



# BAY CITY

REVISED MINUTES • FEBRUARY 12, 2015

**Council Chambers**

**Regular Meeting**

**7:00 PM**

**1901 5TH STREET  
BAY CITY, TX 77414**

## 1. CALL TO ORDER & CERTIFICATION OF QUORUM

| Attendee Name    | Title         | Status  | Arrived |
|------------------|---------------|---------|---------|
| Chrystal Folse   | Councilwoman  | Present |         |
| Steven Johnson   | Councilman    | Excused |         |
| Mark Bricker     | Mayor         | Present |         |
| Carolyn Thames   | Mayor Pro-Tem | Present |         |
| Julie Estlinbaum | Councilwoman  | Present |         |
| William Cornman  | Councilman    | Present |         |

## 2. INVOCATION & PLEDGE OF ALLEGIANCE - COUNCILWOMAN JULIE ESTLINBAUM

Texas State Flag Pledge:

"Honor The Texas Flag; I Pledge Allegiance To Thee, Texas, One State Under God, One And Indivisible."

## 3. PUBLIC COMMENTS

State Law prohibits any deliberation of or decisions regarding items presented in public comments. City Council may only make a statement of specific factual information given in response to the inquiry; recite an existing policy; or request staff places the item on an agenda for a subsequent meeting.

Bay City resident Ricky Clinton talked about a problem within the City. He stated that experience cannot be taught. Mr. Clinton added that you have to live it. He went on to say that a few years ago many supervisors got canned, and Mr. Box, Mr. Calhoun, and Mrs. Jasek were brought in. There were three top layers that had no experience. Mr. Clinton stated that they had to rely on the crew. Without communication there is nothing. Mr. Clinton stated that his boss quit because no one was listening, and he was fired because of lies. Mr. Clinton stated that he was told to be quiet, but that he could not. He stated that you have lost your best employees because of your management. Your employees do not like the supervisors, and it was proven in a survey he requested.

Bay City resident Marguerite Bundick retold of an accident that she was involved in about a year ago this past December. The first responder was a Highway Patrolman. She added that the Bay City Police Department, the Bay City Volunteer Fire Department, and the Matagorda County Sheriff Office were also present. Mrs. Bundick thanked all of the first responders and provided a donation to the 100 Club. She gave the donation to Captain Robert Lister.

Bay City resident Brady Bauers informed everyone that he was a new developer in town and spoke about the different things he was doing in Bay City.

Bay City resident David Torrez stated that you need to know that your employees are valuable. They do not get paid enough. They put up with the political stuff you dish out. Mr. Torrez stated that the roads are horrible. He added that he had seen the City on Cypress fixing it. Mr. Torrez went on to state that he has seen the barricades by the bank, but it's been like that for years. He stated that if you went behind Fat Grass you would need a Hummer. Mr. Torrez pointed out the Councilman Cornman said the City would put signs on all crossings. He commented that the plywood by Holy Cross was still there, and Little League was about to start.

#### 4. REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL:

##### 1. Proclamation

Proclamation Declaring February 12, 2015 as Hope Cornett Day

Dustin Hodges, Public Information Officer

The Mayor told the story of Miss. Hope Cornett. He presented Miss. Hope Cornett with the proclamation.

|                |                  |
|----------------|------------------|
| <b>RESULT:</b> | <b>WITHDRAWN</b> |
|----------------|------------------|

##### 2. Ordinance

CONSIDER AND/OR APPROVE AN ORDINANCE CLOSING AND ABANDONING TO THE ABUTTING PROPERTY OWNER AN ALLEY IN BLOCK 133 OF THE ORIGINAL TOWNSITE, IDENTIFIED AS THAT SEGMENT OF AN ALLEY THAT RUNS PARALLEL TO EIGHTH STREET, BETWEEN AVENUE I AND CANE BELT RAILROAD AND AUTHORIZING THE MAYOR TO EXECUTE A QUIT CLAIM DEED RELEASING THE ALLEY.

The Mayor pointed out that there may be an interest in how the design might not be compatible with the Downtown Plan. He added that he reviewed some of their other buildings and they are metal, which may not coincide with the downtown feel they are going for.

|                  |                                    |
|------------------|------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>        |
| <b>MOVER:</b>    | William Cornman, Councilman        |
| <b>SECONDER:</b> | Carolyn Thames, Mayor Pro-Tem      |
| <b>AYES:</b>     | Folse, Thames, Estlinbaum, Cornman |
| <b>EXCUSED:</b>  | Johnson                            |

#### ORDINANCE

Enacted and approved this 12th day of February, 2015, at Bay City

##### 3. Report

DISCUSS THE CURRENT WCA OPERATIONS AND CONSIDER AND/OR APPROVE THE 2.1% CPI RATE INCREASE REQUEST PURSUANT TO THE SOLID WASTE CONTRACT WITH WCA AS PROVIDED BY SECTION 8.0 OF THE CONTRACT.

Phill Conner, Finance Director and Ferlin Justice, WCA

The Mayor explained that this item was supposed to be on the second meeting of this month, but it was placed on this meeting's agenda. If passed this will be effective March 1, 2015.

Ferlin Justice of WCA informed Mayor and Council that they have added a driver and 2 pieces of equipment. They were still looking for people, but still receives support from Houston.

Councilman Cornman asked what the complaint logs looked like and where were they trending. Mr. Justice stated that they submitted the logs every Tuesday to the Mayor's Office, and that it was trending normal. He added that the calls they have received were for cart repair. Mr. Justice stated that they would going to Houston to get parts for the carts. He stated that they had been running a Rear Load Truck. Mr. Justice stated that they would be adding more people before March, because from March to October they would be busy.

Councilman Cornman asked if they had been working with Code Enforcement and if worked. Mr. Justice stated that it worked well. He stated that his drivers would contact Marty if there were any violations. Councilman Cornman asked if the complaints were handled within 24-hours. Mr. Justice state that for the most part, they were handled the same day.

Councilwoman Estlinbaum asked if WCA still followed the brush schedule. Mr. Justice stated yes, that they were still following the five day schedule; however, he would prefer if citizens would call in so that they did not have to drive up and down the streets. He added that they now have two Grapplers.

Councilwoman Estlinbaum asked the Mayor if he had seen a decrease in the complaint log, since he is the one that sees it. The Mayor stated that he had not seen the last two weeks. Mr. Hodges stated that last week there was an increase in the number of missed pick ups.

Councilman Cornman asked the Mayor what his recommendation was. The Mayor stated that he would recommend the increase.

Councilwoman Estlinbaum asked that with March approaching, for WCA to stay on top of the brush.

Councilman Cornman asked if WCA had any issues with the City. Mr. Justice stated that he noticed when they picked up one day, the next day it's right back out.

|                  |                                     |
|------------------|-------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>         |
| <b>MOVER:</b>    | William Cornman, Councilman         |
| <b>SECONDER:</b> | Chrystal Folsie, Councilwoman       |
| <b>AYES:</b>     | Folsie, Thames, Estlinbaum, Cornman |
| <b>EXCUSED:</b>  | Johnson                             |

Enacted and approved this 12th day of February, 2015, at Bay City

#### 4. Agreement

CONSIDER AND/OR APPROVE ANIMAL CONTROL OFFICER DOTTY GRANDSTAFF AS THE RABIES CONTROL AUTHORITY FOR THE CITY OF BAY CITY.

Captain Robert Lister, BCPD

Captain Lister stated that the Texas Department of State Health Services required the City to designate someone. He stated that Dotty was that person. Captain Lister added that the designation was required every three (3) years.

|                  |                                    |
|------------------|------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>        |
| <b>MOVER:</b>    | Julie Estlinbaum, Councilwoman     |
| <b>SECONDER:</b> | William Cornman, Councilman        |
| <b>AYES:</b>     | Folse, Thames, Estlinbaum, Cornman |
| <b>EXCUSED:</b>  | Johnson                            |

Enacted and approved this 12th day of February, 2015, at Bay City

5. Ordinance

CONSIDER AND/OR APPROVE AN ORDINANCE AMENDING CHAPTER 110 OF THE CITY'S CODE RELATING TO NON-CONSENT TOWING OF VEHICLES; ESTABLISHING A FRANCHISE FOR USE OF CITY STREETS FOR PURPOSES OF CONDUCTING NON-CONSENT TOWING SERVICES; ESTABLISHING NON-CONSENT TOWING FEES; AND ESTABLISHING ADDITIONAL PROVISION RELATING TO NON-EXCLUSIVE FRANCHISE AGREEMENTS FOR TOWING SERVICE PROVIDERS; PROVIDING FOR PENALTY, CUMULATIVE AND CONFLICTS CLAUSE, SEVERABILITY, PUBLICATION AND AN EFFECTIVE DATE.

Captain Robert Lister, Bay City Police Department

The Mayor stated he placed the item back on the agenda because he needed to know if the City needed to move forward or not. Council asked PD their thoughts. Captain Lister stated that all the PD wanted was a Fee Schedule. Councilwoman Estlinbaum stated that she would get with the PD and just look at a Fee Schedule.

Captain Lister stated that they had received complaints that different companies charged different rates.

The Mayor stated that they would revisit the item at a later date.

|                |               |                               |
|----------------|---------------|-------------------------------|
| <b>RESULT:</b> | <b>TABLED</b> | <b>Next: 4/9/2015 7:00 PM</b> |
|----------------|---------------|-------------------------------|

6. Agreement

CONSIDER AND/OR APPROVE A NON-EXCLUSIVE FRANCHISE AGREEMENT FOR TOWING AND STORAGE SERVICES TO BE PROVIDED ON A ROTATIONAL BASIS AND DIRECT STAFF ON EXECUTIVE OF FRANCHISE AGREEMENT WITH SELECTED VENDORS.

Captain Robert Lister, Bay City Police Department

There was no action taken.

|                |               |                               |
|----------------|---------------|-------------------------------|
| <b>RESULT:</b> | <b>TABLED</b> | <b>Next: 4/9/2015 7:00 PM</b> |
|----------------|---------------|-------------------------------|

7. Planning / Plat

DISCUSS PROPOSED SUBDIVISION ORDINANCE REVISION AND ADDITIONS.

Marlal Jasek, Assistant Director of Public Works

Mrs. Jasek explained that the Development Task Force would like to implement the existing changes, but wanted to make Mayor and Council aware of the proposed

changes. Mrs. Jasek stated that she would bring the proposed changes to the Planning Commission, and then back to Council.

The Mayor asked that they discuss the proposed changes before the next meeting.

8. Grant

CONSIDER AND/OR APPROVE A RESOLUTION TO ACCEPT THE 2015 LOCAL BORDER SECURITY GRANT (LBSP) IN THE AMOUNT OF \$15,791.63.

Captain Robert Lister, BCPD

Captain Lister explained that the purpose of the grant was to combat drugs, human trafficking, and money laundering. He added that the grant would pay for the overtime the Officers would receive.

|                  |                                    |
|------------------|------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>        |
| <b>MOVER:</b>    | Carolyn Thames, Mayor Pro-Tem      |
| <b>SECONDER:</b> | Julie Estlinbaum, Councilwoman     |
| <b>AYES:</b>     | Folse, Thames, Estlinbaum, Cornman |
| <b>EXCUSED:</b>  | Johnson                            |

Enacted and approved this 12th day of February, 2015, at Bay City

9. Report

REPORT ON HOW SURPLUS REAL PROPERTY MAY BE SOLD.

