrigation system.

Industrial water use: the use of water in processes designed to convert materials of lower value into forms having greater usability and value.

Landscape irrigation use: water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.

Non-essential water use: water uses that are not essential nor required for the protection of public, health, safety, and welfare, including:

- (a) irrigation of landscape areas, including parks, athletic fields, and golf courses, except otherwise provided under this Plan;
- (b) use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
- (c) use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
- (d) use of water to wash down buildings or structures for purposes other than immediate fire protection;
- (e) flushing gutters or permitting water to run or accumulate in any gutter or street;
- (f) use of water to fill, refill, or add to any indoor or outdoor swimming pools or jacuzzi-type pools;

(g) use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;

(h) failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s); and

(i) use of water from hydrants for construction purposes or any other purposes other than fire fighting.

Odd numbered address: street addresses, box numbers, or rural postal route numbers ending in 1, 3, 5, 7, or 9.

Section VIII: Criteria for Initiation and Termination of Drought Response Stages

The City Manager or his/her designee shall monitor water supply and/or demand conditions on a daily basis and shall determine when conditions warrant initiation or termination of each stage of the Plan, that is, when the specified “triggers” are reached.

The triggering criteria described below are based on an increase in demand and reduction in the water supply. After examining the average daily demands during maximum-use months for the last five years, demand-related triggers were developed based on the average daily demand (2.1 MG) during the maximum-use month (July 2007) extended over a period of ten days (21 MG). Supply-related triggers were developed from water-supply contracts with the City of Wichita Falls which sells water to the City of Burkburnett at a maximum rate of 4 MGD.

Stage 1 Triggers -- MILD Water Shortage Conditions

Requirements for initiation and termination: Customers shall be requested to voluntarily conserve water and adhere to the prescribed restrictions on certain water uses, defined in Section VII–Definitions, annually beginning on May 1 through September 30.

Stage 2 Triggers -- MODERATE Water Shortage Conditions

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses provided in Section IX of this Plan either of the following conditions exist:

(a) The total demand equals or exceeds 21 million total gallons over a period of ten consecutive days.

(b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by between 10 and 20 percent.

Requirements for termination: Stage 2 of the Plan may be rescinded when both of the following conditions have been met:

(a) Total water demand is less than 21 million total gallons over a period of ten consecutive days.

(b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 90 percent of preexisting quantity.

Upon termination of Stage 2, Stage 1 becomes operative.

Stage 3 Triggers – SEVERE Water Shortage Conditions

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 3 of this Plan when either of the following conditions exists:

(a) The total demand equals or exceeds 24 million total gallons over a period of ten consecutive days after implementing Stage 2.

(b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by between 20 and 30 percent.

Requirements for termination: Stage 3 of the Plan may be rescinded when both of the following conditions have been met:

(a) Total water demand is less than 24 million total gallons over a period of fifteen consecutive days.

(b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 80 percent of preexisting quantity.

Upon termination of Stage 3, Stage 2 becomes operative.

Stage 4 Triggers -- CRITICAL Water Shortage Conditions

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 4 of this Plan when either of the following conditions exists:

(a) The total demand equals or exceeds 27 million total gallons over a period of ten consecutive days after implementing Stage 3.

(b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by between 30 and 35 percent.

Requirements for termination: Stage 4 of the Plan may be rescinded when both of the following conditions have been met:

(a) Total water demand is less than 27 million total gallons over a period of ten consecutive days.

(b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 70 percent of preexisting quantity.

Upon termination of Stage 4, Stage 3 becomes operative.

Stage 5 Triggers -- EMERGENCY Water Shortage Conditions

Requirements for initiation: Customers shall be required to comply with the requirements and restrictions for Stage 5 of this Plan when City Manager, or his/her designee, determines that a water supply emergency exists. Conditions that may result in a water supply emergency may include the following:

- (a) Total water demand equals or exceeds 30 million total gallons over a period of ten consecutive days after implementing Stage 4;
- (b) The City of Burkburnett receives notice that the City of Wichita Falls will reduce its supply of water to Burkburnett by 35 percent or more;
- (c) Major water line breaks, or pump or system failures occur, which cause unprecedented loss of capability to provide water service; or
- (d) Natural or man-made contamination of the water supply source(s).

