

## AGENDA

Special Called  
Commissioners Meeting  
December 9, 2013  
7:00 p.m.-City Hall  
501 Sheppard Road  
Burkburnett, Texas 76354

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

**Item 2.** Invocation.

**Item 3.** Pledge of Allegiance.

**Item 4.** Discuss and take any action necessary on previously opened bids for Water Wells.

**Item 5.** Discuss and take any action necessary on proposal from Flowpoint for an overhead bulk water station.

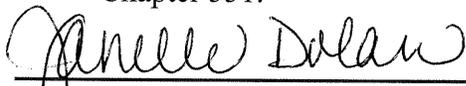
**Item 6.** Discuss and take any action necessary on amendment to Easements with Covenants and Restrictions affecting land ("ECR").

**Item 7.** City Manager Comments.

**Item 8.** Council comments.

**Item 9.** 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 on December 5, 2013 at 1:00 p.m. in compliance with the Open Meeting Act Chapter 551.



Janelle Dolan, City Clerk

Posted 12/5/13 @ 1:00 pm

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 48 hours prior to this meeting. Please contact the City Clerk's office at (940)569-2263 for further information.



## City Commission Agenda Memo

**From:** Mike Whaley  
**Date:** December 9, 2013  
**Item:** Amendment to easements with covenants and restrictions affecting land (ECR)

### Background

The agreement presented to council is in response to an agreement that had previously been entered into by the former owners of 106 S Red River (old Walmart property) and 100 S Red River (Safeway Stores Inc). Within the former agreement there were stipulations pertaining to parking lot ratio requirements. As you know the properties have changed ownership. 106 S Red River is currently owned by WM Burkburnett Partners, LLC (Lee Brumfield) and 100 S Red River is now owned by the City of Burkburnett. Mr. Brumfield has leased approximately half of the Old Walmart building to Tractor Supply Company who intends on utilizing a portion of the parking lot for outside storage and display. This would not be allowed under the old agreement between Walmart and Safeway stores. So today, Mr. Brumfield and TSC have presented an amendment for council consideration eliminating the previous requirements. The owner and tenant have already presented a site plan to the City which has been passed and approved. The current site plan does meet the parking requirements set forth by our Zoning Ordinance. Both attorneys for Mr. Brumfield and TSC have reviewed the amendment as well as the City's attorney and find no reason that would prohibit us from agreeing to the amended document.

### Fiscal Impact

N/A

### Options

Approve  
Deny

### Staff Recommendation

Staff recommends approving the amendment

### Attachments

Amendment to easements with covenants and restrictions affecting land (ECR)  
Statement from City Attorney

Prepared by and after recording  
return to:  
Schwartz, Orgler & Jordan, PLLC  
2355 Pass Road  
Biloxi, MS 39531  
(228) 388-7441  
file # B130845

Grantors:  
WM Burkburnett Partners, LLC  
Attn: William Lee Brumfield, Manager  
P.O. Box 1380  
Ocean Springs, MS 39566  
(228) 617-8780

The City of Burkburnett, Texas  
Attn: Mayor Carl Laws  
501 Sheppard Road  
Burkburnett, TX 76354  
( ) \_\_\_\_\_

**AMENDMENT TO  
EASEMENTS WITH COVENANTS AND  
RESTRICTIONS AFFECTING LAND ("ECR")**

THIS AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTS EFFECTING LAND (this "Amendment") is made and executed by WM Burkburnett Partners, LLC, a Florida Limited Liability Company ("Owner") and The City of Burkburnett, Texas (the "City") as of November 19, 2013.