Mayor Mark A. Bricker

The Mayor provided an update on the surplus properties. Councilman Cornman stated that he had reviewed the list and there were some issues with the properties listed. It was the consensus to remove the Girl Scout House and City Hall from the list. The Mayor stated that he would email the list to everyone and from Council to provide any feedback they may have.

10. Report

DIRECTION TO STAFF REGARDING THE ELECTION TO BE HELD MAY 9, 2015, INCLUDING: A) THE GENERAL ELECTION; AND B) A POSSIBLE SPECIAL ELECTION FOR THE PURPOSES OF AUTHORIZING THE SALE OF CERTAIN CITY PARKLAND.

Mayor Mark A. Bricker

The Mayor informed Council that the deadline for the Local Option Election for May was January 28th. Mrs. Clegg added that the County would be conducting an election that would include Precincts 1C and 1D. Those Precincts encompass Chili's and Applebee's. Mrs. Clegg went on to state that area has been the issue regarding the sale of alcohol and mixed beverages. Mrs. Clegg pointed out that the last day to call the election was Friday, February 27, 2015; however, due to the way the Council Meetings fall, the last day to call the election is Thursday, February 26, 2015.

**5. ITEMS / COMMENTS & MAYOR AND COUNCIL MEMBERS**

Councilwoman Folse informed everyone that opening ceremonies for Girls Softball was on Saturday, and next Saturday there was going to be a Rely for Life Golf Tournament.

Councilman Cornman asked that an update be given on the physical use policy for the Airport and Pool on the next agenda. The Mayor stated that he had spoken with Superintendent Brown and his comment was that the policy was with their attorneys.

Councilwoman Folse stated that she would to receive and update on the Sports Complex.

The Mayor informed Council that he had a 5-hour meeting with Jones & Carter. He added that he would like to have a Transportation Plan that describes the roads and provides color coding for the roads.

Councilwoman Estlinbaum reminded Mayor and Council of the Building Ordinance Committee Meeting set for Tuesday, February 24, 2015 at 6 p.m.

The Mayor informed Council that the first meeting for the Vision 2040 Plan Presentation has been scheduled. Mayor Pro Tem Thames asked who would a Committee contact to schedule a meeting. The Mayor stated Mr. Hodges.

## **6. ADJOURNMENT**

### **AGENDA NOTICES:**

#### Action by Council Authorized:

The City Council may vote and/or act upon any item within this Agenda. The Council reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code Section 551.071, to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The City Attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

#### Attendance By Other Elected or Appointed Officials:

It is anticipated that members of other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be Agenda City Council August 8, 2013 in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

#### Executive Sessions Authorized:

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

This is to certify that the above notice of a Workshop Meeting was posted on the front window of the City Hall of the City of Bay City, Texas on Monday, February 9, 2015 before 7:00 p.m. Any questions concerning the above items, please contact Mayor Mark A. Bricker at (979) 245-2137.

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Rhonda Clegg  
City Secretary



**City Council**  
1901 5Th Street  
Bay City, TX 77414

**WITHDRAWN**

Meeting: 02/12/15 07:00 PM  
Department: Mayor's Office  
Category: Proclamation  
Prepared By: Dustin Hodges  
Initiator: Dustin Hodges  
Sponsors:  
DOC ID: 1763 A

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**AGENDA ITEM (ID # 1763)**

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## **Proclamation Declaring February 12, 2015 as Hope Cornett Day**

|                |                  |
|----------------|------------------|
| <b>RESULT:</b> | <b>WITHDRAWN</b> |
|----------------|------------------|

# PROCLAMATION

## OFFICE OF THE MAYOR CITY OF BAY CITY, TEXAS

- WHEREAS:** Hope Cornett, a local nine year-old girl known by some as “the cat whisperer” is an avid animal lover and has a heart for volunteering; and
- WHEREAS:** Recently on her 9<sup>th</sup> birthday, Hope generously and nobly asked for money so she could provide the animals at the local impound with food and frills; and
- WHEREAS:** She donated a bountiful amount of nutritious treats and toys for all the animals in the impound. Hope Cornett has demonstrated acute selflessness and is a role model amongst all her peers and the community as a whole; and

NOW, THEREFORE, I, Mark Bricker, Mayor of the City of Bay City, in recognition thereof, proclaim this day February 13<sup>th</sup>, 2015, “Hope Cornett Day” and call upon all citizens to recognize this day to be inspired to give back to the community.

In Witness Whereof, I have hereunto set my hand and seal this 12<sup>th</sup> day of February 2015.

\_\_\_\_\_  
Mark Bricker, Mayor  
City of Bay City, Texas

ATTEST:

\_\_\_\_\_  
Rhonda Clegg  
City Secretary

Attachment: Hope Cornett Day (1763 : Proclamation Declaring February 13, 2015 as Hope Cornett Day)



**City Council**  
1901 5Th Street  
Bay City, TX 77414

Meeting: 02/12/15 07:00 PM  
Department: City Secretary  
Category: Property  
Prepared By: Rhonda Clegg  
Initiator: Rhonda Clegg  
Sponsors:  
DOC ID: 1765

**ADOPTED**

**ORDINANCE (ID # 1765)**

**CONSIDER AND/OR APPROVE AN ORDINANCE CLOSING AND ABANDONING TO THE ABUTTING PROPERTY OWNER AN ALLEY IN BLOCK 133 OF THE ORIGINAL TOWNSITE, IDENTIFIED AS THAT SEGMENT OF AN ALLEY THAT RUNS PARALLEL TO EIGHTH STREET, BETWEEN AVENUE I AND CANE BELT RAILROAD AND AUTHORIZING THE MAYOR TO EXECUTE A QUIT CLAIM DEED RELEASING THE ALLEY.**

|                  |                                                                   |
|------------------|-------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>                                       |
| <b>MOVER:</b>    | William Cornman, Councilman                                       |
| <b>SECONDER:</b> | Carolyn Thames, Mayor Pro-Tem                                     |
| <b>AYES:</b>     | Chrystal Folse, Carolyn Thames, Julie Estlinbaum, William Cornman |
| <b>EXCUSED:</b>  | Steven Johnson                                                    |

## ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS, CLOSING AND ABANDONING TO THE ABUTTING PROPERTY OWNER A TWENTY FOOT (20) WIDE ALLEY IN BLOCK 133 OF THE ORIGINAL TOWNSITE, IDENTIFIED AS THAT SEGMENT OF AN ALLEY THAT RUNS PARALLEL TO EIGHTH STREET, BETWEEN AVENUE I AND CANE BELT RAILROAD; AUTHORIZING THE MAYOR TO EXECUTE A QUIT CLAIM DEED**

**WHEREAS**, the City of Bay City, Texas, a home rule municipality, under the provisions of City Code of Ordinances Section 94-139 may authorize an alley to be closed; and

**WHEREAS**, pursuant to Section 311.007 of the Texas Transportation Code, a home-rule municipality may vacate, abandon, or close a street or alley; and

**WHEREAS**, Alamo Lumber Company constitutes all of the abutting owners on both sides of the that certain alley being a twenty foot (20) wide alley in Block 33 of the Original Townsite, that runs parallel to Eight Street between Avenue I and Cane Belt Railroad as depicted in Exhibit "A" (the "Alley"); and

**WHEREAS**, said owner has petitioned the City of Bay city to vacate, abandon and close said alley; and

**WHEREAS**, the said City of Bay City has caused inquiries to be made of the public in general and utility entities who might be directly affected; and

**WHEREAS**, no detriment or hazard to the City of Bay City or its citizens has been found; and;

**WHEREAS**, the City Council finds and declares that it is in the best interest of the City that said alley be closed, vacated and abandoned.

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

**Section 1.** That the recitals contain in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

**Section 2.** That the City Council finds that such closure and abandonment as requested will cause no harm or injury to the City of Bay City or its citizens.

**Section 3.** That the Alley as depicted on Exhibit "A", is hereby closed and abandoned to the abutting owners, and as authorized by Section 311.007 of the Texas Transportation Code, Section 272.001(b)(2) of the Texas Local Government Code and Section 94-139 of the City Code of Ordinances.

**Section 4.** The City reserves a blanket easement across the Property for the installation, construction, maintenance, replacement, repair, and upgrade of public utilities. This reservation shall be released by plat note, approved by City, upon Alamo Lumber Company's platting of the Property in such manner as to show the defined location of the easement within the boundaries of the Property.

**Section 5.** That the Mayor is hereby authorized to execute a Quit Claim Deed in substantially the same form as set out in **Exhibit "B"**, and such other instruments and documents that are reasonably necessary to effectuate the purpose of this Ordinance.

**Section 6.** That should any section, clause, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the city as a whole or any part thereof, other than the part so declared to be invalid.

**Section 7.** That it is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

**Section 8.** This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

**PASSED AND APPROVED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF BAY CITY**

\_\_\_\_\_  
Mark Bricker, Mayor  
City of Bay City

**ATTEST:**

\_\_\_\_\_  
Rhonda Clegg, City Secretary  
City of Bay City

**APPROVED AS TO FORM:**

\_\_\_\_\_  
George Hyde, City Attorney  
Denton Navarro Rocha Bernal Hyde & Zech, P.C.

| <u>Council Member:</u>           | <u>Voted Aye</u> | <u>Voted No</u> | <u>Absent</u> |
|----------------------------------|------------------|-----------------|---------------|
| Julie L. Estlinbaum              | _____            | _____           | _____         |
| Bill Cornman                     | _____            | _____           | _____         |
| Chrystal Folse                   | _____            | _____           | _____         |
| Steven Johnson                   | _____            | _____           | _____         |
| Carolyn Thames,<br>Mayor Pro Tem | _____            | _____           | _____         |

City of Bay City

\_\_\_\_\_

Mark A. Bricker, Mayor,

ATTEST:

\_\_\_\_\_

Rhonda Clegg, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_

George Hyde, City Attorney  
City of Bay City  
DENTON, NAVARRO, ROCHA,  
BERNAL, HYDE & ZECH, P.C.