Requirements for termination: Stage 5 of the Plan may be rescinded when all of the following applicable conditions have been met:

- (a) Total water demand is less than 30 million total gallons over a period of ten consecutive days.
- (b) The City receives notice that the City of Wichita Falls is restoring its supply of water to the City to at least 65 percent of preexisting quantity.
- (c) Repairs have been made and water service restored.
- (d) Contamination of the water supply source has been corrected and water service restored.

When Stage 5 conditions were a result of either (a) or (b) above, Stage 4 becomes operative upon termination of Stage 5. When Stage 5 conditions were a result of either (c) or (d) above, water supply operation may return to pre-existing conditions upon termination of Stage 5.

Stage 6 Triggers -- WATER ALLOCATION

In the event that water shortage conditions threaten public health, safety, and welfare, the City Manager is hereby authorized to allocate water as prescribed in Section IX of this

Plan. Customers shall be required to comply with the water allocation plan and comply with the requirements and restrictions for Stage 6 of this Plan.

Section IX: Drought Response Stages

The City Manager, or his/her designee, shall monitor water supply and/or demand conditions on a daily basis and, in accordance with the triggering criteria set forth in Section VIII of this Plan, shall determine that a mild, moderate, severe, critical, emergency or water shortage condition exists and shall implement the following notification procedures:

Notification

Notification of the Public: The City Manager or his/her designee shall notify the public by means of:

- (a) publication of notice in the local weekly newspaper;
- (b) inserts in water bills;
- (c) notifications by direct mail to customers; or
- (d) by any combination of these actions.

Additional Notification: The City Manager or his/her designee shall notify directly, or cause to be notified directly, only as appropriate to respective drought stages, the following individuals and entities:

- (a) Mayor / members of the City Council
- (b) Fire Chief
- (c) County Judge and Commissioners
- (d) TCEQ (required when mandatory restrictions are imposed)
- (e) Major water users
- (f) Critical water users (hospitals, etc)
- (g) Parks / street superintendents and public facilities managers

Stage 1 Response -- MILD Water Shortage Conditions

Target: Achieve a voluntary 5 percent reduction in total water use and raise public awareness.

Voluntary Water Use Restrictions for Reducing Demand:

(a) Water customers are requested to voluntarily limit the irrigation of landscaped areas to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and to irrigate landscapes only between the hours of midnight and 10:00 a.m. and 8:00 p.m. to midnight on designated watering days.

(b) All operations of the City of Burkburnett shall adhere to water use restrictions prescribed for Stage 2 of the Plan.

(c) Water customers are requested to practice water conservation by checking for leaks, dripping faucets, and running toilets and by utilizing water conservation kits such as displacement bags, low-flow shower heads, and leak detector tablets, and to minimize or discontinue water use for non-essential purposes.

Stage 2 Response -- MODERATE Water Shortage Conditions

Target: Achieve a 15 percent reduction in total water use.

Water Use Restrictions for Demand Reduction: Under threat of penalty for violation, the following water use restrictions shall apply to all persons:

(a) Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and irrigation of landscaped areas is further limited to the hours of 12:00 midnight until 10:00 a.m. and between 8:00 p.m. and 12:00 midnight on designated watering days. However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose, a faucet filled bucket or watering can of five (5) gallons or less, or drip irrigation system.

(b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight. Such washing, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rises. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. Further, such washing may be exempted from these regulations if the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.

(c) Use of water to fill, refill, or add to any indoor or outdoor swimming pools, wading pools, or jacuzzi-type pools is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight.

(d) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.

(e) Use of water from hydrants shall be limited to fire fighting, related activities, or other activities necessary to maintain public health, safety, and welfare, except that use of water from designated fire hydrants for construction purposes may be allowed under special permit from the City of Burkburnett.

(f) Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days between the hours 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight. However, if the golf course utilizes a water source other than that provided by the City of Burkburnett, the facility shall not be subject to these regulations.

(g) All restaurants are prohibited from serving water to patrons except upon request of the patron.

