

AGENDA

Notice is hereby given of a meeting of the Board of Commissioners of Burkburnett to be held on **Monday, August 15, 2016 at 7:00 p.m.** at City Hall-Council Chambers, 501 Sheppard Road, Burkburnett, Texas for the purpose of considering the following agenda items. The Board of Commissioners may discuss and take action on any item on this agenda. The Board of Commissioners reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

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

Item 1. Mayor: Call meeting to order.

Item 2. Invocation-

Item 3. Pledge of Allegiance.

Item 4. CONSENT AGENDA:

- A. Approval of Minutes from July 11, 2016 and July 12, 2016 Special Called Meetings/Workshops and July 18, 2016 Regular Meeting

Item 5. Mayor to close regular meeting and open "Public Hearing" for the following Planning & Zoning Commission Case:

- A. Case #2016-29, re-zone application for the 1100 Blk. of Cheryl Dr., block rezoned as a carport overlay district.

item 6. Mayor to close Public Hearing and reopen the regular meeting and take any action necessary on Planning & Zoning Commission Cases:

- A. Case #2016-29, re-zone application for the 1100 Blk. of Cheryl Dr., block rezoned as a carport overlay district.

Item 7. Ordinance Number 902. An ordinance granting ONCOR Electric Delivery Company LLC. an electric power franchise to use the present and future streets, alleys, highways, public utility easements, public ways and public property of the City of Burkburnett, Texas, and providing for compensation.

Item 8. Discuss and take any action necessary on a Professional Service Agreement with HDR Engineering, Inc. for Gresham Rd ROW Acquisition.

Item 9. Discuss and take any action necessary for the appointment of the Burkburnett Development Corporation Board Members.

Item 10. Discuss and take any action necessary on setting dates for public hearings for the FY 2017 Budget and proposed tax rate.

Item 11. Review of monthly reports.

- A. Public Works
 - Friendship Festival
 - Aquatic Center Updates
- B. Public Safety
 - Hotter 'n Hell

Item 12. Public Comments.

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

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

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

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

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

Item 13. City Manager’s report.

- Budget Calendar
- City Hall Closed-Labor Day
- SAFB Airshow

Item 14. Commissioner’s Comments.

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

***Expressions of thanks, congratulations, or condolence;**

***Information regarding holiday schedules;**

***An honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of the person’s public office of public employment is not an honorary or salutary recognition for purposes of this subdivision;**

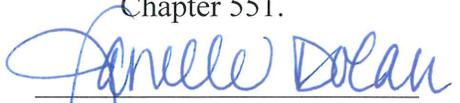
***A reminder about an upcoming event organized or sponsored by the governing body;**

***Information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; and**

***Announcements involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.**

Item 15. 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 11:00 a.m. on August 12, 2016 in compliance with the Open Meeting Act Chapter 551.


Janelle Dolan, City Clerk
Posted 8/12/16 @ 11:00 am

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

MINUTES

BOARD OF COMMISSIONERS

The Board of Commissioners of the City of Burkburnett, Texas met in a special called meeting/workshop on July 11, 2016 at 1:00 p.m. in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meetings Act. The following Commissioners were present:

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

Commissioner Tugman was not present.

Others present: Mike Whaley, City Manager; Trish Holley, Director of Administration; Gordon Smith, Director of Public Works; Janelle Dolan, City Clerk; Ed Stahr, Police Chief; Gary Robinett, Economic Development Director; and Rod Ryalls, Fire Chief.

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

Item 2. Invocation was given by Commissioner Duff.

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

Item 4. Resolution Number 611. A resolution authorizing the Burkburnett Development Corporation to fund up to thirty-five thousand dollars for sponsorship of the 75th SAFB/35th ENJJPT anniversary celebration. First reading, no action taken.

Item 5. Mayor Law closed the regular meeting at 1:01 p.m. and opened the “Public Hearing” to review the effects of the City’s juvenile curfew regulations on the City and on the problems the regulations were intended to remedy.

Chief Stahr reported the curfew regulations are being used as intended. This year to date there have been twelve juvenile cases and 6 citations issued.

Item 6. Mayor Law closed the “Public Hearing” at 1:02 p.m. and reopened the regular meeting.

Item 7. Ordinance Number 901 was presented in its entirety. An ordinance regulating Juvenile Curfew Regulations.

Motion was made by Commissioner Lindenborn seconded by Commissioner Brewster to adopt Ordinance Number 901. Motion carried unanimously.

Item 8. Mr. Whaley highlighted the Fiscal Year 2017 General Fund Budget. Mr. Whaley presented a proposed General Fund budget in the amount of \$5,434,986 expenses and \$5,016,420 in revenues. This will leave a projected unappropriated balance of (\$418,566). This does not include any capital requests. Mr. Whaley stated staff is still waiting on the Truth and Taxation rate.

Item 9. City Manager Comments.

- Mr. Whaley stated the next scheduled budget meetings are 7/12, 8/8 and 8/9 all at 1:00 pm.

Item 10. No Commissioner Comments.

Item 11. Motion was made by Commissioner Tugman, seconded by Commissioner Ducos 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 special called meeting/workshop on July 12, 2016 at 1:00 p.m. in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meetings Act. The following Commissioners were present:

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

Others present: Mike Whaley, City Manager; Trish Holley, Director of Administration; Gordon Smith, Director of Public Works; Janelle Dolan, City Clerk; Ed Stahr, Police Chief; Gary Robinett, Economic Development Director; Francene Neff, Utility Billing Supervisor; and Chris Eckrut, NewGen Strategies & Solutions.

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

Item 2. Invocation was given by Commissioner Tugman.

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

Item 4. Resolution Number 611. A resolution authorizing the Burkburnett Development Corporation to fund up to thirty-five thousand dollars for sponsorship of the 75th SAFB/35th ENJJPT anniversary celebration.