Attachment: ORDINANCE NO. - Alamo Lumber Alley Closure (1765 : Alamo Alley)

## EXHIBIT "A"

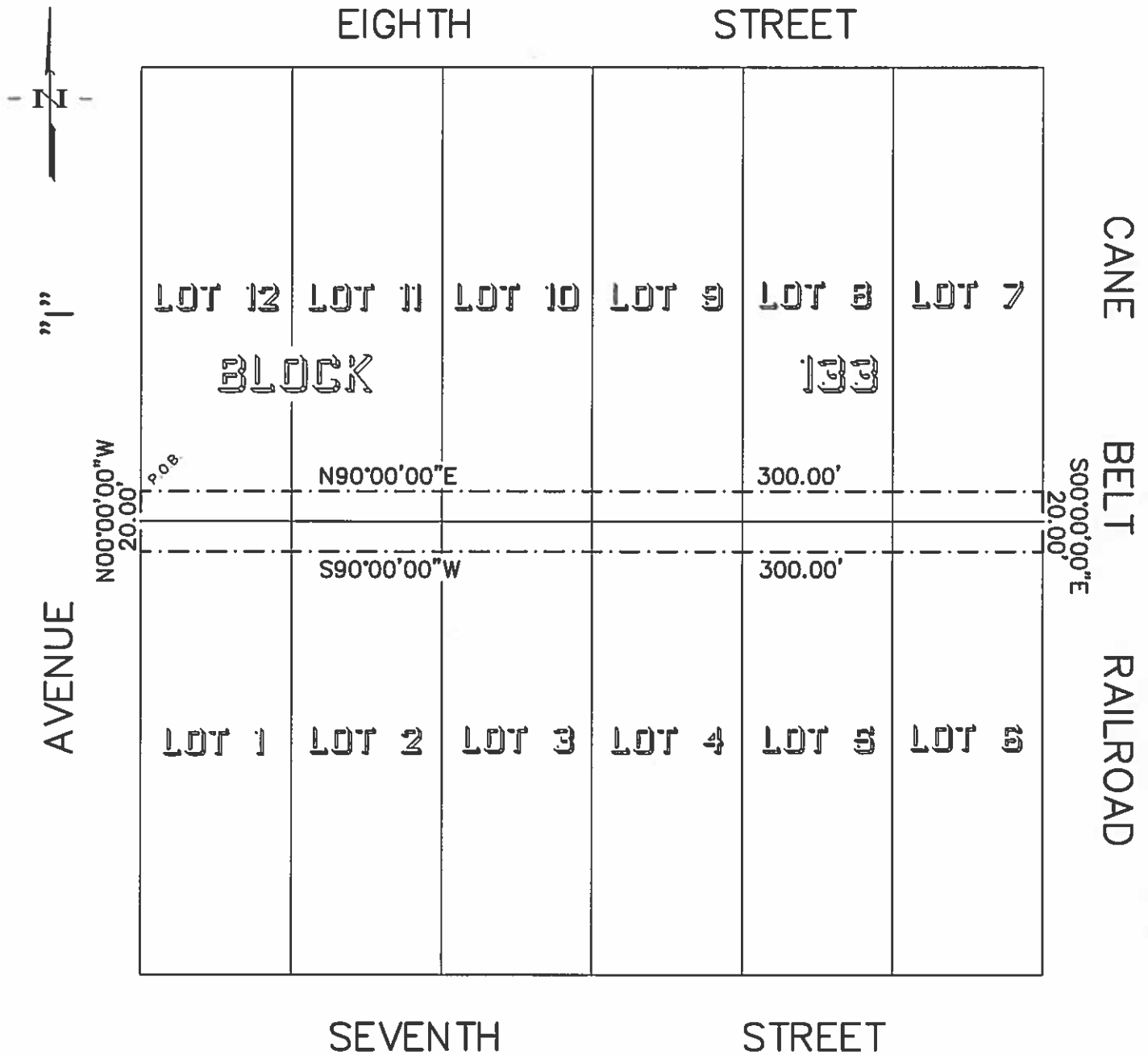
Attachment: ORDINANCE NO. - Alamo Lumber Alley Closure (1765 : Alamo Alley)

## EXHIBIT "B"

Attachment: ORDINANCE NO. - Alamo Lumber Alley Closure (1765 : Alamo Alley)

4.2.b

Packet Pg. 16



PLAT SHOWING A  
20 FOOT WIDE ALLEY IN  
BLOCK 133 OF THE  
ORIGINAL TOWNSITE OF BAY CITY  
MATAGORDA COUNTY, TEXAS

#### LEGEND

P.O.B. POINT OF BEGINNING

### G & W ENGINEERS, INC.

• ENGINEERING • SURVEYING • ARCHITECTURE • PLANNING

205 W. LIVE OAK ST. PORT LAVACA, TEXAS 77979 (361) 552-4509  
1803A 7th STREET BAY CITY, TEXAS 77414 (979) 323-7100

|                  |                    |                     |                 |                   |                        |
|------------------|--------------------|---------------------|-----------------|-------------------|------------------------|
| DRAWN BY: T.E.T. | RECOM'D BY: B.W.S. | DATE: NOV. 18, 2014 | SCALE: 1" = 50' | JOB NO.: 6594-001 | DRAWING NO.: 6594-002B |
|------------------|--------------------|---------------------|-----------------|-------------------|------------------------|

**PROPERTY DESCRIPTION  
20 FOOT WIDE ALLEY**

**STATE OF TEXAS                    }**  
**COUNTY OF MATAGORDA        }**

**BEGINNING** in the East line of Avenue "I" and the West line of Block 133 of the Original Townsite of Bay City at a point 140.00 feet South of the Northwest corner of the said Block 133 for the Northwest corner of this 20 Foot Wide Alley;

**THENCE** North 90° 00' 00" East, parallel to and 140.00 feet South of the North line of the said Block 133, a distance of 300.00 feet to the West Line of the Cane Belt Railroad and the East line of the said Block 133 for the Northeast corner of this 20 Foot Wide Alley;

**THENCE** South 00° 00' 00" East, with the West line of the Cane Belt Railroad and the East line of the said Block 133, a distance of 20.00 feet for the Southeast corner of this 20 Foot Wide Alley;

**THENCE** South 90° 00' 00" West a distance of 300.00 feet to the East Line of Avenue "I" and the West line of the said Block 133 for the Southwest corner of this 20 Foot Wide Alley;

**THENCE** North 00° 00' 00" West, with the East line of Avenue "I" and the West line of the said Block 133, a distance of 20.00 feet to the **PLACE OF BEGINNING**.

STATE OF TEXAS                   §  
COUNTY OF MATAGORDA       §

QUIT CLAIM DEED

**Grantor:** The City of Bay City, a municipal corporation, whose City Hall is located at 1901 Fifth Street, Bay City, County of Matagorda, Texas, as Grantor, organized and existing under the laws of the State of Texas.

**Grantee:** Alamo Lumber Company (“Grantee”), whose mailing address is 2009 Seventh Street, Bay City, Texas, 77414.

**The Property** (including any improvements): That certain alley being a twenty foot (20) wide alley in Block 33 of the Original Townsite of Bay City, Matagorda County, Texas, that runs parallel to Eight Street between Avenue I and Cane Belt Railroad as depicted in **Exhibit “A”**; and being that area that was closed and vacated by the City of Bay City – see Ordinance Closing, Vacating and Abandoning said alley as set forth in **Exhibit “B”**.

**Consideration:** TEN DOLLARS (\$10.00) and other good and valuable consideration, receipt and sufficiency being hereby acknowledged.

Grantor for the Consideration received **GRANTS AND CONVEYS** to Grantee, and Grantee's personal representatives, successors to **HAVE AND TO HOLD** all of Grantor's right, title, and interest in and to the Property. Neither Grantor nor Grantor's personal representatives, successors or assigns shall have, claim, or demand any right, title, or interest in all or any part of the Property.

**Reservation From Quit Claim.** Grantor reserves a blanket easement across the Property for the installation, construction, maintenance, replacement, repair, and upgrade of public utilities. This reservation shall be released by plat note, approved by Grantor, upon Grantee's platting of the Property in such manner as to show the defined location of the easement within the boundaries of the Property.

**IT IS EXPRESSLY UNDERSTOOD AND AGREED** that the property described above includes all buildings, fences, driveways, walkways, and other fixtures and appurtenances.

EXECUTED on the \_\_\_\_\_ day of February, 2015.

GRANTOR:

By: Mark Bricker, Mayor  
City of Bay City, Grantor

Attachment: 20150212 - Alamo Lumber Quitclaim Deed Ex B (1765 : Alamo Alley)

STATE OF TEXAS                   §  
                                              §  
 COUNTY OF MATAGORDA

### CERTIFICATE OF ACKNOWLEDGMENT

Before me, the undersigned Notary Public, on this day personally appeared Mark Bricker, the person whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the instrument for the purposes and considerations expressed in it, doing so as Mayor of the City of Bay City, a municipal corporation, and on its behalf.

Given under my hand and seal of office on the \_\_\_\_\_ of February, 2015.

\_\_\_\_\_  
 Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

Attachment: 20150212 - Alamo Lumber Quitclaim Deed Ex B (1765 : Alamo Alley)



**City Council**  
1901 5Th Street  
Bay City, TX 77414

**ADOPTED**

Meeting: 02/12/15 07:00 PM  
Department: City Secretary  
Category: Report  
Prepared By: Rhonda Clegg  
Initiator: Rhonda Clegg  
Sponsors:  
DOC ID: 1757

**AGENDA ITEM (ID # 1757)**

**DISCUSS THE CURRENT WCA OPERATIONS AND  
CONSIDER AND/OR APPROVE THE 2.1% CPI RATE  
INCREASE REQUEST PURSUANT TO THE SOLID WASTE  
CONTRACT WITH WCA AS PROVIDED BY SECTION 8.0 OF  
THE CONTRACT.**

|                  |                                                                   |
|------------------|-------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>                                       |
| <b>MOVER:</b>    | William Cornman, Councilman                                       |
| <b>SECONDER:</b> | Chrystal Folse, Councilwoman                                      |
| <b>AYES:</b>     | Chrystal Folse, Carolyn Thames, Julie Estlinbaum, William Cornman |
| <b>EXCUSED:</b>  | Steven Johnson                                                    |



**City Council**  
1901 5Th Street  
Bay City, TX 77414

Meeting: 02/12/15 07:00 PM  
Department: Police Department  
Category: Agreement  
Prepared By: Robert Lister  
Initiator: Roger Barker  
Sponsors:  
DOC ID: 1761

**ADOPTED**

**AGENDA ITEM (ID # 1761)**

**CONSIDER AND/OR APPROVE ANIMAL CONTROL OFFICER  
DOTTY GRANDSTAFF AS THE RABIES CONTROL  
AUTHORITY FOR THE CITY OF BAY CITY.**

|                  |                                                                   |
|------------------|-------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>                                       |
| <b>MOVER:</b>    | Julie Estlinbaum, Councilwoman                                    |
| <b>SECONDER:</b> | William Cornman, Councilman                                       |
| <b>AYES:</b>     | Chrystal Folse, Carolyn Thames, Julie Estlinbaum, William Cornman |
| <b>EXCUSED:</b>  | Steven Johnson                                                    |



## TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.  
COMMISSIONER5425 Polk St. • Houston, Texas 77023  
1-800-270-3128 • <http://www.dshs.state.tx.us>  
TDD: 512-458-7708The City Council of Bay City, Texas  
(governing body) (city or county)designates Dotty Grandstaff of Bay City PD Animal Control as the  
person's name (print) (i.e. animal control, police, or sheriff's dept., etc)Rabies Control Authority for the purpose of the **RABIES CONTROL ACT OF 1981.**This appointment became effective: 2/4/15  
(date)Authorizing person's name: MARK A. BRICKER  
(print)Authorizing person's Signature: [Signature]  
**Circle One: Mayor (if municipality); County Judge (if county)**

In reference to the person named as Rabies Control Authority, please indicate (print) their mailing address and telephone number.