(h) The following uses of water are defined as non-essential and are prohibited:

1. wash down of any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
2. use of water to wash down buildings or structures for purposes other than immediate fire protection;
3. use of water for dust control;
4. flushing gutters or permitting water to run or accumulate in any gutter or street; and
5. failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).

Stage 3 Response -- SEVERE Water Shortage Conditions

Target: Achieve a 35 percent reduction in total water use.

Water Use Restrictions for Demand Reduction: All requirements of Stage 2 shall remain in effect during Stage 3 except:

- a) Irrigation of landscaped areas shall be limited to Sundays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9) between the hours of and between 8 pm and 12:00 midnight and shall only be by means of hand-held hoses, hand-held buckets, drip irrigation, hose-end sprinklers

with automatic timers, or permanently installed automatic sprinkler systems. The use of hose-end sprinklers without automatic timers is prohibited at all times.

- b) A water conservation surcharge will be applied to all residential and irrigation accounts when the City is under Stage 3. The surcharges will include:

Residential Meters

\$1.00 per 1,000 gallons for usage between 8,000 gallons and 16,000 gallons
\$2.00 per 1,000 gallons for usage between 16,000 gallons and 24,000 gallons
\$4.00 per 1,000 gallons for usage over 24,000 gallons

Irrigation Meters

\$1.00 per 1,000 gallons for usage between 0 and 8,000 gallons
\$2.00 per 1,000 gallons for usage between 8,000 gallons and 16,000 gallons
\$4.00 per 1,000 gallons for usage between 16,000 gallons and 24,000 gallons
\$8.00 per 1,000 gallons for usage over 24,000 gallons

- c) The watering of golf course greens, tees, and fairways is prohibited unless the golf course utilizes a water source other than that provided by the City of Burkburnett or treated effluent water.
- d) The use of potable water for construction purposes from designated fire hydrants under special permit is to be discontinued.
- e) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
- f) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the immediate premises of a commercial car wash or commercial service station and not in the immediate interest of public health, safety, and welfare is prohibited
- g) Commercial car washes shall only operate 18 hours a day.

Stage 4 Response -- CRITICAL Water Shortage Conditions

Target: Achieve a 45 percent reduction in total water use.

Water Use Restrictions for Reducing Demand: All requirements of Stage 2 and 3 shall remain in effect during Stage 4 except:

- (a) Irrigation of landscaped areas shall be limited to designated watering days between the hours of 8:00 p.m. and 12:00 midnight and shall be by means of hand-held hoses, hand-held buckets, or drip irrigation only. The use of hose-end

sprinklers or permanently installed automatic sprinkler systems are prohibited at all times.

(b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the premises of a commercial car wash and commercial service stations and not in the immediate interest of public health, safety, and welfare is prohibited. Further, such vehicle washing at commercial car washes and commercial service stations shall occur only between the hours of 6:00 a.m. and 10:00 a.m. and between 6:00 p.m. and 10 p.m.

(c) Residential pools shall only drained when necessary to make repairs. The pool level shall only be lowered to the level necessary to make the repairs and may be refilled. All water features (waterfalls, sprays, slides, etc.) for residential pools shall be prohibited.

(e) Commercial car washes shall only operate 18 hours a day and 6 days a week.

(f) The use of water for washing sidewalks, walkways, driveways, parking areas, streets, tennis courts, patios, or other hard-surfaced area, except to allow to alleviate immediate health of fire hazards is prohibited.

Stage 5 Response -- EMERGENCY Water Shortage Conditions

Target: Achieve a 50 percent reduction in total water use.

Water Use Restrictions for Reducing Demand: All requirements of Stage 2, 3, and 4 shall remain in effect during Stage 5 except:

(a) Irrigation of landscaped areas is absolutely prohibited. No new landscapes of any type may be established.

(b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is absolutely prohibited.

(c) The use of water for construction purposes from designated fire hydrants under special permits is to be discontinued.

Stage 6 Response -- WATER ALLOCATION

In the event that water shortage conditions threaten public health, safety, and welfare, the City Manager is hereby authorized to allocate water according to the following water allocation plan:

Single-Family Residential Customers: The allocation to residential water customers residing in a single-family dwelling shall be as follows:

<u>Persons per Household</u>	<u>Gallons per Month</u>
1 or 2	6,000
3 or 4	7,000
5 or 6	8,000
7 or 8	9,000
9 or 10	10,000
11 or more	12,000

“Household” means the residential premises served by the customer’s meter.