Gary Robinett, Economic Development Director, addressed the Board and stated the Sheppard Military Affairs Committee (SMAC) requested a \$35,000 sponsorship from the Burkburnett Development Corporation (BDC) for the September 21, 2016 75th SAFB/35th ENJJPT anniversary. This event will include an air show featuring the Thunderbirds, a Pat Green concert, speakers TBD, and high-ranking AF and DOD officials. This will be an event that will be recognized across the military and will receive considerable attention. The BDC Board of Directors approved the request on June 14, 2016 contingent that funding could be found from past years where the marketing/promotion dollars were not fully spent. Economic Development agencies are required to file an annual Economic Development Corporation Report to the state comptroller that contains annual sales tax revenues received and dollars spent on

marketing and promotion. Mr. Robinett stated he reviewed all past reports dating back to 1998, the BDC's first report filed, to determine if there was a cumulative \$35,000 of unspent marketing dollars that could be used to support SMAC's request. He stated in reviewing data from past years, there is \$35,000 available from unspent marketing funds over the years to support sponsorship of SMAC 75th SAFB/35th ENJJPT anniversary.

Motion was made by Commissioner Love, seconded by Commissioner Lindenborn to approve Resolution Number 611 as presented.

Ayes: Mayor Law; Commissioners Lindenborn, Brewster, Ducos, Duff, Love

Nays: Commissioner Tugman

Motion passed.

Item 5. Mike Whaley, City Manager, addressed the Mayor and Commissioners and introduced Chris Eckrut, NewGen Strategies & Solutions who discussed the key utility issues for FY 2017 which included the following: financial performance has improved, but not to historic levels and water demand is still lower than "normal". Mr. Eckrut also reviewed the historical utility operation net income; historical water production; and projected FYE 2017 consumption; year over year budget comparison; anticipated revenue performance; and various rate comparisons.

Mr. Whaley then highlighted the Fiscal Year 2017 Water Fund Budget. Mr. Whaley presented a proposed Water Fund budget in the amount of \$3,786,588 expenses and \$4,018,983 in revenues. This will leave a projected unappropriated balance of \$232,395. Mr. Whaley stated there are no capital requests in the proposed working budget.

Mr. Whaley also reviewed the employees' health and dental benefits. He stated that TML has imposed some earlier deadlines this year as far as employee participation in the health and dental plans. Mr. Whaley stated he would need a consensus of the Board of Commissioners on those benefits. After reviewing all available health dental plans it was the consensus of the Board of Commissioners for the following: Health insurance will be provided for the employees but there is now a choice of a \$1,250 or \$1,5000 in network deductible. If the employee chooses the \$1,250 deductible they will be required to pay \$22.40 monthly to receive the lower deductible; the Family Plan health insurance will remain the same with the City contributing to 25% of the premium for coverage for an employees' family. Dental Option 3: Dental insurance will now be optional for the employees and the employee will be responsible for the monthly premium. There is no orthodontics coverage and the plan will pay up to \$1,500; and the HRA Card will remain the same with the City placing \$50 per month on the card

Item 6. City Manager Comments.

- Mr. Whaley stated the next scheduled budget meetings are 8/8 and 8/9 all at 1:00 pm.

Item 7. No Commissioner Comments.

Item 8. Motion was made by Commissioner Tugman, seconded by Commissioner Lindenborn 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, July 18, 2016 at 7:00 p.m. in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meetings Act. The following Commissioners were present:

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

Others present: Mike Whaley, City Manager; Trish Holley, Director of Administration; Gordon Smith, Director of Public Works; Janelle Dolan, City Clerk; and Ed Stahr, Police Chief.

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

Item 2. Invocation was given by Phillip Kenedy, Pastor of New Hope Church of the Nazarene.

Item 3. The Pledge of Allegiance was led by Commissioner

Item 4. Consent Agenda.

A. Approval of Minutes from June 20, 2016

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

Mayor Law moved up Agenda Item 8.

Item 8. Mike Whaley, City Manager, addressed the Mayor and Commissioners and stated a request was sent to the City of Burkburnett to enter into a new Interlocal Agreement with Wichita County for the purpose to assess and collect current and delinquent taxes for the City of Burkburnett. The current agreement has been in place since 2004. In the proposed agreement, Wichita County is addressing the fee that has been in place since the 2004 agreement which reads, "taxing unit shall pay \$1.00 per taxable account per year." The new agreement reads, "taxing unit shall pay an amount

determined by the calculation of the previous year of operational costs by the Wichita Appraisal District from the appraisal roll submitted to the taxing entities for the current year of collection.” Currently, as reflected in their summary, the cost would be \$2.85 per parcel which totals \$17,060.10. Prior to the 2004 agreement, the City employed an individual that collected the taxes. Mr. Whaley stated even with the adjusted costs from Wichita County, it is still more cost effective for the City to continue to partner with Wichita County than to hire an individual, pay salary and benefits and associated costs with running a tax collection department.

The following addressed the Mayor and Commissioners:

Tommy Smyth, Wichita County Tax Assessor
Clay Glasgow, Chief Deputy Tax Assessor

Motion was made by Commissioner Tugman, seconded by Commissioner Duff to enter into a interlocal agreement with Wichita County for the purpose of collecting ad valorem taxes under the new agreement.

Ayes: Mayor Law; Commissioners Lindenborn and Ducos

Nays: Commissioners Brewster, Duff, Love and Tugman

Motion failed.

Item 5. Mayor Law closed the regular meeting at 7:58 p.m. and opened the “Public Hearing” to receive public comment with regard to the First Amended Project Plan and Reinvestment Zone Financing Plan for Tax Increment Reinvestment Zone Number One, City of Burkburnett (the Zone) for the provision of increased public infrastructure costs and extending the life of the Zone by an additional ten (10) years.