The Rabies Control Authority for this community is:

Name: Dotty GrandstaffMailing Address: 2201 Avenue H  
Bay City, Texas 77414Telephone: (979) 323-1705Fax: (979) 245-5758Email Address: dgrandstaff@cityofbaycity.org



**City Council**  
1901 5Th Street  
Bay City, TX 77414

Meeting: 02/12/15 07:00 PM  
Department: City Secretary  
Category: Policy  
Prepared By: Cecelia Allen  
Initiator: Rhonda Clegg  
Sponsors:  
DOC ID: 1639

**TABLED**

**ORDINANCE (ID # 1639)**

**CONSIDER AND/OR APPROVE AN ORDINANCE AMENDING  
CHAPTER 110 OF THE CITY'S CODE RELATING TO NON-  
CONSENT TOWING OF VEHICLES; ESTABLISHING A  
FRANCHISE FOR USE OF CITY STREETS FOR PURPOSES  
OF CONDUCTING NON-CONSENT TOWING SERVICES;  
ESTABLISHING NON-CONSENT TOWING FEES; AND  
ESTABLISHING ADDITIONAL PROVISION RELATING TO  
NON-EXCLUSIVE FRANCHISE AGREEMENTS FOR TOWING  
SERVICE PROVIDERS; PROVIDING FOR PENALTY,  
CUMULATIVE AND CONFLICTS CLAUSE, SEVERABILITY,  
PUBLICATION AND AN EFFECTIVE DATE.**

**HISTORY:**

09/25/14      City Council      **TABLED**      Next: 02/12/15

**RESULT:      TABLED      Next: 4/9/2015 7:00 PM**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 110 OF THE CITY'S CODE RELATING TO NON-CONSENT TOWING OF VEHICLES; ESTABLISHING A FRANCHISE FOR USE OF CITY STREETS FOR PURPOSES OF CONDUCTING NON-CONSENT TOWING SERVICES; ESTABLISHING NON-CONSENT TOWING FEES; AND ESTABLISHING ADDITIONAL PROVISION RELATING TO NON-EXCLUSIVE FRANCHISE AGREEMENTS FOR TOWING SERVICE PROVIDERS; PROVIDING FOR PENALTY, CUMULATIVE AND CONFLICTS CLAUSE, SEVERABILITY, PUBLICATION AND AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of Bay City finds that it requires vehicle tow and storage services in the exercise of its police powers and as necessary and appropriate requires towing, storage and impound services in connection with vehicles which have been determined to be a public nuisance, or which are in violation of Federal or State laws and statutes, as well as the regulations relating to parking, traffic and law enforcement of the City of Bay City; and

**WHEREAS**, the City Council of the City of Bay City finds that pursuant to the authority granted by state law, in order to protect the public, to protect the rights of persons whose vehicles may be towed and to maintain safe and efficient operating rules, the City desires to enter into contractual relationships for the provision of towing and storage services, which are necessary for the enforcement of applicable laws and regulations; and

**WHEREAS**, the City Council of the City of Bay City finds it necessary to enact regulations providing for the safety of its citizens, financial responsibility requirements for auto wreckers and price limits for non-consent tows without otherwise regulating the price, route or service of auto wreckers operating within city limits; and

**WHEREAS**, the City Council of the City of Bay City finds that the provisions of this Ordinance will promote the health, safety, and general welfare of the City of Bay City;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAY, CITY:**

**Section one. Chapter 110 Amended.** Article II, Administration and Enforcement of Chapter 110 of the City's Code of Ordinances is hereby amended by creating a new DIVISION 3., (entitled "NON-CONSENT TOWING") as reflected in the attached **Exhibit "A"** which is hereby incorporated as if fully set out herein.

**Section two. Penalty.** Violation of any provision of this ordinance is a class C misdemeanor and subject to the penalties prescribed in Section 1-16 of the City's Code of Ordinances.

**Section three. Cumulative and Conflicts.** This Ordinance shall be cumulative of all provisions of ordinances of the City of Bay City, Texas, except where the provisions of the

Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Any and all previous versions of this Ordinance to the extent that they are in conflict herewith are repealed.

**Section four. Severability.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause sentence, paragraph or section of this Ordinance 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 Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**Section five. Effective Date.** This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Mark Bricker, Mayor  
City of Bay City

ATTEST:

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Rhonda Clegg, City Secretary  
City of Bay City

\_\_\_\_\_  
George Hyde, City Attorney  
City of Bay City

**EXHIBIT “A”**  
**NON-CONSENT TOWING ORDINANCE**

Attachment: ORDINANCE NO. - Towing (1639 : Towing and Franchise)

### **DIVISION 3. – NON-CONSENT TOWING**

#### **Section 110.86. PURPOSE AND INTENT.**

It is the intent of this chapter and any subsequent amendments thereto to prescribe the basic regulations for the operation of the City of Bay City (“City”) and City of Bay City Police Department (“Police Department”) towing service in emergency situations and in the removal of vehicles that are abandoned, involved in an accident, or constitute an obstruction to traffic because of mechanical failure. It is the purpose of the City Council in enacting this chapter to provide a fair and impartial means of distributing requests for towing services among qualified franchises, and to ensure that such service is prompt and reasonably priced, and in the best interests of the public as well as the interest of efficient policing operations for the removal of such vehicles from public streets.

#### **Section 110.87. DEFINITIONS**

In this chapter:

- (1) **ABANDONED VEHICLE** has the meaning assigned by the Texas Transportation Code, Chapter 683, as amended.
- (2) **APPLICATION** means the application forms furnished by the City.
- (3) **CITY** means the City of Bay City, Texas.
- (4) **DEPARTMENT** means the Bay City Police Department.
- (5) **FRANCHISE AGREEMENT** means an agreement between the City and a Franchisee for the purposes of providing towing services as provided in this chapter.
- (6) **FRANCHISEE** means a certain tow truck operator or tow truck/wrecker service owner to which the City Council may, by the adoption of a resolution or ordinance, grant a nonexclusive franchise for purposes of providing towing services to the City under and pursuant to the provisions of this chapter.
- (7) **OPERATOR** means a holder of the franchise agreement set forth herein. Only one person or company may be an operator regardless of the fact that the owner owns another towing business that may qualify to be granted a franchise agreement.
- (8) **TOW TRUCK** has the meaning assigned by the Texas Administrative Code Section 86 definitions as amended.
- (9) **TOWING COMPANY** has the meaning assigned by the Texas Administrative Code Section 86 definitions, as amended.
- (10) **VEHICLE STORAGE FACILITY** has the meaning assigned by the Texas Occupations Code Section, Chapter 2303 definitions, as amended.

**Section 110.88. ADMINISTRATION**

- (A) The Police Chief or his designee shall administer and enforce this chapter pursuant to the provisions of this chapter, as well as any terms or conditions specified in the resolution granting the franchise and the franchise agreement.
- (B) The Police Chief may propose additional or revised rules for the administration and enforcement of this chapter, which shall be presented to City Council for consideration at a regularly scheduled meeting for. The rules provided for in the franchise agreement must be reasonably designed to promote public health and safety and ensure that:
  - (1) towing companies and tow truck drivers are able to perform their responsibilities under this chapter and carry adequate liability insurance;
  - (2) the Police Chief is able to determine the correct identity and qualifications of individuals licensed under this chapter;
  - (3) towing companies responding to the scene of an accident respond reasonably promptly;
  - (4) tow trucks responding to an accident or incident scene have the appropriate capabilities to deal with damaged or noncompliant vehicles at the scene; and
  - (5) tow trucks are operated in a safe and efficient manner and in accordance with the provisions of this article and state law.

**Section 110.88. TOW TRUCK OPERATOR FRANCHISE**

- (A) The City Council may at its discretion, by adoption of an ordinance, grant a nonexclusive franchise to a tow truck operator ("Franchisee") to provide towing services to the City under and pursuant to the provision of this chapter.

**Section 110.89. TOWING SERVICES PROVIDED BY FRANCHISEES ONLY**

- (A) All towing services performed for the City shall be provided by a towing company that has obtained a franchise from the City of Bay City. A franchise is not required under the following situations:
  - (1) operators performing towing services for entities or persons other than the City of Bay City;
  - (2) operators performing towing services at the direction of the City when no Franchisee is available or able to perform such services or cannot provide such services in a timely manner.

**Section 110.90. NONEXCLUSIVE FRANCHISE**

- (A) All franchises granted pursuant to this chapter shall be nonexclusive and shall be for a term specified by City Council in the ordinance granting a franchise hereunder and in the franchise agreement between the City and the Franchisee.
- (B) The City Council may award one or more franchises for towing services and no provision of this chapter shall be deemed to require the City Council to grant a franchise if the City Council determines that the grant of any such franchise is not in the best interest of the City and the public.
- (C) All Franchisees shall be subject to the terms and conditions specified in this chapter, as well as any terms or conditions specified in the franchise agreement.
- (D) The City Council may prescribe such other terms and conditions, not in conflict with this chapter, as are determined by the City Council to be in the best interest of the City and the public.

**Section 110.91. SELECTION OF FRANCHISEE**

- (A) All selection of the Franchisees shall be done through an application process. All interested tow truck operators shall file with the Police Chief or designee an application in writing on a form to be furnished by the city; which shall provide the following information:
  - 1. Completed owner information sheet for each owner or partner of service;
  - 2. Copy of Vehicle Storage Facility License;
  - 3. Copy of Vehicle Storage Facility Insurance;
  - 4. Documentation evidencing either Worker's Comp or Occupational Insurance;
  - 5. Copy of Texas Department of Licensing and Regulation Cab Card for each tow truck;
  - 6. Copy of Liability Insurance Card for each tow truck policy with minimum coverage limit in the amount of one million dollars;
  - 7. Copy of Current Registration and Inspection for each tow truck;
  - 8. Confirmation of Compliance with Title 16, § 86.710 of the Texas Administrative Code "Drug Testing Policy".
- (B) The Police Chief or designee shall evaluate the qualifications of the tow truck operator to ensure the applicant is capable of providing the required services pursuant to the franchise agreement and in compliance with all applicable Federal, State laws and local regulations.
- (C) Within ten (10) days of approval of application, Operator must provide certificate of liability insurance naming City of Bay City as an additional insured with 30 days written notice before cancellation or termination.
- (D) The initial enrollment period will begin upon execution of the franchise agreement. Thereafter, the next enrollment period will be January 1 through January 31, 2016, and continue every two (2) years thereafter. A new rotation list will be opened for ALL participants to apply and submit documents and information for enrollment, unless a sooner

period is deemed necessary by the Chief of Police, at his sole discretion. The deadline for application submittal will be January 31 of each enrollment year.

#### **Section 110.92. TOW TRUCK DRIVER QUALIFICATIONS**

- (A) Prior to a driver operating a tow truck for tows in connection with the Bay City Police Department Tow Service Rotation List ("Rotation List"), each driver must obtain a City of Bay City Tow Truck Drivers Permit. The Application for the permit will be available from the City of Bay City Police Department. The requirements for obtaining a City of Bay City Tow Truck Driver Permit are as follows:
1. Complete all information contained on the Application;
  2. Copy of Texas Driver's License; and
  3. Copy of TDLR Incident Management ID
  4. Submit to additional criminal background check, if required by Police Department
- (B) City of Bay City Tow Truck Driver permits will be issued at the discretion of the Police Chief or his designee after a review of the application and supporting documents and the criminal background of the applicant. City of Bay City Tow Truck Driver permits may be revoked by the Chief of Police or his designee for any violation of the law, the franchise agreement, driver misconduct, or any other action or inaction deemed inappropriate by the Chief of Police or his designee. In the event a criminal investigation is conducted after the initial qualification period, any adverse findings will be reported to the owner/operator in conjunction with the revocation notice.

#### **Section 110.94 APPEALS**

- (A) If an Operator's application or Driver's Permit is denied or, after approval to participate in the City's rotation list, an Operator or driver's participation privilege is removed/revoked, the following appeals procedures shall be followed:
1. Operator/Driver shall file a written notice of appeal with the City Secretary within ten days from the decision of the Police Chief or designee.
  2. The City Secretary shall provide notice to the Council of the appeal and cause the appeal to be added to the agenda of the next regular meeting of the City Council.
  3. The hearing shall be conducted by the presiding officer. The only issues to be decided at the hearing is whether any violation of the terms of the Franchise Agreement occurred that would justify suspension or termination of the Agreement/License.
  4. The burden of proof shall be a preponderance of the evidence and shall be placed upon the City to demonstrate removal from the rotation list/driver's permit is appropriate.
  5. After conducting the hearing, the council shall, by majority vote, either sustain the action of the Police Chief or designee or issue an order to reinstate the Operator or Driver.
  6. Any decision by the City Council shall be final.
- (B) The filing of a notice of appeal shall not stay the removal of the Operator or Driver from the rotation list until a final decision is rendered by the City Council.