WHEREAS, Wal-mart Properties, Inc., ("Wal-mart") and Percy/Christon, Inc., ("Percy") entered into Easements with Covenants and Restrictions Affecting Land on November 10, 1980, which are recorded in Wichita County, Texas Recorder's Office in Volume 1304 at Page 822, et seq. ("ECR Agreement"); and

WHEREAS, additional Easements with Covenants and Restrictions Affecting Land were entered into on March 31, 1982, between Wal-mart and Safeway Stores, Incorporated ("Safeway") which are recorded in Volume 1331 at Page 675, et seq. ("Supplemental ECR Agreement"), which Supplemental ECR Agreement was amended by First Amendment between Wal-mart and Safeway dated July 6, 1982, recorded in Volume 1339 at Page 21, et seq. ("First Amendment"); and

WHEREAS, said Supplemental ECR Agreement and First Amendment were assigned to Mart-91, L.P., ("Mart 91") by Assignment recorded in Volume 1559 at Page 373, et seq; and

WHEREAS, Wal-mart is no longer an owner and/or Tenant of any portion of the property described in the ECR Agreement, Supplemental ECR Agreement or First Amendment; and

WHEREAS Owner is currently the Owner and Successor in interest to Wal-mart, and City is currently the Owner and Successor of Percy and Safeway relating to the aforesaid agreements; and

WHEREAS, Owner and City desire to amend the ECR Agreement, Supplemental ECR Agreement and First Amendment; and

WHEREAS, Owner and City desire to record this Amendment to put the general public on notice of the same.

NOW, THEREFORE, the Owner and City hereby agree as follows:

1. Owner and City hereby amend the ECR Agreement, Supplemental ECR Agreement and First Amendment described above by deleting the Parking Ratio requirements set forth in Section 6(a) (ii) of the ECR Agreement and Supplemental ECR Agreement.
2. The Owner and City further specifically acknowledge that Tractor Supply Co., of Texas, L.P., A Texas Limited Partnership, its parents, subsidiaries, affiliates, successors and assigns (herein collectively "Tenant") will be a Tenant of the Owner pursuant to the terms of a lease agreement between Tenant and Owner and will be granted the exclusive use and possession of certain portions of the "common areas" described in the ECR Agreement and Supplemental ECR Agreement for use by the Tenant as "fenced outdoor display area", "permanent trailer and equipment display area" and "permanent sidewalk display area" (collectively "Tenant Areas") which Tenant Areas are designated on the site plan of Tenant attached hereto and marked as Exhibit "A". Owner and City consent to Tenant's exclusive use and possession of said Tenant Areas by Tenant during the term of Tenant's lease.
3. Owner and City further acknowledge and consent to the operation of a Tractor Supply Store on the property of the Owner provided the same meets all applicable city ordinance and operational requirements.

**SIGNATURE PAGES TO FOLLOW**

This instrument is executed on November \_\_\_\_, 2013.

Owner:  
WM Burkburnett Partners, LLC,  
a Florida Limited Liability Company

\_\_\_\_\_  
By: William Lee Brumfield, Manager

STATE OF MISSISSPPI  
COUNTY OF HARRISON

Personally appeared before me, the undersigned authority in and for the said county and state, on this November \_\_, 2013, within my jurisdiction, the within named, William Lee Brumfield, who acknowledged that he is the Manager of WM Burkburnett Partners, LLC, a Florida Limited Liability Company, and that for and on behalf of the said Limited Liability Company and as its act and deed he signed, executed and delivered the above and foregoing instrument, after first having been duly authorized by said Limited Liability Company so to do.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

(SEAL)

This instrument is executed on November \_\_\_\_, 2013.

City:  
City of Burkburnett, Texas

\_\_\_\_\_  
By: Carl Laws, Mayor

STATE OF MISSISSPPI  
COUNTY OF HARRISON

Personally appeared before me, the undersigned authority in and for the said county and state, on this November \_\_, 2013, within my jurisdiction, the within named, Carl Laws, who acknowledged that he is the Mayor of the City of Burkburnett, Texas, and that for and on behalf of the said City and as its act and deed he signed, executed and delivered the above and foregoing instrument, after first having been duly authorized by said City so to do.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

(SEAL)

## Janelle Dolan

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**From:** Mike Whaley <mwhaley@burkburnett.org>  
**Sent:** Tuesday, December 03, 2013 2:25 PM  
**To:** Chester Nolen  
**Cc:** Janelle Dolan  
**Subject:** FW: Burburnett TX amendment to covenants v 2 kp 11-26-13 docx

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**From:** mguevara@stgcitylaw.com [mailto:mguevara@stgcitylaw.com]  
**Sent:** Tuesday, December 03, 2013 2:19 PM  
**To:** Mike Whaley  
**Subject:** RE: Burburnett TX amendment to covenants v 2 kp 11-26-13 docx

Mike,

I have reviewed the amendment you provided and the documents that are being amended. As long as the Commission agrees to remove the parking restriction, I see no legal prohibition with the Commission granting an individual the authority to execute the amendment on behalf of the City.