There were no speakers.

Item 6. Mayor Law closed the “Public Hearing” at 8:00 p.m. and reopened the regular meeting.

Item 7. Ordinance Number 900 was presented in its entirety. Caption of same being:

AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE PROJECT PLAN AND REINVESTMENT ZONE FINANCING PLAN FOR REINVESTMENT ZONE NUMBER ONE, CITY OF BURKBURNETT, TEXAS; AUTHORIZING THE CITY CLERK TO DISTRIBUTE SUCH PLANS; EXTENDING THE DURATION OF THE ZONE TO DECEMBER 31, 2035; CONTAINING FINDINGS AND PROVISIONS RELATED TO THE FOREGOING SUBJECT; AND PROVIDING FOR SEVERABILITY.

Motion was made by Commissioner Love, seconded by Commissioner Ducos to approve Ordinance Number 900 with the following corrections: the last Whereas change 2035 to

December 31, 2035, and in Section 5 remove the word be from be held. Motion carried unanimously.

Item 9. Resolution Number 609 was presented in its entirety. A resolution authorizing a Burkburnett Development Corporation economic incentive agreement with HomeWell Senior Care Inc.

Mike Whaley, City Manager addressed the Mayor and Commissioners and stated the Burkburnett Development Corporation (BDC) proposes entering into an agreement with HomeWell Senior Care, Inc. of Burkburnett wherein the BDC will provide an economic incentive package worth **\$85,700.00** provided for the expansion of business along with retention of existing jobs and creation of new jobs within Burkburnett, Texas, the terms of which are more specifically described below:

The BDC will provide HomeWell Senior Care, Inc. job creation incentives in the amount of **\$57,000** for the **retention of 10 existing jobs** with an annual payroll of \$500,860.48 and the **creation of 48 new jobs** over the next three years with an anticipated payroll over \$1,000,000. All jobs will work locally in Burkburnett, TX. The incentive will be paid in equal installments over the next three years provided Homewell Senior Care, Inc. meets their job creation goals. In order to qualify for such payment, Homewell Senior Care, Inc. will provide the BDC documentation reflecting total number of new personnel employed to include start dates and salary.

The BDC would also agree to provide HomeWell Senior Care, Inc. **capital investment incentives** in the amount of **\$28,700** which is 10% of Homewell Senior Care, Inc.'s total investment of \$287,000. The remainder of the capital investment incentive will be rolled into the job creation incentive.

HomeWell Senior Care, Inc. estimates it will purchase, renovate, and complete improvements to the subject property, relocate and begin operations as soon as possible, no later than 12 months from the date of this agreement, and will retain ten (10) existing jobs and create forty-eight (48) jobs over the next three years at such location.

Motion was made by Commissioner Brewster, seconded by Commissioner Ducos to approve Resolution Number 609 as presented. Motion carried unanimously.

Item 10. Gordon Smith, Director of Public Works, addressed the Mayor and Commissioner and stated the City of Burkburnett's Cemetery Board consists of seven (7) appointed members that serve a 2-year term. Mr. Ted Kwas' term is nearing its end. Staff contacted Mr. Kwas and he is willing to continue to serve on the Cemetery Board.

Motion was made by Commissioner Tugman, seconded by Commissioner Lindenborn to approve the re-appointment of Ted Kwas to the Cemetery Board. Motion carried unanimously.

Item 11. Mr. Smith addressed the Mayor and Commissioner and stated the Zoning Board of Adjustment consists of five (5) members and two (2) alternates that serve two (2) year terms. Mr. Matt Horn (Alternate) and Roy Cheney (Appointed) terms are ending. Staff contacted both Mr. Horn and Mr. Cheney and both are willing to continue to serve on the Zoning Board of Adjustment.

Motion was made by Commissioner Tugman, and seconded by Commissioner Duff to reappoint Mr. Matt Horn (Alternate) and Roy Cheney (Appointed) to the Zoning Board of Adjustment. Motion carried unanimously.

Item 12. Mr. Whaley addressed the Mayor and Commissioners and stated the Pool Trust Agreement provide for three (3) year staggered terms of office for Trustees. Terms expire for Trustees in TML Region 5 on September 30, 2016. The Trust Agreement provides that all Pool Members in an affect region have an opportunity to submit nominations. Mike Smith, is the City Manager of Jacksboro, and the incumbent Board Member for TML Region 5. Staff recommends nominating Mr. Smith based on his given experience of serving on the Board of Trustees.

Motion made by Commissioner Tugman, seconded by Commissioner Lindenborn to nominate incumbent Mike Smith to the TML IEP Board of Trustees. Motion carried unanimously.

Item 13. Review of monthly reports.

- A. Administration-Janelle Dolan, City Clerk, reported the TML Annual Conference is scheduled for October 4-7, 2016 in Austin.
- B. Public Safety- Ed Stahr, Police Chief, reported Pat Hanlon, EMT, is retiring. His retirement reception will be held at City Hall on July 29th at 2:30 pm.
- C. Public Works- Mr. Smith provided a presentation on the water well leases and their performance.

Item 14. No public comments.

Item 15. City Manager comments.

- Region 5 TML Dinner-July 21, 2016 in Iowa Park
- Budget Meetings-August 8-9, 2016 1pm

Item 16. No Commissioner comments.

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

Carl Law, Mayor

ATTEST:

Janelle Dolan, City Clerk



City Commission Agenda Memo

From: Gordon Smith, Director of Public Works

Date: August 9, 2016

Item: Rezone Application: Carport Overlay District

Background

The application was presented by Rickie Pike owner of property located at 1111 Cheryl Dr. This request is to allow for a carport overlay district to be extended from the 900 block and 1000 Block of Cheryl Dr. to include the 1100 block of Cheryl. All publishing and mail out requirements have been met. Also, the required amount of signatures (75%) has been satisfied and ownership has been verified by City staff. 20 out of the 23 total property owners on the block has signed the petition.