**Section 110.95. ROTATION SYSTEM**

- (A) The tow truck operators who obtain a franchise pursuant to this chapter shall provide towing services to the City pursuant to the rotation system established by the Police Chief.
- (B) The Chief of Police, or his designee, will maintain the rotation list consisting of eligible tow truck services. The rotation list will be maintained in alphabetical order. When a tow truck is needed, a tow truck will be summoned from the first tow truck service on the list. Thereafter, a tow truck from the next tow truck service on the alphabetical list will be summoned in like fashion, advancing through the list.

**Section 110.96. CONDITIONS OF FRANCHISE**

- (A) Comply with all applicable Federal, State, and local laws and ordinances required for the operation of a towing company.
- (B) The Operator shall obtain and maintain during the term of the agreement all necessary insurance, licenses, permits and certificates required by law, including the City's regulations, for the conduct of the Operator's activities and for the provision of services hereunder, including a business license issued by the City.
- (C) Ensure that all of its tow truck drivers are qualified, competent, properly trained and licensed to provide services under applicable law and pursuant to this Agreement.
- (D) Ensure that all of its tow trucks and required equipment are maintained and in compliance with Texas Transportation Code, Texas Department of Public Safety, Texas Administrative Code, Texas Occupations Code and all other applicable Federal, State and local regulations.
- (E) Provide insurance of the types set forth in Texas Department of Licensing and Regulation Towing Administrative Rule 86.400 "Insurance Requirements – Tow Truck Permits and in the amounts agreed to in the franchise agreement. The Franchisee shall agree to protect, indemnify, defend and hold harmless the City from all claims, demands or liabilities arising out of or encountered in connection with its agreement with the City or the performance of work in preparation for the towing operations, or claims, demand and liability occurring during the towing and subsequent storage and maintenance whether such claims, demands or liabilities are caused by the tow service or its employees or agents.
- (F) Franchisee shall be responsible for the acts of its employees and agents while on duty and for damage to towed vehicles while in its possession.
- (G) Maintain its primary office and vehicle storage facility within the corporate city limits or extraterritorial jurisdiction of the City or its extraterritorial jurisdiction in compliance within with the franchise agreement as well as the Texas Administrative Code and Texas Occupations Code.

- (H) Maintain regular operating hours or have personnel available (phone or messenger service) 24 hours a day for storage facilities of Monday through Friday, 8:00 a.m. to 5:00 p.m., including holidays.
- (I) Ensure all rates and fees, associated with non-consent tows under this franchise agreement, charged for towing and storage services do not exceed the rates set by the City.
- (J) Maintain a sign listing the rates and charges of all towing and storage services. Such sign shall be conspicuously posted in the office or other location clearly visible where customer financial transactions are processed.
- (K) Maintain all tow records of services, including a description of vehicles towed, time, location of calls, and total itemized costs of towing and storage.
- (L) Respond to calls 24 hours a day, seven days a week, within the response time as established by the Police Chief, but generally within five (5) minutes. On-scene response time is established as generally within twenty (20) minutes. The Franchisee shall promptly advise of any anticipated delay in arrival and in the event of delay, the City may elect to contact the next Franchisee in the rotation.
- (M) Comply with all other terms and conditions of the franchise agreement.

#### **Sec. 110.97. RATES**

- (A) Franchisee shall not charge towing rates, associated with non-consent tows under this franchise agreement, in excess of the rates established by the City.
- (B) The fee for a light duty motor vehicle tow shall not exceed \$\_\_\_\_\_, whether towed from public or private property. The Tow Operator shall notify the City of any extenuating circumstances that may warrant additional fees for specialized equipment or materials, and provide a copy of listed rates for specialized equipment or materials and explanation of the circumstances. Rates for the use of specialized equipment shall not exceed State approved standards. The Chief of Police will determine if payment of additional fees is necessary. The Chief's decision shall be final.
- (C) Storage fees shall be charged by calendar day.
- (D) Franchisee shall not charge an impound fee or storage fee in excess of the rates established by the Texas Administrative Code.

**Commented [CT1]:** Fee amount to be determined council. Rates reported by vendors between \$150.00 a \$250.00

\$250.00 is the State maximum rate

#### **Section 110.98. FRANCHISE FEES**

- (A) The City Council finds that in lieu of imposing a franchise fee, the City will require Operators to perform the occasional tow of any City owned vehicles at no charge when requested to do so by authorized City personnel, including the City's police department.

**Section 110.99. FRANCHISE AGREEMENTS**

- (A) All franchises granted by the City Council pursuant to this chapter shall be memorialized in a written franchise agreement between the Franchisee and the City and approved by City Council. The franchise granted therein shall be non-transferable unless prior consent is obtained from the City. The franchise agreement shall provide for immediate suspension or termination of the franchise granted under this chapter in event that the Franchisee fails to comply with the provisions of this chapter and/or the franchise agreement.

**Section 110.100. TOWING FEE STUDY**

- (A) In this section, a “towing fee study” is a study to determine the fair market value of a non-consent tow originating in the City, considering financial information provided to the City by the towing company requesting the study.
- (B) A towing company may request that the City conduct a towing fee study by filing a written request with the Mayor by certified mail, return receipt requested, or by hand delivery.
- (C) Within 90 days after the filing of an initial request additional towing companies may join the request by filing written requests in accordance with Subsection (B).
- (D) The City shall conduct a towing fee study if the initial requestor and the additional requestors, if any:
- (1) accounted for not less than 50 percent of the non-consent tows performed in the City during the preceding twelve month period, as determined by the Mayor; and
  - (2) deposit with the City a fee of \$1,000.
- (E) If the towing fee study is not conducted the City shall refund the fee, less an administrative fee of \$250.
- (F) Each towing company requesting the towing fee study shall cooperate with the City to conduct the study. Each such towing company shall provide to the City information determined by the Mayor to be reasonably necessary to determine the fair market value of towing services regulated under this Chapter.
- (G) The City shall complete a towing fee study not later than the 120th day after receiving all information required under Subsection (F).
- (H) The Mayor shall present to the city council the results of the towing fee study. The Mayor shall give to each towing company that owns or leases tow trucks registered with the city written notice of the time, date, and location of the city council meeting at which the study is to be considered. The notice must be sent by United States regular mail to the towing company’s address listed in the latest registration application on file with the police chief.

(I) Based on the results of the towing fee study, the city council may change the non-consent towing fees. The maximum fees must represent the fair market value of the services of a towing company performing non-consent tows originating in the City.

(J) The City is not required to conduct more than one towing fee study within a two-year time period, measured from the date the city council most recently considered a towing fee study.

(K) Not later than the second anniversary of the effective date of this ordinance and at succeeding two year intervals, regardless of whether a towing company has requested a fee study, the Mayor shall present to the City Council recommendations for adjustments to the fees established by ordinance for non-consent tows.



**City Council**  
1901 5Th Street  
Bay City, TX 77414

Meeting: 02/12/15 07:00 PM  
Department: City Secretary  
Category: Agreement  
Prepared By: Cecelia Allen  
Initiator: Rhonda Clegg  
Sponsors:  
DOC ID: 1640

**TABLED**

**AGENDA ITEM (ID # 1640)**

**CONSIDER AND/OR APPROVE A NON-EXCLUSIVE  
FRANCHISE AGREEMENT FOR TOWING AND STORAGE  
SERVICES TO BE PROVIDED ON A ROTATIONAL BASIS AND  
DIRECT STAFF ON EXECUTIVE OF FRANCHISE  
AGREEMENT WITH SELECTED VENDORS.**

**HISTORY:**

09/25/14      City Council      **TABLED**      Next: 02/12/15

**RESULT:      TABLED      Next: 4/9/2015 7:00 PM**

**CITY OF BAY CITY NON-EXCLUSIVE FRANCHISE AGREEMENT  
FOR TOWING AND STORAGE SERVICES  
TO BE PROVIDED ON A ROTATIONAL BASIS**

**THIS NON-EXCLUSIVE FRANCHISE TOWING AND STORAGE AGREEMENT** is made and entered into on \_\_\_\_\_ (“Effective Date”), by and between the City of Bay City (“the City”), a municipal corporation and \_\_\_\_\_ (“Operator”), (collectively “Parties”).

**RECITALS**

**A.** The City requires vehicle tow and storage services in the exercise of its police powers necessary or appropriate to the general welfare of City’s citizens. Specifically, the City requires, from time to time, towing and storage and impound services in connection with vehicles which have been determined to be a public nuisance, or which are in violation of State laws and statutes, including but not limited to the Texas Transportation Code and the Texas Occupations Code, as well as the laws and ordinances relating to parking, traffic and law enforcement of the City of Bay City; and

**B.** Section 282.003 of the Local Government Code and Section 311.071 of the Transportation Code authorize the City of Bay City to grant a franchise to a person for the use of occupancy of the public grounds and public streets of the City; and

**C.** City desires to enter into a contractual relationship for the provision of towing and storage services, which are necessary for the enforcement of the applicable laws and regulations; and

**D.** In order to ensure open, transparent and fair processes in entering into contractual arrangements for and providing towing and storage services, the City has conducted a survey and has evaluated various companies that engage in the business of towing and storage of vehicles, as described herein, and the City desires to enter into agreements for these services with separate companies that will provide vehicle towing and storage services to the City on a rotational basis; and

**E.** The City also evaluated the proximity of the various towing and storage companies to the City and has determined that the closest to the City are:

1. Jackson Services
2. Coastal Automotive Service, Inc.
3. Central Towing
4. Bay City Wrecker
5. R&R Wrecker Service

**F.** City staff also visited all of the potential towing and storage companies to evaluate such important factors as the ability to release impounded vehicles 24 hours a day, seven (7) days a week, the cleanliness and organization of the storage yard, the professionalism, in interaction as well as appearance of companies’ staff, customer service and a systematic approach, regularly accepted in the industry, to each company’s book keeping practices; and

**G.** Based on evaluation of these factors, the City's survey and the proximity of the towing and storage companies to the City, City staff recommended and has determined that the following companies are best suited to provide towing and storage services on rotational basis to the City:

1. Jackson Services
2. Coastal Automotive Service, Inc.
3. Central Towing
4. Bay City Tow Service
5. R&R Wrecker Service

**H.** Based on the foregoing, the City desires to enter into agreement with \_\_\_\_\_ for the provision of vehicle towing and storage services for a limited period of time and on a rotational basis, as provided set forth in this Agreement.

**I.** The Operator represents that it has the managerial and operating personnel and the facilities and equipment necessary to provide the required vehicle towing and storage services to the City on the terms and conditions hereinafter set forth, and in compliance with applicable Texas state and local regulations.

**J.** Operator has submitted an application for participation in the Bay City Tow Service Rotation List and has agreed to follow the guidelines established by the City with respect to providing towing services for the City.

**L.** Furthermore, the Parties have negotiated the terms of this franchise agreement pursuant to which the Operators will provide vehicle towing and services, and have been reduced such terms to writing.

**NOW, THEREFORE**, the City and the Operator, in consideration of the mutual promises set forth herein, hereby agree as follows:

#### **SECTION 1. DEFINITIONS**

1.1 "Abandoned Motor Vehicle" shall have the same meaning as assigned that term by Texas Transportation Code§ 683.002.