“Persons per household” includes only those persons currently physically residing at the premises and expected to reside there for the entire billing period. It shall be assumed that a particular customer’s household is comprised of two (2) persons unless the customer notifies the City of Burkburnett of a greater number of persons per household on a form prescribed by the City Manager. The City Manager shall give his/her best effort to see that such forms are mailed, otherwise provided, or made available to every residential customer. If, however, a customer does not receive such a form, it shall be the customer’s responsibility to go to the City of Burkburnett offices to complete and sign the form claiming more than two (2) persons per household. New customers may claim more persons per household at the time of applying for water service on the form prescribed by the City Manager. When the number of persons per household increases so as to place the customer in a different allocation category, the customer may notify the City of Burkburnett on such form and the change will be implemented in the next practicable billing period. If the number of persons in a household is reduced, the customer shall notify the City of Burkburnett in writing within two (2) days. In prescribing the method for claiming more than two (2) persons per household, the City Manager shall adopt methods to insure the accuracy of the claim. Any person who knowingly, recklessly, or with criminal negligence falsely reports the number of persons in a household or fails to timely notify the City of Burkburnett of a reduction in the number of person in a household shall be fined I accordance with the enforcement measures described in Section X Enforcement.

Residential water customers shall pay the following surcharges:

- \$5.00 for the first 1,000 gallons over allocation.
- \$6.00 for the second 1,000 gallons over allocation.
- \$7.00 for the third 1,000 gallons over allocation.
- \$8.00 for each additional 1,000 gallons over allocation.

Surcharges shall be cumulative.

Master-Metered Multi-Family Residential Customers: The allocation to a customer billed from a master meter which jointly measures water to multiple permanent residential dwelling units (example: apartments, mobile homes) shall be allocated 6,000 gallons per month for each dwelling unit. It shall be assumed that such a customer’s meter serves two dwelling units unless the customer notifies the City of Burkburnett of a greater number

on a form prescribed by the City Manager. The City Manager shall give his/her best effort to see that such forms are mailed, otherwise provided, or made available to every such customer. If, however, a customer does not receive such a form, it shall be the customer's responsibility to go to the City of Burkburnett offices to complete and sign the form claiming more than two (2) dwellings. A dwelling unit may be claimed under this provision whether it is occupied or not. New customers may claim more dwelling units at the time of applying for water service on the form prescribed by the City Manager. If the number of dwelling units served by a master meter is reduced, the customer shall notify the City of Burkburnett in writing within two (2) days. In prescribing the method for claiming more than two (2) dwelling units, the City Manager shall adopt methods to insure the accuracy of the claim. Any person who knowingly, recklessly, or with criminal negligence falsely reports the number of dwelling units served by a master meter or fails to timely notify the City of Burkburnett of a reduction in the number of person in a household shall be fined in accordance with the enforcement measures described in Section X Enforcement. Customers billed from a master meter under this provision shall pay the following monthly surcharges:

\$5.00 for 1,000 gallons over allocation up through 1,000 gallons for each dwelling unit.

\$6.00 thereafter, for each additional 1,000 gallons over allocation up through a second 1,000 gallons for each dwelling unit.

\$7.00 thereafter, for each additional 1,000 gallons over allocation up through a third 1,000 gallons for each dwelling unit.

\$8.00 thereafter for each additional 1,000 gallons over allocation.

Surcharges shall be cumulative.

Commercial Customers: A monthly water allocation shall be established by the City Manager, or his/her designee, for each nonresidential commercial customer other than an industrial customer who uses water for processing purposes. The non-residential customer's allocation shall be approximately 75 percent of the customer's usage for corresponding month's billing period for the previous 12 months. If the customer's billing history is shorter than 12 months, the monthly average for the period for which there is a record shall be used for any monthly period for which no history exists. Provided, however, a customer, 75 percent of whose monthly usage is less than 6,000 gallons, shall be allocated 5,000 gallons. The City Manager shall give his/her best effort to see that notice of each non-residential customer's allocation is mailed to such customer. If, however, a customer does not receive such notice, it shall be the customer's responsibility to contact the City of Burkburnett to determine the allocation. Upon request of the customer or at the initiative of the City Manager, the allocation may be reduced or increased if, (1) the designated period does not accurately reflect the customer's normal water usage, (2) one nonresidential customer agrees to transfer part of its allocation to another nonresidential customer, or (3) other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the City Manager. Nonresidential commercial customers shall pay the following surcharges:

- \$5.00 per thousand gallons for the first 1,000 gallons over allocation.
- \$6.00 per thousand gallons for the second 1,000 gallons over allocation.
- \$7.00 per thousand gallons for the third 1,000 gallons over allocation.
- \$8.00 per thousand gallons for each additional 1,000 gallons over allocation.

The surcharges shall be cumulative. As used herein, “block rate” means the charge to the customer per 1,000 gallons at the regular water rate schedule at the level of the customer’s allocation.

Industrial Customers: A monthly water allocation shall be established by the City Manager, or his/her designee, for each industrial customer, which uses water for processing purposes. The industrial customer’s allocation shall be approximately 90 percent of the customer’s water usage baseline. Ninety (90) days after the initial imposition of the allocation for industrial customers, the industrial customer’s allocation shall be further reduced to 85 percent of the customer’s water usage baseline. The industrial customer’s water use baseline will be computed on the average water use for the 3-month period ending prior to the date of implementation of Stage 2 of the Plan. If the industrial water customer’s billing history is shorter than 3 months, the monthly average for the period for which there is a record shall be used for any monthly period for which no billing history exists. The City Manager shall give his/her best effort to see that notice of each industrial customer’s allocation is mailed to such customer. If, however, a customer does not receive such notice, it shall be the customer’s responsibility to contact the City of Burkburnett to determine the allocation, and the allocation shall be fully effective notwithstanding the lack of receipt of written notice. Upon request of the customer or at the initiative of the City Manager, the allocation may be reduced or increased, (1) if the designated period does not accurately reflect the customer’s normal water use because the customer had shutdown a major processing unit for repair or overhaul during the period, (2) the customer has added or is in the process of adding significant additional processing capacity, (3) the customer has shutdown or significantly reduced the production of a major processing unit, (4) the customer has previously implemented significant permanent water conservation measures such that the ability to further reduce water use is limited, (5) the customer agrees to transfer part of its allocation to another industrial customer, or (6) if other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the City Manager. Industrial customers shall pay the following surcharges:

- \$5.00 per thousand gallons for the first 1,000 gallons over allocation.
- \$6.00 per thousand gallons for the second 1,000 gallons over allocation.
- \$7.00 per thousand gallons for the third 1,000 gallons over allocation.
- \$8.00 per thousand gallons for each additional 1,000 gallons over allocation.

The surcharges shall be cumulative. As used herein, “block rate” means the charge to the customer per 1,000 gallons at the regular water rate schedule at the level of the customer’s allocation.

Section X: Enforcement

(a) No person shall knowingly or intentionally allow the use of water from the City of Burkburnett for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this Plan, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by City Manager, or his/her designee, in accordance with provisions of this Plan.

(b) Any person who violates this Plan is guilty of a misdemeanor and, upon conviction shall be punished by a fine of not less than twenty dollars (\$20) and not more than five hundred dollars (\$500). Each day that one or more of the provisions in this Plan is violated shall constitute a separate offense. If a person is convicted of three or more distinct violations of this Plan, the City Manager shall, upon due notice to the customer, be authorized to discontinue water service to the premises where such violations occur. Services discontinued under such circumstances shall be restored only upon payment of a re-connection charge, hereby established at twenty-five dollars \$25, and any other costs incurred by the City of Burkburnett in discontinuing service. In addition, suitable assurance must be given to the City Manager that the same action shall not be repeated while the Plan is in effect. Compliance with this plan may also be sought through injunctive relief in the district court.

(c) Any person, including a person classified as a water customer of the City of Burkburnett, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person’s property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on property within the parents’ control shall constitute a rebuttable presumption that the parent committed the violation, but any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of this Plan and that the parent could not have reasonably known of the violation.