Public Notices as required by the Zoning Ordinance were sent to the proposed district and all properties 200 feet adjacent to the proposed district.

On August 1, 2016 the Planning and Zoning Board met and staff presented the information for review and a recommendation to City Commissioners. Mr. Pike was in attendance. Consensus of the Board was existing carports were constructed in the block prior to the adoption of 2000 zoning ordinance and this would be an extension of recently approved carport overlay district on Cheryl.

Then a motion was made and seconded for approval of the zoning change request. Chairman Tim Cornelius took a vote. The vote was 4-0 in favor of approval the request. 4 members were in attendance and 1 member notified staff after the meeting of a conflict and stated he would be at all future meetings.

Zoning Ordinance

The request follows the guidelines as set forth by the Zoning Ordinance.

Comprehensive Plan

N/A

Subdivision Ordinance

N/A

Staff Recommendation

Approval

Attachments

Application

Petition

Area map highlighting block to be overlaid

CITY OF BURKBURNETT
REZONING APPLICATION

OFFICE USE:

CASE NO. 2016-29

FEE PAID \$150.00

PROPERTY ADDRESS: 1111 CHERYL DR

LEGAL DESCRIPTION: 18 2 ASHTON
LOT(S) BLOCK SECTION SUBDIVISION

AREA IN ACRES _____

PRESENT ZONING CLASSIFICATION SF6 PROPOSED ZONING SF6 W/CARPORT OVERLAY

PRESENT USE SINGLE FAMILY 6

PROPOSED USE CARPORT OVERLAY DISTRICT ADDED

REASON FOR REQUEST TO BUILD A CARPORT TO PROTECT VEHICLES

NAME OF APPLICANT RICKIE PIKE

ADDRESS 1111 CHERYL DR.

PHONE # 569-2405

I hereby certify that all information contained herein is true and correct, and that all required submissions (see reverse) have been submitted.

SIGNATURE OF APPLICANT RICKIE LEE PIKE DATE 6-24-2016

SIGNATURE OF PROPERTY OWNER Rickie Lee Pike DATE 6-24-2016

NOTE: SEE REVERSE SIDE FOR INSTRUCTIONS
Attach PUD application for a Planned Unit Development

PERMIT (To be completed by the Planning Department)

The rezoning request is hereby approved based on Ord. No. _____

The rezoning request is hereby disapproved by City Council on _____

Director of Planning _____ Date _____



City Commission Agenda Memo

From: Mike Whaley
City Manager

Date: August 15th, 2016

Item: Ordinance Number 902 ONCOR Franchise Renewal

Background

The City's electric franchise with ONCOR Electric Delivery is set to expire December 31st, 2016. Enclosed is a copy of the franchise renewal. The City attorney has reviewed and approved the ordinance supplied by ONCOR. The previous franchise agreement was passed and approved in 2006. The current franchise renewal has a term of 20 years and would expire Sept. 30th, 2037. Gordon Drake, ONCOR West Regional Customer Operations Area Manager will be present to answer any questions you may have at the meeting.

Fiscal Impact

N/A

Options

Approve Ordinance Number 902
Deny with recommendations

Staff Recommendation

Staff recommends approval of Ordinance Number 902 ONCOR Franchise Renewal

Attachments

Ordinance Number 902

ORDINANCE NUMBER 902

AN ORDINANCE GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, PUBLIC WAYS AND PUBLIC PROPERTY OF THE CITY OF BURKBURNETT, TEXAS, PROVIDING FOR COMPENSATION THEREFOR, PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE, PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE, PROVIDING FOR THE REPEAL OF ALL EXISTING FRANCHISE ORDINANCES TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS PREDECESSORS AND ASSIGNS, AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC.

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

SECTION 1. GRANT OF AUTHORITY: That there is hereby granted to Oncor Electric Delivery Company LLC, its successors and assigns (herein called "Company"), the right, privilege and franchise to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, public utility easements, public ways and other public property (Public Rights-of-Way) of the City of Burkburnett, Texas (herein called "City") electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines, telephone and communication lines, and other structures for its own use), (herein called "Facilities") for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 7.

SECTION 2. Poles, towers and other structures shall be so erected as not to unreasonably interfere with traffic over streets, alleys and highways.

SECTION 3. The City reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipe lines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The City also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines, storm sewers, drainage basins, drainage ditches, and the like. Upon request by City, Company shall relocate its facilities at the expense of the City except as otherwise required by Section 37.101(c) of the Texas Public Utility Regulatory Act (PURA), which statutory provision currently states, the governing body of a municipality may require an electric utility to

Oncor Electric Delivery Company LLC/City of Burkburnett Electric Franchise Agreement

relocate the utility's facility at the utility's expense to permit the widening or straightening of a street. City and Company further agree that widening and straightening of a street includes the addition of any acceleration, deceleration, center or side turn lanes, and sidewalks (meaning sidewalks done in conjunction with widening or straightening of a street), provided that the City shall provide Company with at least thirty (30) days' notice and shall specify a new location for such facilities along the Public Rights-of-Way of the street. Company shall, except in cases of emergency conditions or work incidental in nature, obtain a permit, if required by City ordinance, prior to performing work in the Public Rights-of-Way, except in no instance shall Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, despite the City's enactment of any ordinance providing the contrary. Company shall construct its facilities in conformance with the applicable provisions of the National Electrical Safety Code.

If the City requires the Company to adapt or conform its Facilities, or in any manner to alter, relocate, or change its Facilities to enable any other corporation or person to use, or use with greater convenience, said street, alley, highway, or public way, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's Facilities.

If City abandons any Public Rights-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 4.