1.2 "Bay City Police Department" shall mean the City of Bay City Police Department and its duly authorized employees, agents, assignees or designees.

1.3 "Class 'A' Tow Truck" means a tow truck which has a manufacturer's GVWR of at least 10,000 lbs.

1.4 "Consent Tow" shall be any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

- 1.5 “Contract Administrator” shall mean the Police Chief or his/her duly authorized designee.
- 1.6 “Incident Management Tow” means any tow of a vehicle in which the tow is summoned to the scene of a traffic accident or to an incident, including the removal of a vehicle, commercial cargo, and commercial debris from an accident or incident scene.
- 1.7 “Junked Vehicle” shall have the same meaning as assigned to that term by Texas Transportation Code § 683.071.
- 1.8 “Nonconsent tow” has the meaning ascribed in section 2308.002 (6) of the Texas Occupations Code.
- 1.9 “Operator” means a holder of the franchise agreement set forth herein. Only one person or company may be an operator regardless of the fact that the owner owns another towing business that may qualify to be granted a franchise agreement. A person or entity who owns a towing company and any towing company owned by that person or entity may only be included on a the City’s or Bay City Police Department’s rotational list one time per term of this franchise agreement. An Operator may not own more than one towing company on the City’s rotation list at a time.
- 1.10 “Private property tow” means any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.
- 1.11 “Special Circumstances Tow” a rotation tow such as a police chase out of the City of Bay City resulting in extensive miles for the tow, or the tow requires extensive recovery. If a City of Bay City Rotation Tow requires special circumstances in and/or for towing the vehicle, the driver will provide whatever services are required and the tow service owner will call the Chief of Police designee the next day and explain the special circumstances to request additional charges which may be approved solely at the discretion of the designee of the Chief of Police.
- 1.12 “Tow Truck” shall mean a motor vehicle or mechanical device adapted or used to tow, winch or otherwise move motor vehicles.
- 1.13 “Tow Truck Service” shall mean an individual, association, corporation, or other legal entity that controls, operates or directs the operation of one or more tow trucks over a public roadway in this state.
- 1.14 “Vehicle Storage Facility” has the meaning assigned by the Texas Occupations Code Section, Chapter 2303 definitions, as amended.

## SECTION 2. SCOPE OF SERVICES

- 2.1 Operator agrees to provide, in response to calls generated from the City’s Rotation Tow List, as set forth in Section 5 of this Agreement, towing and storage of vehicles, and related services, as set forth herein.

2.2 City places no maximum on the number of City-generated tows that the Operator may be required to provide in any time period. There shall be no obligation upon the City to provide the Operator with a minimum number of City-generated tows during any time period.

### **SECTION 3. TERM AND GRANT OF NON-EXCLUSIVE FRANCHISE**

3.1 City hereby grants to Operator a non-exclusive franchise to perform City of Bay City generated tows and storage service. This agreement contains rules and regulations that the Operator agrees to comply with in order to be placed and maintained on the rotation to list with the City of Bay City.

3.2 Participation in the Bay City rotation towing program is voluntary. Compliance with all terms and conditions of the Agreement is mandatory for participation.

3.3 The Operator, by rendering services under the provisions of this Agreement, is not acting as an agent for the City or Bay City Police Department.

3.4 The City Council has delegated the responsibility of operation and enforcement of the City's rotation tow list to the Police Chief. The Police Chief may appoint and delegate a designee for administration of the application process and rotation tow list.

3.5 The term of this Agreement shall be for a period of two years from the Effective Date of this Agreement.

### **SECTION 4. FRANCHISE FEE**

4.1 Pursuant to the Texas Constitution the City is authorized to require a fee in connection with the award of a franchise for towing vehicles on behalf of the City in an amount not to exceed the amount necessary to reimburse the City for its actual and reasonable costs incurred in connection with the towing program. The City Council finds that in lieu of imposing a franchise fee, the City will require Operator to perform the occasional tow of any City vehicles at no charge when requested to do so by authorized city personnel. Such requests

### **SECTION 5. ROTATION LIST**

5.1 The City or Bay City Police Department shall maintain a rotation tow and storage list that will govern dispatches to vehicles. The tow service rotation list will be maintained in alphabetical order. When a tow truck is needed, a tow truck will be summoned from the first tow service on the list. Thereafter, a tow truck from the next tow service on the alphabetical list will be summoned in like fashion, advancing through the list.

5.2 Only the City or Bay City Police Department shall dispatch the Operator to provide services covered by this Agreement. The City or Bay City Police Department shall dispatch the Operator when its name appears at the top of the rotation tow list, as provided in this Agreement.

- a. A call to the Operator shall constitute one turn on the list and the Operator shall then be moved to the bottom of the list.

- b. The City shall call the next operator on the list when the Operator:
  - 1. fails to answer the phone or respond to the voice mail message within five (5) minutes;
  - 2. is unable to provide a service;
  - 3. is unable to respond;
  - 4. is canceled due to excessive Response Time (20 minutes for on-scene arrival, but circumstances may vary based on a variety of factors including the location of the vehicle and will be at the discretion of the requesting Bay City Police Officer).
- c. When the City determines that the Operator, after being dispatched, is not needed and the call is canceled by the City up to and including arrival at the scene, there shall be no charges and the Operator will be placed back on top of the tow rotation list.

5.3 If service has begun and is canceled by the vehicle's owner or agent, charges shall not exceed one half of the regular towing charge for the actual time expended on the call or as otherwise provided in the City's towing ordinance.

5.4 If two or more operators are required at the same incident, the incident commander shall have the discretion to assign operators to the vehicles to be towed.

5.5 Unless requested to do so by the requesting Bay City Police Officer, tow service attempts to substitute and to perform the duties of the originally summoned tow service are prohibited.

5.6 Notice shall be provided to the Bay City Police Department dispatch if the tow service is unable to respond to the scene or will be out of service for any extended length of time.

## SECTION 6. STANDARDS OF SERVICE

6.1 The Operator warrants that all of its tow truck drivers are qualified, competent, properly trained and licensed to provide services under applicable law and pursuant to this Agreement.

6.2 The Operator shall ensure that all tow truck drivers employed by or under contract with Operator currently and all new hires or new contractors submits an application for approval as a tow driver and has been issued a City Tow Driver permit. Operator shall provide City with an updated list within seven (7) calendar days of any change in driver status. The list shall include the following information for each driver:

- 1. Name;
- 2. Date of birth;
- 3. Texas Driver's License number and classification;
- 4. Copy of TDLR Incident Management ID
- 5. Job title or description;
- 6. Current home address and telephone number; and
- 7. Types of trucks driver is trained and licensed to operate.

6.3 All of the Operator's officers, agents, or employees who engage in performance of this Agreement with City on behalf of the Operator shall be neat in appearance and courteous to the public and to the City employees.

6.4 When performing towing services all operators shall comply with safety clothing and identification requirements in accordance with Rule 86.1001 of the Texas Administrative Code. Additionally, when responding to calls pursuant to this agreement, all operators and drivers shall wear uniforms clearly marked with the tow company's name as it appears on the Police Department's records and the operator's/driver's name either stitched to the shirt or a pin-on tag affixed to the shirt.

6.5 While providing services pursuant to this Agreement, the Operator and Operator's employees or subcontractors shall not engage in misconduct, including, but not limited to the following acts of misconduct:

1. Rude or offensive behavior;
2. Selective service or refusal to provide service;
3. Racial discrimination;
4. Sexual harassment or sexual discrimination;
5. Unsafe or unlawful driving; and
6. Exhibiting any objective symptoms of alcohol or drug use, as determined in the officer's discretion.

6.5 The Operator shall take prompt and appropriate steps to resolve any third party complaints arising from or related to services provided pursuant to this Agreement. The Operator shall provide each such complainant with a Customer Complaint form (provided by City), and shall fully cooperate with City's investigation of and attempts to resolve complaints.

6.6 All signage must be posted by the Operator at each storage facility in compliance with State Regulation.

6.7 In the event the Operator discovers that a vehicle which has been towed has a Vehicle Identification Number ("VIN") which is different that the VIN showing on the registration documents, the Contractor will notify the Police Department within twenty-four (24) hours of the time of such discovery.

6.8 Failure to comply with any of the Standards of Service set forth in this Subsection may be treated as a material breach of this Agreement.

## SECTION 7. DRIVER QUALIFICATIONS

7.1 The requirements for obtaining a City of Bay City Tow Truck Driver Permit are as follows:

1. Complete all information contained on the Application;
2. Provide Photos - front & profile
3. Copy of Texas Driver's License; and
4. Copy of TDLR Incident Management ID

5. Submit to additional criminal background check, if required by Police Department

7.2 City of Bay City Tow Truck Driver permits will be issued at the discretion of the Chief of Police or his designee after a review of the application and supporting documents and the criminal background of the applicant. City of Bay City Tow Truck Driver permits may be revoked by the Chief of Police or his designee for any violation of the law, the franchise agreement, driver misconduct, or any other action or inaction deemed inappropriate by the Chief of Police or his designee.

7.3 If a Driver's Permit is denied or, after approval to participate in the City's rotation list, a driver's permit is revoked, the following appeals procedures shall be followed:

1. Driver shall file a written notice of appeal with the City Secretary within ten days from the decision of the Police Chief or designee.
2. The City Secretary shall provide notice to the Council of the appeal and cause the appeal to be added to the agenda of the next regular meeting of the City Council.
3. The hearing shall be conducted by the presiding officer. The only issues to be decided at the hearing is whether any violation of the terms of the Franchise Agreement occurred that would justify suspension or termination of the Agreement/License.
4. The burden of proof shall be a preponderance of the evidence and shall be placed upon the City to demonstrate removal of the driver's permit is appropriate.
5. After conducting the hearing, the council shall, by majority vote, either sustain the action of the Police Chief or designee or issue an order to reinstate the Driver.
6. Any decision by the City Council shall be final.

7.4 The filing of a notice of appeal shall not stay the removal of the Driver permit for the purposes of the rotation list until a final decision is rendered by the City Council.

## SECTION 8. REQUIRED EQUIPMENT

8.1 The Operator shall maintain a minimum of at least one (1) Class "A" truck.

8.2 All towing vehicles are required to have the following safety devices and tools on each truck: two 5 lb. fire extinguishers, size appropriate shovel, size appropriate bucket, and appropriate amount of sand.

8.3 All towing vehicles are required to meet the following minimum requirements:

1. Each tow truck shall: (1) have a legible manufacturer's data plate indicating the capacity of the boom, the winch or the carry mechanism; or (2) have a document in the truck from the manufacturer stating the capacity of the boom, the winch or the carry mechanism;
2. Every hydraulic line on each tow truck must be free of leaks and be in good working condition free of defects;
3. The winch must not exceed the capacity of the boom or leak oil;

4. The cables must be as specified by the manufacturer and be in good condition, within manufacturer guidelines;
5. Each tow truck must have a copy of the annual state inspection; and
6. Tow trucks placed in service after May 1, 2008, must contain the original manufacturer's warning labels on the truck, truck bed, winches, and all other accessories.

8.2 The Operator shall comply with all other provisions of the Texas Transportation Code, Occupations Code, Texas Department of Transportation and Department of Public Safety requirements pertaining to the operation and maintenance of its tow trucks and operation of its business.

8.3 All of Operator's tow trucks shall be identifiable with signs in compliance with Texas Department of Transportation requirements, with the additional requirement that such signs be displayed on the right and left doors of each tow truck.