Thank you,  
Mike

Michael A. Guevara  
Guevara, Decker & Arrott, PC  
1322 Hunter Ace Way  
Cedar Park, Texas 78613  
(512) 904-0010  
(512) 807-7166 - fax

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----- Original Message -----

Subject: Burburnett TX amendment to covenants v 2 kp 11-26-13 docx  
From: Mike Whaley <mwhaley@burkburnett.org>  
Date: Tue, December 03, 2013 7:59 am  
To: <mguevara@stgcitylaw.com>

Mike ,

Can you review and see if there is any reason why City shouldn't agree to these terms. I would like to get it on a Sept 9<sup>th</sup> Council agenda for approval.

Thank You,

Mike



Michael Whaley  
Director of Public Works  
(940) 569-4192 Fax  
(940)569-2263 Office  
[mwhaley@burkburnett.org](mailto:mwhaley@burkburnett.org)  
Have a blessed day!



## City Commission Agenda Memo

**From:** Mike Whaley  
**Date:** December 9, 2013  
**Item:** Water Vending Quote Approval

### Background

As previously discussed, the staff has been working with Flowpoint Environmental Systems to establish a quote for a turn-key automated water vending machine. This is the same type of system the City of Wichita Falls is implementing for their water vending service. The quote totals \$43,632.38. There will be some additional costs for piping in which City staff will be installing ourselves as well as concrete costs for pads and approaches. I would estimate an additional \$3,500.00 for material and concrete. In regards to financing, it would be staff's recommendation that we utilize a portion of the revenue bond for funding the project.

### Fiscal Impact

**\$47,132.38**

### Options

Approve Quote and finance with revenue bond  
Approve Quote and finance with an alternative means  
Deny quote and forgo project

### Staff Recommendation

Staff recommends accepting quote, financing with revenue bond, and proceeding with project

### Attachments

Quote for turn-key water vending machine  
Picture of similar project



# QUOTE

## Flowpoint Environmental Systems

191 University Blvd #467  
 Denver, CO 80206  
 Phone: 877-655-5585  
 Fax: 888-655-5588  
 sales@flowpointsystems.com

QUOTE # QO0595  
 DATE: 11/20/2013  
 EXPIRATION DATE 1/20/2014

TO Kelvin Parker  
 City of Burkburnett  
 501 Sheppard Road  
 Burkburnett TX 76354  
 (940) 613-2235

SALESPERSON	LOCATION	SHIPPING METHOD	SHIPPING TERMS	DELIVERY DATE	PAYMENT TERMS
Jason Jones		INCLUDED	FOB FACTORY		

LINE ITEM	QUANTITY	DESCRIPTION	UNIT PRICE	LINE TOTAL
1	1.0000	<b>WATER SYSTEMS</b> <b>WATER SYSTEMS</b>		
	1.00	WG2RPCOMXXXEW1IXXXXXXX WATER GENERAL - 2" INCLUDES:REDUCED PRESSURE PRINCIPLE ASSEMBLY BACKFLOW PREVENTOR, COMBINATION METER/ VALVE,ETHERNET COMMUNICATION,1000 WATT WINTERIZATION PACKAGE, & ONE ACCESS POINT. 12 MONTHS FREE ONLINE BILLING SOFTWARE TECHNICAL SUPPORT. 1 ELECTRONIC SHOP DRAWINGS. 1 ELECTRONIC O&M MANUAL.		
	1.00	ODV OPTIONAL 1/2" DRAIN VALVE ASSEMBLY		
	1.00	WG-OVERHEAD FILL-SUPPORT OPTIONAL PIPE AND SUPPORT-WATER GENERAL		
	1.00	COMM-CELL-US CELLULAR COMMUNICATION - US		
		FREIGHT SHIPPING CHARGES		
		STARTUP - SITE STARTUP UNIT ON SITE		
		<b>TOTAL</b>		<b>43,632.38</b>