A. In consideration of the granting of this Franchise, Company shall, at its sole cost and expense, indemnify and hold the City, and its past and present officers, agents and employees harmless against any and all liability arising from suits, actions or claims regarding injury or death to any person or persons, or damages to any property arising out of or occasioned by the intentional and/or negligent acts or omissions of Company or any of its officers, agents, or employees in connection with Company's construction, maintenance and operation of Company's system in the City Public Rights-of-Way, including any court costs, reasonable expenses and reasonable defenses thereof.

B. This indemnity shall only apply to the extent that the loss, damage or injury is attributable to the negligence or wrongful act or omission of the Company or its officers, agents or employees, and does not apply to the extent such loss, damage or injury is attributable to the negligence or wrongful act or omission of the City or the City's officers, agents, or employees or any other person or entity. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of Company and the City.

C. In the event of joint and concurrent negligence or fault of both Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively between the City and Company in accordance with the laws of the state of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any of the defenses of the parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both Company and the City, responsibility for all costs of defense shall be apportioned between the City and Company based upon the comparative fault of each.

D. In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. Company shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this franchise. If Company fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all reasonable defense costs incurred by City, except as otherwise provided in section 4.B and 4.C.

SECTION 5. This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights, privileges and franchises to any other person, firm, or corporation. Any Franchise granted by the City to any

other person, firm, or corporation shall not unreasonably interfere with this Franchise.

SECTION 6. In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Company shall pay to the City the following:

- A. A final quarterly payment will be made on or before December 15, 2016 for the basis period of July 1, 2016 through September 31, 2016 and the privilege period of July 1, 2017 through September 31, 2017 in accordance with the provisions in the previous franchise.
- B. As authorized by Section 33.008(b) of PURA, the original franchise fee factor calculated for the City in 2002 was 0.003003 (the "Base Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries for determining franchise payments going forward.

Due to a 2006 agreement between Company and City the franchise fee factor was increased to a franchise fee factor of 0.003153 (the "Current Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries on an quarterly basis.

However, consistent with the 2006 agreement, should the Public Utility Commission of Texas at any time disallow Company's recovery through rates of the higher franchise payments made under the Current Factor as compared to the Base Factor, then the franchise fee factor shall immediately revert to the Base Factor of 0.003003 and all

future payments, irrespective of the time period that is covered by the payment, will be made using the Base Factor.

Company shall make quarterly payments as follows:

<u>Payment Due Date</u>	<u>Basis Period</u>	<u>Privilege Period</u> <u>(Following Year)</u>
March 15	Oct.1 – Dec. 31	Oct. 1 – Dec. 31
June 15	Jan. 1 – Mar. 31	Jan. 1 – Mar. 31
September 15	Apr.1 – Jun. 30	Apr.1 – Jun. 30
December 15	Jul.1 – Sept. 30	Jul.1 – Sept. 30

1. The first payment hereunder shall be due and payable on or before March 15, 2017 and will cover the basis period of October 1, 2016 through December 31, 2016 and privilege period of October 1, 2017 through December 31, 2017. The final payment under this franchise is due on or before December 15, 2036 and covers the basis period of July 1, 2036 through September 30, 2036 and the privilege period of July 1, 2037 through September 30, 2037; and

1. 2. After the final payment date of December 15, 2036, Company may continue to make additional quarterly payments in accordance with the above schedule. City acknowledges that such continued payments will correspond to privilege periods that extend beyond the term of this Franchise and that such continued payments will be recognized in any subsequent franchise as full payment for the relevant quarterly periods.

C. A sum equal to four percent (4%) of gross revenues received by Company from services identified as DD1 through DD24 in Section 6.1.2 “Discretionary Service Charges,” in Oncor’s Tariff for Retail Delivery Service (Tariff), effective 1/1/2002, that are for the account and benefit of an end-use retail electric consumer. Company will, upon request by City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company’s current approved Tariff.

1. The franchise fee amounts based on “Discretionary Service Charges” shall be

calculated on an annual calendar year basis, i.e. from January through December 31 of each calendar year.

2. The franchise fee amounts that are due based on “Discretionary Service Charges” shall be paid at least once annually on or before April 30 each year based on the total “Discretionary Service Charges”, as set out in Section 6C, received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April, 30 2017 and will be based on the calendar year January 1 through December 31, 2016. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2038 and will be based on the calendar months of January 1 through September 30, 2037.
3. Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
4. City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.
5. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.
6. In the event of a regulatory disallowance of the recovery of the franchise fees on the Discretionary Service Charges, Company will not be required to continue payment of such franchise fees.

SECTION 7. This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the City within sixty (60) days after final passage and approval hereof. The right, privilege and franchise granted hereby shall expire on September 30, 2037; provided that, unless written notice of cancelation is given by either party hereto to the other not less than sixty (60) days before the expiration of this franchise agreement, it shall be automatically renewed for an additional period of six (6) months

from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

SECTION 8. This Ordinance shall supersede any and all other franchises granted by the City to Company, its predecessors and assigns.

SECTION 9 The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable. If any portion of this Ordinance is declared illegal or unconstitutional by the valid final non-appealable judgment or decree of any court of competent jurisdiction, such illegality or unconstitutionality shall not affect the legality and enforceability of any of the remaining portions of this Ordinance.

SECTION 10. In order to accept this franchise, Company must file with the City Clerk its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City.

SECTION 11. It is hereby officially found that the meeting at which this Ordinance is passed is open to the public and that due notice of this meeting was posted by City, all as required by law.

PASSED AND APPROVED on the 1st reading at a regular meeting of the City Council of Burkburnett, Texas, on this the ____ day of _____, 2016.

PASSED AND APPROVED on the 2nd reading at a regular meeting of the City Council of Burkburnett, Texas, on this the ____ day of _____, 2016.

PASSED AND APPROVED on the 3rd and final reading at a regular meeting of the City Council of Burkburnett, Texas, on this the ____ day of _____, 2016.