(d) Any employee of the City of Burkburnett, police officer, or other employee designated by the City Manager, may issue a citation to a person he/she reasonably believes to be in violation of this Ordinance. The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the offense charged, and shall direct him/her to appear in the municipal court on the date shown on the citation for which the date shall not be less than 3 days nor more than 5 days from the date the citation was issued. The alleged violator shall be served a copy

of the citation. Service of the citation shall be complete upon delivery of the citation to the alleged violator, to an agent or employee of a violator, or to a person over 14 years of age who is a member of the violator's immediate family or is a resident of the violator's residence. The alleged violator shall appear in municipal court to enter a plea of guilty or not guilty for the violation of this Plan. If the alleged violator fails to appear in municipal court, a warrant for his/her arrest may be issued. A summons to appear may be issued in lieu of an arrest warrant. These cases shall be expedited and given preferential setting in municipal court before all other cases.

Section XI: Variances

The City Manager, or his/her designee, may, in writing, grant temporary variance for existing water uses otherwise prohibited under this Plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:

- (a) Compliance with this Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect.
- (b) Alternative methods can be implemented which will achieve the same level of reduction in water use.

Persons requesting an exemption from the provisions of this Ordinance shall file a petition for variance with the City of Burkburnett within 5 days after the Plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the City Manager, or his/her designee, and shall include the following:

- (a) Name and address of the petitioner(s).
- (b) Purpose of water use.
- (c) Specific provision(s) of the Plan from which the petitioner is requesting relief.
- (d) Detailed statement as to how the specific provision of the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Ordinance.
- (e) Description of the relief requested.
- (f) Period of time for which the variance is sought.
- (g) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this Plan and the compliance date.
- (h) Other pertinent information.

Section XII: Severability

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Plan shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Plan.

SECTION 2. That all ordinances that are in conflict with the provisions of this ordinance be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. Should any paragraph, sentence, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

SECTION 4. This ordinance shall be in full force and effect immediately upon passage and publication.

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

PASSED AND APPROVED on this 20th day of May 2013.

Carl Law, Mayor

ATTEST:

Janelle Dolan, City Clerk

RESOLUTION NUMBER 550

WHEREAS, The City of Burkburnett Police Department finds it in the best interest of the citizens of Burkburnett that the Audio/ Video Patrol Car Camera System be operated for the 2014 year; and

WHEREAS, City of Burkburnett Police Department agrees to provide \$0.00 for the said project as required by the Office of the Governor, Criminal Justice Division grant application; and

WHEREAS, City of Burkburnett Police Department agrees that in the event of loss or misuse of the Criminal Justice Division funds City of Burkburnett Police Department assures that the funds will be returned to the Criminal Justice Division in full.

WHEREAS, City of Burkburnett Police Department designates Chief Mike Tracey as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT TEXAS:

Section 1: The Board of Commissioners of the City Of Burkburnett hereby approves submission of the grant application for the Audio/ Video Patrol Car Camera System to the Office of the Governor, Criminal Justice Division.

PASSED AND APPROVED at a meeting of the Board of Commissioners of the City of Burkburnett Texas on:

Passed and Approved this 20th May, 2013.

Grant Number: **2709701**

Carl Law, Mayor

Attest:

Janelle Dolan, City Clerk



Board of Commissioners Agenda Memo

From: Tim James, P.E. – City Manager

Date: May 20, 2013

Item: Discuss and Take Any Action Necessary Concerning the City's Hiring Policies and Procedures

Background

Mayor Law has requested to place this item on the agenda for discussion. Currently the City of Burkburnett's Personnel Policy states:

Job Vacancies

The City Manager or designee shall be notified of current and anticipated vacancies as soon as they occur by the appropriate supervisor.

Promotions will occur from within the organization whenever possible and employees are encouraged to develop their qualifications. However, if the organization is to succeed, it must constantly progress and become more efficient. Therefore, we will seek to have in each position the most capable person obtainable to perform a particular job without regard to race, religion, color, sex, age, disability, or national origin. Depending upon the job and qualifications, internal and external candidates may be considered concurrently.

Fiscal Impact

N/A

Options

- N/A

Staff Recommendation

Staff does not know if there will be any specific proposal and therefore cannot make any recommendation.

Attachments

- N/A