Quotation prepared by: Jason Jones

This is a quotation on the goods named, and is subject to the following conditions:

Taxes are not included. All prices are in US dollars unless otherwise noted. Installation is by others. Owner is responsible for all utility service connections including water service to and from station. Owner is responsible for offloading and / or storing the station until it is installed. Payment Terms: 10% on acceptance of quote, 10% on approval of shop drawings, 70% on delivery, 10% after start up services are completed. FOB Factory means the Owner is responsible for the station during freight (including, but not limited to any damage to unit during freight). Start Up services require: 1. Minimum 3 weeks notice to book 2. 90% payment 3. Completion of Start-up readiness checklist.

To accept this quotation, sign here and return: SIGN: \_\_\_\_\_ PRINT NAME: \_\_\_\_\_

POSITION: \_\_\_\_\_ DATE: \_\_\_\_\_

### Flowpoint One Year Manufacturer's Warranty (Included):

Flowpoint Environmental Systems (Manufacturer) warranty is as follows, and extends ONLY to the original purchaser of the equipment and is limited to the purchase price of each part. Manufacturer warrant products against defects in materials or workmanship as follows:

**LABOR:** For a period of 1 (one) year from the date of commission (start up), if Manufacturer determines that the equipment is defective subject to the limitations of this warranty, Manufacturer will replace or repair it at no charge for labor. Manufacturer warrants any such work done against defects in materials or workmanship for the remaining portion of the original warranty period.

**PARTS:** For a period of 1 (one) year from the date of commission (start up), Manufacturer will supply, at no charge, new or rebuilt replacement parts in exchange for parts that the Manufacturer determines are defective subject to the limitations of this warranty. Manufacturer warrants any such replacement parts against defects in materials or workmanship for the remaining portion of the original warranty period.

This warranty "does not cover" installation of the system or damages incurred during shipping.

This warranty "does not cover" consumer instruction, physical set up or adjustment of any electronic equipment, communication / signal reception problems, loss of use of the equipment, or unused programming charges due to equipment malfunction.

This warranty "does not cover" cosmetic damage, damage due to lightning, electrical surges, fire, flood, or other acts of God, accident, misuse, abuse, vandalism, repair or alteration by other than factory service, negligence, or improper or neglected maintenance.

This warranty "does not cover" equipment sold AS IS, REFURBISHED, or WITH ALL FAULTS, auction sales, equipment removal or reinstallation, nor equipment purchased, serviced, or operated by other dealers.

AMERICAN  
WATER OIL  
MILITARY  
VEHICLES  
ONLY



## Mike Whaley

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**From:** Jason Jones <jasonjones@mccainwaterworks.com>  
**Sent:** Wednesday, November 20, 2013 3:36 PM  
**To:** Mike Whaley; Kelvin Parker  
**Subject:** Flowpoint bulk water station- overhead fill  
**Attachments:** Q00595- Flowpoint Overhead Bulk Water Station Quote- City of Burkburnett Texas.pdf; American Water Fort AP Hill.jpg; \$Flowpoint Bulk Water Station.pdf

Hello gentlemen. I have attached a quote for the station that includes the following:

1. 2" water general turn-key station (backflow preventer, meter/control valve, building, control panel, software, etc.)
2. Overhead fill arm with 2" piping, one connection
3. Cellular communication (if you plan to use Ethernet cable, we can deduct)
4. On-site startup (if you think you would like to do a remote startup with online training for the software, we can deduct)
5. Freeze-protection (heater)

I have attached a picture of a similar station to the one we have quoted. You would be responsible for the slab onto which the building is mounted, the concrete base for the overhead fill arm, and the 2" hose.

I will call you tomorrow to discuss after you have had a chance to review. We will talk about the optional software maintenance agreement and your options shown above.

Thanks guys.

Jason Jones  
Sales Representative- Texas/Oklahoma  
McCain Waterworks Marketing  
1139 Serendipity Circle  
Sanger, Texas 76266  
Mobile 214-205-4889  
Fax 210-651-3383