Mayor
The City of Burkburnett

ATTEST:

City Clerk

STATE OF TEXAS §
COUNTY OF WICHITA §
CITY OF BURKBURNETT §



City Commission Agenda Memo

From: Mike Whaley
City Manager

Date: August 15th, 2016

Item: Professional Service Agreement, HDR Engineering, Inc.: Gresham Rd ROW Acquisition

Background

Now that the Interlocal Agreement with Wichita County and the revised Contract agreement with TXDOT are in place for the Gresham Rd Reconstruction Project, we are moving into the next phase which is ROW acquisition. TXDOT has completed the ROW acquisition maps required for the project. You have for review a professional service agreement with HDR Engineering, Inc. detailing the scope of services, row acquisition rates, and terms and conditions of the agreement. We have estimated the contract cost not to exceed \$150,365. There will also be additional title company cost estimated from \$30-50,000. The City will not have to make any financial adjustments to the budget. \$150,000 of the total cost will be reimbursed by TXDOT. There is \$75,000 set aside for the Gresham Rd Reconstruction Project in which the remaining cost will be deducted. (The City had originally approved a contract with HDR in July of 2015 for the ROW acquisition, but due to the period of inactivity, HDR requested to revise the contract and adjust prices accordingly. Originally, cost estimate were from \$155,000 - \$175,000) (New estimates to include HDR and title cost are from \$180,000- 205,000)

Fiscal Impact

Approximately \$25-\$55,000

Options

- Approve contract
- Take no action

Staff Recommendation

Staff recommends approval as presented

Attachments

Professional Service Agreement, HDR Engineering, Inc.
Cost Estimate Worksheet

**SHORT FORM AGREEMENT BETWEEN OWNER AND HDR ENGINEERING,
INC. FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made as of this _____ day of _____, 2016, between CITY OF BURKBURNETT, TEXAS (“OWNER”), with principal offices at 501 Sheppard Road, Burkburnett, Texas, 76354, and HDR ENGINEERING, INC., (“ENGINEER”) a Nebraska corporation, with principal offices at 8404 Indian Hills Drive, Omaha, Nebraska, 68114 for services in connection with the project known as Gresham Road Improvement (“Project”);

WHEREAS, OWNER desires to engage ENGINEER to provide professional engineering, consulting and related services (“Services”) in connection with the Project; and

WHEREAS, ENGINEER desires to render these Services as described in SECTION I, Scope of Services.

NOW, THEREFORE, OWNER and ENGINEER in consideration of the mutual covenants contained herein, agree as follows:

SECTION I. SCOPE OF SERVICES

ENGINEER will provide Services for the Project, which consist of Appraisal and Acquisition Services as outlined on the attached Exhibit A for **ELEVEN (11) PARCELS**.

SECTION II. TERMS AND CONDITIONS OF ENGINEERING SERVICES

The “HDR Engineering, Inc. Terms and Conditions for Professional Services,” which are attached hereto in Exhibit B, are incorporated into this Agreement by this reference as if fully set forth herein.

SECTION III. RESPONSIBILITIES OF OWNER

The OWNER shall provide the information set forth in paragraph 6 of the attached “HDR Engineering, Inc. Terms and Conditions for Professional Services.”

SECTION IV. COMPENSATION

Compensation for ENGINEER’S services under this Agreement shall not exceed \$150,365.00. Appraisal Fee and Appraisal Review Fees are set amounts as shown on the attached Real Estate Services Cost Sheet. Expenses, i.e., mileage, printing and postage will be billed as actual cost. Acquisition Service Fees will be billed hourly according to the following rate sheet:

2016 HOURLY RATES FOR ACQUISITION SERVICES

Personnel	Rate Per Hour
Project Principal	\$180.00
Project Manager	\$150.00
Staff Appraiser	\$130.00
Right-of-Way Agent III	\$120.00
Right-of-Way Agent II	\$105.00
Right-of-Way Agent I	\$95.00
Tech III	\$110.00
Tech II	\$100.00
Tech I	\$90.00
Relocation Agent	\$130.00
Eminent Domain Coordinator	\$130.00
Appraisal Expert Witness Prep & Testimony	\$225.00

*Escalation of rates will be allowable at beginning of each calendar year.

Expenses	
Mileage	Current IRS rates
Postage	Actual cost
Printing	Actual cost
Travel Expenses over night	Actual cost
Other Expenses	Actual cost

The amount of any sales tax, excise tax, value added tax (VAT), or gross receipts tax that may be imposed on this Agreement shall be added to the ENGINEER'S compensation as Reimbursable Expenses.

The not to exceed amount of \$150,365.00 is for a Parcel Count of 11 as shown in the following chart. Parcels owned by the City have not been included in this parcel count or fee schedule. If the parcel count increases, the contract amount will be adjusted according to the fee schedule above.