#### SECTION 8. STORAGE FACILITIES AND REMOVAL OF VEHICLES

9.1 The City hereby accepts the Operator's primary storage facilities located at the following addresses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9.2 The Operator, with City's prior written authorization, may from time to time designate additional sites, or delete the existing sites, provided that the primary site is within the corporate city limits or extraterritorial jurisdiction, in the City of Bay City.

9.3 The Operator shall also maintain secured storage in compliance with State requirements.

9.4 The Operator shall maintain an office at its primary storage lot, staffed twenty four (24) hours a day, seven (7) days a week including holidays by at least one employee, **or have an employee available who can arrive at the office within one hour of a City or citizen request.** The Operator shall provide a phone number that is answered twenty-four (24) hours a day and shall display that number in a prominent place.

9.5 The Operator shall maintain a security system sufficient to protect the office and the vehicles stored pursuant to this Agreement. Compliance with State law requirements will be considered sufficient security.

9.6 The Operator shall be responsible for the protection of each City-impounded vehicle in its possession until such vehicle has been released to its owner, or disposed of through legal process, and shall be responsible for safeguarding all articles left in the impounded vehicle. Contractor shall comply with police regulations regarding the inventory or removal of property found in police-stored or impounded vehicles.

9.7 All of the Operator's storage facilities shall have valid land use and other regulatory permits, as may be required by State or local law.

9.8 All of the Operator's storage facilities shall be operated and maintained in compliance with all applicable environmental laws and regulations.

9.9 The Operator shall be responsible for all vehicles and their contents stored by the Operator, including but not limited to, personal property and vehicle accessories and equipment. The Operator shall be responsible for protecting these items against loss or damage from, including but not limited to, fire, theft, or other causes.

9.10 The Operator shall take all actions and precautions necessary to protect all vehicles and their components such as their engines, trunks, and interior areas, from natural elements by closing the windows, doors, trunk lids, hoods, and, if necessary, covering the vehicle or parts thereof exposed to the weather with plastic, canvas, or other waterproof covering.

9.11 The Operator shall park all stored and/ or impounded vehicles in such a manner so as to prevent any damage to them during the movement or the parking of other vehicles.

9.12 Personal property contained in vehicles stored by the Operator shall not be disposed of to defray any charges for the towing or storage of said vehicles. In the event the owner of said vehicle fails to contact the Operator within thirty (30) days after the date of notice to the vehicle owner of impound or storage in accordance with the provisions of Chapter 683 of the Texas Transportation Code, the vehicle, its accessories and equipment, and personal property shall be disposed of only in accordance with all State, Matagorda County, and Bay City regulatory requirements.

#### **SECTION 10. TOW LOCATION AND REMOVAL OF VEHICLES**

10.1 Any vehicle being towed as a result of the rotation list will be towed to the City approved Vehicle Storage Facility and may not be moved from that Vehicle Storage Facility unless being transferred only to a repair facility in accordance with Title 16, Chapters 85 and 86 of the Texas Administrative Code with the consent of the owner of the vehicle as defined in § 86.10 (22).

10.2 All vehicles towed as a result of a rotation call will be towed to the approved Vehicle Storage Facility for that tow service on file with Bay City Police Department, unless the owner designates a location to the tow service.

10.3 Upon the vehicle owner's request of a particular tow location, the tow driver is authorized to take the vehicle to that location designated by the vehicle owner, (with the exception of those vehicles which are part of an ongoing law enforcement investigation). The address where the vehicle is taken must match the address on the Bay City Police Department Tow Slip. If the location where the vehicle owner requests the vehicle towed is closed, the vehicle will be taken to the approved Vehicle Storage Facility. The tow truck operator shall give notice to the Bay City Police Department of any change in tow location.

10.4 If the owner requests the vehicle be towed to a location other than the City approved VSF, the tow fee will remain \$ \_\_\_\_\_ and the tow service may charge per mile not to exceed \$5.00 per mile for all towed miles outside the Bay City city limits.

Commented [CT1]: To be determined

10.5 Before any towed vehicle is transferred/transported from one location to another, the tow service must give the owner or owner's representative notice of the fee to be charged for such transfer. Any removal/transfer of a vehicle from a vehicle storage facility must be done in compliance with Title 16, § 85.710 of the Texas Administrative Code.

10.6 A tow service summoned from the tow rotation list to remove a junked vehicle, as set forth by Municipal Court order will provide this service at no charge pursuant to Section 4 of this Agreement. The junked vehicle will be delivered to a salvage yard or other location for destruction as provided by the municipal court order and state law and the tow driver is required to notify the Bay City Police Department of what location the vehicle was taken. An operator that performs this service retains its place on the rotation list.

10.7 A towing company that removes a vehicle in accordance with Chapter 684 (Removal of Unauthorized Vehicles from Parking Facility or Public Roadway) of the Texas Transportation Code or in executing a repossession pursuant to lawful authority shall notify the department no later than one hour after the removal.

1. the name of the towing company;
2. the date, time, and location of the removal;
3. the physical description, license number and vehicle identification number of the vehicle removed;
4. the name of the tow truck operator who performed the removal; and
5. the storage location of the vehicle.

10.8 Except as provided in subsection (B), a towing company that intends to remove a vehicle from a parking facility in accordance with Chapter 684 (Removal of Unauthorized Vehicles from Parking Facility or Public Roadway) of the Texas Transportation Code may not tow a vehicle under this chapter when the vehicle owner objects to the tow or tenders payment of the appropriate fee authorized by ordinance and removes the vehicle within 30 minutes.

10.9 If a towing company is authorized to remove a vehicle from a parking facility, it may remove the vehicle earlier than 30 minutes after the vehicle owner objects to the tow if the vehicle:

1. is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;
2. prevents a vehicle from exiting a parking space in the facility; or
3. is in or obstructs a properly marked fire lane.

#### **SECTION 11. RATES AND FEES CHARGED BY OPERATOR**

11.1 Rates and fees charged by the Operator to vehicle owners for tow and storage services originating from the City are set forth in the City's Towing Ordinance No. \_\_\_\_\_ as amended.

**Commented [CT2]:** Amount to be determined

11.2 The city's fees shall be applicable regardless of whether or not the vehicle is towed from public or private property and shall be complete compensation for all services rendered in connection with the performance of the tow, cleanup, and removal of wreckage or debris resulting

from an accident involving the towed vehicle. Unless authorized by other provisions in this agreement, no additional fees, charges, costs, etc. may be attached to the towing of the vehicle.

11.3 The Operator shall not make any demand upon the owner of the vehicle for a sum in excess of the rates set forth in the City's Towing Ordinance No. \_\_\_\_\_ as amended.

11.4 The provisions of these guidelines apply to "nonconsent" and "private property tows" as they are regulated in the Texas Occupations Code Chapter 2308, Subchapter E.

11.5 Even when tow and storage services are specifically requested by the City, the Operator acknowledges and agrees that the Operator shall charge vehicle owners only for the tow and storage services incurred pursuant to the provisions of this Agreement. At no time shall the Operator hold the City liable for any tow or storage services incurred pursuant to and during the term of this Agreement.

11.6 Fuel surcharge will not be charged by the tow service unless the cost of fuel exceeds \$4.00 per gallon (in the City of Bay City, Texas) for a period of thirty (30) days at which time the Chief of Police or his designee MAY issue written authority to the tow services on the Tow Service Rotation List for a fuel surcharge.

11.7 Owner's request for a tow service will be honored at the discretion of the police officer on scene if that service can timely respond on scene within twenty (20) minutes of receiving the call from Bay City Police Department Dispatch. The fee for this tow will be as set forth in the City's Ordinance No. \_\_\_\_\_ as amended.

11.8 The Operator shall post and maintain all signs as required for compliance with State regulations.

## **SECTION 12. RESPONSE TO CALLS**

12.1 The Operator shall respond to calls 24 hours a day, seven (7) days a week, within the maximum response time of five (5) minutes from the call. At the time of notification, the Operator will advise dispatch when the Operator is unable either to respond or to meet the maximum response time.

12.2 If the Operator was not called to a scene and comes upon a collision scene where a vehicle or vehicles are blocking a roadway, an officer may request the Operator's assistance in clearing the roadway. In such a case, the Operator may be requested to move the vehicle to a safe location, as directed by the officer, and leave it. There shall be no charge for this assistance. The assistance provided shall not change the Operator place in the rotation.

12.3 Any complaints or disputes concerning the rotation tow list or its use or this agreement, shall be made in writing and delivered to the Police Chief for designee.

12.4 It shall be the responsibility of the Operator to remove or clean from the scene of the collision any liquid, glass, or debris from the scene excluding flammable substances.

12.5 Operator shall not solicit business from a city street or attempt to influence a peace officer to secure business or towing service to a vehicle disabled in an accident or that is a subject in a traffic incident. This prohibition applies to a solicitation to tow, remove, repair, store, trade, sell, or purchase the vehicle.

### SECTION 13. BUSINESS RECORDS

13.1 The Operator shall maintain all tow slips and receipts and other records of services pertaining to the tows initiated by the City. Upon notice, the Operator will provide the tow slips and receipts for inspection to the Bay City Police Department within ten (10) days.

13.2 Lien sale records of vehicles towed or stored under this Agreement shall be available to the City for review.

13.3 Records shall be maintained and available for inspection for a period of four (4) years from the date of the service provided.

13.4 The Operator shall provide the City with a list of all vehicles towed and/ or stored during a calendar month, the rates charged and the amount of gross income generated from towing and/ or storage of vehicles pursuant to this Agreement.

13.5 The City is authorized and shall be permitted to examine and inspect all records of vehicles towed and fees imposed by the Operator at any time.

### SECTION 14. FINANCIAL INTEREST

14.1 The Operator shall not be directly involved in the towing related business of any other operator or applicant. A person has a financial interest when that person owns an interest in or is an officer, partner, or member of any business or association, or venture, whether for profit or not, which is an operator. Directly involved means anything in common between operators or applicants with regard to any of the following: (1) business licenses; (2) insurance; (3) tow truck or equipment ownership; (4) parking facilities; (5) booting companies and (6) employees.

Commented [CT3]: To be determined by Council

14.2 All tow services must own and/or operate a licensed vehicle storage facility to be placed on the rotation list and may not “share” a storage lot with other service resulting in more than one tow service storing vehicles in a common location.

14.3 A towing company may not directly or indirectly give anything of value to a parking facility owner in connection with:

1. the removal of a vehicle from a parking facility; or
2. the booting of a vehicle in a parking facility;
  - a. a towing company or booting company may not have a direct or indirect monetary interest in a parking facility:

- (1) from which the towing company for compensation removes unauthorized vehicles; or
- (2) in which the booting company for compensation installs boots on unauthorized vehicles.

#### **SECTION 15. INSPECTIONS**

15.1 The City may inspect all tow trucks with or without prior notice to the Operator. The City may conduct such inspections without notice to the Operator during business hours to ensure compliance with this Agreement and all applicable laws and regulations.

15.2 The City may inspect the Vehicle Storage Facility at any time during normal business hours without notice to the Operator. The purpose of such inspections is to ensure that the Operator is providing a reasonably safe and clean facility in which vehicles are stored and where contact with the public occurs.