REAL ESTATE SERVICES COST SHEET
GRESHAM ROAD - CITY PARCELS

PARCEL	OWNER	TAKING ACRES	LOCATION	Appraisal	Appraisal Review	Acquisition Services Not to Exceed	Estimated Expences for Certified Mail Postage and Mileage	Real Estate Services Estimated Total Cost
1 pt 1	Edward K Clack AKA Edward Kerry Clack	2.660	CITY	3,355.00	1,485.00	8,400.00	125.00	13,365.00
28	CITY OF BURKBURNETT	1.990	CITY					
29	DIANA L WATSON	0.002	CITY	3,000.00	1,250.00	8,400.00	125.00	12,775.00
30	KELVIN W PARKER ET UX RHONDA K PARKER	0.015	CITY	3,000.00	1,500.00	8,400.00	125.00	13,025.00
31	STACY SCHROEDER	0.010	CITY	3,000.00	1,250.00	8,400.00	125.00	12,775.00
32	CITY OF BURKBURNETT	0.010	CITY					
33	LOYD & BILLIE POTTS	0.020	CITY	3,000.00	1,250.00	8,400.00	125.00	12,775.00
34	RAY GOODE ET UX SHIRLEY GOODE	0.080	CITY	3,000.00	1,500.00	8,400.00	125.00	13,025.00
35	THE RAYMOND R DILLINGHAM TRUST & LUCILLE DILLINGHAM	0.016	CITY	3,000.00	1,500.00	8,400.00	125.00	13,025.00
37	E & E DRILLING CO, INC	0.877	CITY	2,550.00	1,250.00	8,400.00	125.00	12,325.00
38	F T FELTY	2.362	CITY	2,850.00	1,250.00	8,400.00	125.00	12,625.00
40	CITY OF BURKBURNETT	2.509	CITY					
41	GLORIA V KENNEDY	2.727	CITY	2,550.00	1,250.00	8,400.00	125.00	12,325.00
42	BURKBURNETT BUTANE CO INC	0.002	CITY	2,550.00	1,250.00	8,400.00	125.00	12,325.00
			TOTAL	\$31,855.00	\$14,735.00	\$92,400.00	\$1,375.00	\$140,365.00
	Estimated Cost for Real Estate Services for conveyance from City/County to TxDOT							
							TOTAL	\$150,365.00

SECTION V. PERIOD OF SERVICE

Upon receipt of written authorization to proceed, ENGINEER shall perform the services within a reasonable period of time and as described in Exhibit A.

Unless otherwise stated in this Agreement, the rates of compensation for ENGINEER’S services have been agreed to in anticipation of the orderly and continuous progress of the project through completion. If any specified dates for the completion of ENGINEER’S services are exceeded through no fault of the ENGINEER, the time for performance of those services shall be automatically extended for a period which may be reasonably required for their completion and all rates, measures and amounts of ENGINEER’S compensation shall be equitably adjusted.

SECTION VI. SPECIAL PROVISIONS

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

CITY OF BURKBURNETTE
“OWNER”

BY: _____

NAME: _____

TITLE: _____

ADDRESS: 501 SHEPPARD ROAD
BURKBURNETTE, TEXAS
76354

HDR ENGINEERING, INC.
“ENGINEER”

BY: _____

NAME: LUKE BATHURST

TITLE: VICE PRESIDENT

ADDRESS: 600 W SIXTH STREET
SUITE. 200
FORT WORTH, TEXAS
76102

EXHIBIT A

SCOPE OF SERVICES

1. Project Administration
 - 1.1 Maintain current status reports of parcel and project activities and provide weekly to client
 - 1.2 Participate in project review meetings at dates and times determined by Client.
 - 1.3 Prepare initial property owner contact list for use in distribution of introduction letters.
 - 1.4 Provide property owners with Notice of Intent to acquire letters and Landowner Bill of Rights via USPS Certified Mail-Return Receipt Requested (CMRRR).
 - 1.5 Up-to-date parcel files will be maintained.
 - 1.6 Prepare monthly invoices utilizing pre-approved payment submissions forms with supporting documentation.
 - 1.7 Maintain records of payment amounts.
 - 1.8 Maintain copies of correspondence and contacts with property owners.
 - 1.9 Provide hard copy closeout-files for each parcel and/or electronic copies of the files on a thumb drive at completion of project.

2. Title Services/Closings
 - 2.1 Secure preliminary title commitment or preliminary title search, and five-year sales data from the Title Company that will be providing title insurance. Cost of preliminary title commitments will be paid by Client and is not included in this scope of work.
 - 2.2 Secure title commitment updates in accordance with insurance rules and requirements for parcel payment submissions. Cost of title commitment updates will be paid by Client and is not included in this scope of work or fee schedule.

- 2.3 Assist the property owner and Title Company with title curative work necessary to convey clear title to Client.
 - 2.4 Curative fees imposed by title companies, lenders, and attorneys or other will be paid by the Client and are not included in this scope of work or fee schedule.
 - 2.5 Provide necessary support to the Title Company and Client in facilitating the closing
 - 2.6 Secure title insurance for parcels acquired, insuring acceptable title to Client. Cost of title insurance will be paid by the Client and is not included in this scope of work.
3. Right of Entry Services (N/A)
4. Initial Appraisal
 - 4.1 Appraisers must be approved by the Client.
 - 4.2 Contact property owners or their designated representative to offer opportunity to accompany the appraiser on the appraiser's inspection of subject property. Maintain record of contact in file.
 - 4.3 Prepare complete appraisal report for each parcel to be acquired in narrative form. These reports shall conform to the Uniform Standards of Professional Appraisal Practices.
 - 4.4 Completed appraisals will be administratively reviewed and approved by Client.
 - 4.5 As necessary, the appraiser will appear and/or testify as an Expert Witness in eminent domain proceedings and be available for pre-hearing or pre-trial meetings. The fee for appraisal updates, preparation time and testimony must be based on the hourly rate as shown on the attached rate sheet.
5. Initial Appraisal Review Service

- 5.1 Review Appraiser must be approved by Client.
 - 5.2 Review appraisal reports for each parcel to determine consistency of values, supporting documentation related to the conclusion reached, compliance with the Uniform Standards of Professional Appraisal Practices.
 - 5.3 Prepare and submit to Client a review on a form approved by Client for each appraisal.
- 6 Negotiation Services
- 6.1 Analyze appraisal reports and confirm Client approved value prior to making offer for each parcel.
 - 6.2 Analyze preliminary title report to determine potential title problems, propose methods to cure title deficiencies.
 - 6.3 Prepare and send the letter transmitting the Landowners' Bill of Rights by CMRRR.
 - 6.4 Prepare the initial offer letter, memorandum of agreement and instrument of conveyance.
 - 6.5 The written offer and appraisal report will be sent to each property owner or the property owner's designated representative through CMRRR.
 - 6.6 Contact each property owner or owner's designated representative, to present the written offer in person where practical and deliver appraisal report.
 - 6.7 Maintain follow-up contacts and secure the necessary instruments upon acceptance of the offer for the closing. Up to five substantive contacts per parcel will be made.
 - 6.8 Respond to property owner inquiries verbally and in writing within two business days.
 - 6.9 Prepare a separate negotiator report for each contact made for each parcel.
 - 6.10 Maintain parcel files of original documentation related to the purchase of the real property or property interests.

- 6.11 Transmit to Client any written counter offer from property owners including supporting documentation, and HDR recommendation with regard to counter offer.
- 6.12 If after (30) days into the negotiation period, the negotiations have reached an impasse or have proven unproductive, a (14) day Final Offer Letter will be prepared and delivered via certified mail, return receipt requested (CMRRR).

7. Condemnation Support Services

- 7.1 Upon issuance of the Final Offer Letter, request an updated title commitment for Eminent Domain from the Title Company.
- 7.2 Prepare an Eminent Domain (ED) package to include copies of the following documents: Commitment, Negotiator's Reports / Logs, Appraisal Acknowledgment, Pre-appraisal Contact Sheet, signed and sealed property description, and plat (provide by the Client), Offer Letter, Final Offer Letter, any correspondence from the land owner or representatives, along with one copy of the appraisal report. Submit package to Client Attorney.
- 7.3 **BEYOND ISSUANCE OF THE FINAL OFFER LETTER AND ED PACKAGE TO THE CLIENT, SUPPORT SERVICES FOR CONDEMNATION PROCEEDINGS ARE NOT INCLUDED IN THIS SCOPE OR FEE SCHEDULE. FEES FOR CONDEMNATION SUPPORT SERVICES WILL BE BASED ON THE HOURLY RATE AS SHOWN ON THE ATTACHED RATE SHEET.**

Exhibit B - HDR Engineering, Inc.

Terms and Conditions for Professional Services

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and/or cost of capital) arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

OWNER will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by ENGINEER. The OWNER agrees to bear full responsibility for the technical accuracy and content of OWNER-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. SUCCESSORS, ASSIGNS AND BENEFICIARIES

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other. No third party beneficiaries are intended under this Agreement.

8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make payments to ENGINEER within thirty (30) days of OWNER's receipt of ENGINEER's invoice.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily

delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date OWNER receives ENGINEER's invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional

services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17. ALLOCATION OF RISK

OWNER AND ENGINEER HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING ENGINEER'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ENGINEER (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$100,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER ENGINEER'S COMMERCIAL GENERAL LIABILITY INSURANCE POLICY.

18. LITIGATION SUPPORT

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. UTILITY LOCATION

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify ENGINEER of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The OWNER agrees to waive any claim against ENGINEER and will indemnify and hold ENGINEER harmless from any claim of liability, injury or loss caused by or allegedly caused by ENGINEER's damaging of underground utilities that are not properly marked or are not called to ENGINEER's attention prior to beginning the underground sampling/testing.



City Commission Agenda Memo

From: Mike Whaley
City Manager

Date: August 15th, 2016

Item: BDC Appointments

Background

With the recent resignation of Jeff Briscoe (due to employment conflicts) and current member John Robertson's term ending September 30th, the BDC has/will have two open chairs. At the regularly scheduled BDC meeting on Sept 9th, the BDC nominated two ex-officio members, Dale Lewis and Casey McCleskey to serve as voting members to fill the open chairs. Voting members serve two year terms with a maximum of three consecutive terms. (We will have four open chairs for ex-officio members, if you have someone who is interested, please have them pick up an application.)

Fiscal Impact

N/A

Options

Appoint BDC nominations
Submit different nominations

Staff Recommendation

Staff recommends accepting the BDC's recommendation to appoint Dale Lewis and Casey McCleskey to the BDC as voting members.

Attachments

BDC Board Members/Terms

Final Term Ends

Voting: 7 Members: 2 yr terms/max 3 consecutive terms

Name	Title	Source	Term 1	Term 2	Term 3
Jeff Briscoe	President		2014		2018
John Robertson	Vice Pres		2012	2014	2016
Mel Feller	Sec		2014		2018
Jeff Kindt			2013	2015	2017
Jerry Johnson			2015		2019
Teresa Brantley			2015		2019
Danny Cremeens			2015		2019

Ex Officio: Up to 8 Members: 2 yr terms/max 3 consecutive terms

Name	Title	Source	Term1	Term 2	Term 3
Matt Patterson	At Large		2015		2019
Josh Andajack	At Large		2016		2020
John Erickson	At Large		2016		2020
Ted Kwas	At Large		2016		2020
Dale Lewis	At Large		2016		2020
Casey McCleskey	At Large		2016		2020
Del Hardaway	At Large - Chamber				
Tylor Chaplin	At Large - BISD				
Lee Harvey	At Large-County Co.				



City Commission Agenda Memo

From: Mike Whaley
City Manager

Date: August 15th, 2016

Item: Public Hearing Dates for the FY 2017 Budget and Proposed Tax Rate

Background

The City is required to hold two public hearings prior to the adoption of the proposed tax rate and FY 17 budget. There are specific guidelines for setting the dates for the hearings. (The meeting to vote on the tax rate must take place no less than three days and no more than fourteen days after the second public hearing)

Proposed Public Hearing Dates:

6PM Tuesday, 9-6-2016 or 6PM Thursday, 9-8-2016
6PM Tuesday, 9-13-2016 6PM Thursday, 9-15-2016

We would then adopt the proposed tax rate at our regularly scheduled meeting on Monday the 19th.

Fiscal Impact

Options

Staff Recommendation

Attachments