#### **SECTION 16. INSURANCE**

16.1 During the term of this Agreement, the Operator shall maintain a minimum of \$1,000,000 liability insurance per tow truck per incident, which is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage (excluding cargo) per occurrence, or both; and a minimum of \$50,000 of cargo or cargo on hook insurance per tow truck per incident, with no more than a \$1000.00 deductible. Should the Texas Department of Licensing and Regulation's towing administrative rules be amended to require insurance coverage greater than what is required by this section, Operator shall comply with the amended rules. However, in no event shall insurance coverage decrease below that which is required by this section.

16.2 The Operator shall carry and maintain during the term of this Agreement, Workers Compensation or Occupational Insurance and employers liability insurance meeting the requirements of the State of Texas on all Operator's employees carrying out the work involved in this contract.

16.3 The policy or policies required by this Agreement shall be issued by an insurer licensed and authorized to conduct business in the State of Texas. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

16.4 The Operator expressly agrees to keep such policies in full force and in effect during the life of this Agreement or while qualified to operate under this Agreement. In the event of a claim against an Operator, it is expressly understood, and such policies shall expressly provide, that neither Operator nor their insurers will seek to avoid liability on the grounds that Operator was engaged in the exercise of a governmental function. Any lapse in the required insurance shall cause an immediate removal from the rotation list.

16.5 At all times during the term of this Agreement, the Operator shall maintain on file with Police Chief or designee a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City as an additional insured. The Operator

shall, prior to commencement of work under this Agreement, file with Police Chief or designee such certificate(s).

16.6 All insurance policies required in this Agreement shall name the City as an additional named insured without qualification. In this connection, Operator shall deposit with the Police Chief or designee, proof of insurance, certificates of insurance, issued by a responsible company or companies authorized to do business in the State of Texas, that Operator shall have the insurance policies required herein in full force and effect. Each such policy shall contain an endorsement providing for thirty (30) days prior notice to the Police Chief or designee and Operator in the event of any cancellation of, or material change in, said policy.

16.7 The City of Bay City shall be named as a certificate holder in all insurance policies provided for herein other than workers compensation.

16.8 No personal injury policy shall have a personal injury deductible.

16.9 All required insurances shall be purchased at the sole expense of the Operator.

16.10 Procurement of insurance by the Operator shall not be construed as a limitation of the Operator's liability or as full performance of the Operator's duties to indemnify, hold harmless and defend under Section 19 of this Agreement.

#### **SECTION 17. COMPLIANCE WITH LAW**

17.1 The Operator shall at all times comply with federal, state, and local laws and ordinances.

17.2 Any felony conviction of an owner of the Operator's tow service involving stolen or embezzled vehicles, fraud related to the towing business, stolen property, crimes of violence, fraud of any type, or moral turpitude shall be cause for termination of the Agreement.

17.3 The Operator shall obtain and maintain during the term of this Agreement all necessary licenses, permits and certificate required by law, including the City's regulations, for the conduct of the Operator's activities and for the provision of services hereunder, including a business license issued by the City.

#### **SECTION 18. TERMINATION**

18.1 The City shall have the right to terminate this Agreement for any reason on ten (10) calendar days' written notice to the Operator.

18.2 The Operator shall have the right to terminate this Agreement for any reason on one hundred and eighty (180) calendar days' written notice to City. The Operator agrees to cease all work under this Agreement on or before the effective date of any notice of termination.

18.3 If it is found that an Operator owns more than one company on the City's rotation list or is owned by more than one company on the City's rotation list, such a finding shall constitute grounds for removal from the rotation list and for termination of this Agreement.

18.4 This Agreement shall terminate immediately upon the removal of Operator from the rotation list. Operator may appeal the removal from the rotation list by following the appeal procedures set forth below:

- a. Operator shall file a written notice of appeal with the City Secretary within ten days from the decision of the Police Chief or designee.
- b. The City Secretary shall provide notice to the Council of the appeal and cause the appeal to be added to the agenda of the next regular meeting of the City Council.
- c. The hearing shall be conducted by the presiding officer. The only issues to be decided at the hearing is whether any violation of the terms of this Agreement occurred that would justify suspension or termination of the Agreement.
- d. The burden of proof shall be a preponderance of the evidence and shall be placed upon the City to demonstrate removal from the rotation list is appropriate.
- e. After conducting the hearing, the council shall, by majority vote, either sustain the action of the Police Chief or designee or issue an order to reinstate the Operator.
- f. Any decision by the City Council shall be final.

#### **SECTION 19. RELEASE, INDEMNITY AND HOLD HARMLESS**

**19. OPERATOR AGREES TO INDEMNIFY AND HOLD THE CITY OF BAY CITY, TEXAS AND ALL OF ITS PRESENT, FUTURE AND FORMER AGENTS, EMPLOYEES, OFFICIALS AND REPRESENTATIVES HARMLESS IN THEIR OFFICIAL, INDIVIDUAL AND REPRESENTATIVE CAPACITIES FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LIENS AND EXPENSES (INCLUDING ATTORNEY'S FEES, WHETHER CONTRACTUAL OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY, AND WHETHER ACTUAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL), OF ANY CONCEIVABLE CHARACTER, FOR INJURIES TO PERSONS (INCLUDING DEATH) OR TO PROPERTY (BOTH REAL AND PERSONAL) CREATED BY, ARISING FROM OR IN ANY MANNER RELATING TO THE SERVICES PERFORMED OR PROVIDED BY OPERATOR EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES OR TEXAS .**

#### **SECTION 20. CONFLICT OF INTEREST**

20.1 The Operator shall comply with all applicable federal, state, and local laws and regulations relating to conflicts of interest (including the Texas Occupations Code). During the term of this Agreement, the Operator shall not perform any work for another person or entity for whom the Operator was not working at the Effective Date of this Agreement if both (i) such work would require the Operator to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) the City has not consented in writing to the Operator's performance of such work.

20.2 The Operator shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of the City shall have any financial interest in this Agreement that would violate Section 171 of the Local Government Code *et seq.*; the Operator hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If the Operator was an employee, agent, appointee, or official of the City in the previous twelve (12) months, the Operator warrants that it did not participate in any manner in the forming of this Agreement.

20.3 The Operator understands that, if this Agreement is made in violation of any applicable law the entire Agreement is void and the Operator will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and the Operator will be required to reimburse the City for any sums paid to the Operator. The Operator understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Chapter 171, Local Government Code and, if applicable, will be disqualified from holding public office in the State of Texas.

#### SECTION 21. NOTICES

21.1 Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

**CITY:** City of Bay City  
1901 Fifth Street  
Bay City, Texas 77414

**OPERATOR:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21.2 Any notice given as provided here will be deemed given the business day after the notice is mailed to either of the parties listed above.

#### SECTION 22. INDEPENDENT CONTRACTOR

22.1 The parties intend that the Operator, in performing services herein specified, shall act as an independent contractor and shall have control of its work and the manner in which it is performed. The Operator shall be free to contract for similar services to be performed for other employers while under this Agreement with the City subject to Section 20 of this Agreement. The Operator is not considered to be an agent or employee of the City and is not entitled to participate in any pension plan, medical, or dental plans, or any other benefit provided by the City for its employees.

### SECTION 23. GENERAL PROVISIONS

23.1 The Operator shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than the Operator.

23.2 In the performance of this Agreement, the Operator shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. The Operator will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation.

23.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

23.4 The waiver by City or the Operator of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or the Operator unless in writing. A waiver by the City shall only be effective upon action and consent by the City Council.

23.5 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be in a court of appropriate jurisdiction in Matagorda County, Texas.

23.6 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is

held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

23.7 This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

23.8 Operator certifies that they nor any partner or officer of the corporation is ineligible to receive an award of payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

23.9 All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between the City and the Operator with respect to the transactions contemplated herein. No other prior oral or written agreement(s) are binding upon the Parties. Any amendments or deviations from this agreement shall be effective and binding only if made in writing and executed by City, with the consent by action of the City Council, unless otherwise delegated and the Operator.

23.10 Texas Family Code Child Support Certification. Operator certifies that they nor any partner or officer of the corporation is ineligible to receive an award of payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**DATE:** \_\_\_\_\_

**CITY OF BAY CITY, TEXAS**

By: \_\_\_\_\_  
Mark Bricker, Mayor

**ATTEST:**

\_\_\_\_\_  
Rhonda Clegg, City Secretary

**“OPERATOR”**

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

**APPROVED AS TO FORM:**

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George Hyde, City Attorney  
Denton Navarro Rocha Bernal Hyde & Zech, P.C.



**City Council**  
1901 5Th Street  
Bay City, TX 77414

**SCHEDULED**

Meeting: 02/12/15 07:00 PM  
Department: Public Works  
Category: Planning / Plat  
Prepared By: Marla Jasek  
Initiator: Marla Jasek  
Sponsors:  
DOC ID: 1759

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**DISCUSSION ITEM (ID # 1759)**

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## **DISCUSS PROPOSED SUBDIVISION ORDINANCE REVISION AND ADDITIONS.**

The Development Task Force and Public Works have identified items that need to be revised and/or added to the existing Subdivision Ordinance (Chapter 98). These revisions will help ensure orderly development, address ambiguities in the existing ordinance and bring the ordinance into compliance with certain county and state requirements.

#### Sec. 98-1. - Definitions.

*Subdivision* means the addition of a tract or parcel of land or the division of a tract or parcel of land into two or more parts, lots or parcels for the purpose of transfer of ownership or building development, whether immediate or future; or any division of a parcel of land if any portion is intended for public use or use of investors or owners adjacent thereto, or if a new street is involved; provided, however, that a division of land which may be ordered or approved by a court or effected by testamentary or intestate provisions, or a division of land into lots or parcels ~~of two acres or more and not involving a new street greater than five (5) acres, where each part has access and no public improvement is dedicated,~~ shall not be deemed a subdivision. The term "subdivision" includes the term "resubdivision" and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

**Commented [MJ1]:** Revised to match LGC 21

- **Sec. 98-5. - Annexation of subdivision outside the city.**

The city council may give written declaration of intent to annex proposed subdivisions prior to completion of improvements. Annexation shall take place after all improvements are complete and have been approved by the director of public works and plats have been properly approved and recorded. Proposed subdivisions may be annexed prior to completion of improvements with the execution of a performance agreement as described in Section 98-40.1.

**Commented [MJ2]:** Allows annexation prior to improvements being complete.

(Code 1985, § 27-5; Code 2000, § 98-5; Ord. of 4-26-2001)

#### Sec. 98-37. - Generally.

There shall be a three-stage review process for plats required to be submitted to the city for approval, consisting of a departmental review (stage one), preliminary approval (stage two) and final approval (stage three), all as provided in this article. A land plan, as described in Section 98-44, may be required prior to platting.

**Commented [MJ3]:** New section proposed to be added to the land plan.

(Code 1985, § 27-26; Code 2000, § 98-41; Ord. of 4-26-2001)

#### Sec. 98-38. - Departmental review.

- The owner, or his authorized agent, shall submit to the departments of public works, a plot plan, drawn to a scale not less than one inch equals 100 feet (preferably the scale of one inch equals 20 feet or one inch equals 60 feet). The developer, the director of public works and the gas company director shall meet together and determine whether the applicable requirements of this article have been complied with. If there is disagreement on this issue, the applicant, by request, or the director of public works may take this pre-preliminary information to the city council for their determination.
- If the director of public works and applicant reach a satisfactory agreement, the applicant may proceed to prepare data for stage two, preliminary approval.

(Code 1985, § 27-27; Code 2000, § 98-42; Ord. of 4-26-2001)

#### Sec. 98-39. - Completeness review.

- Plat applications. Plat applications shall be made by the owner, or his authorized agent, of all affected property and shall be filed on a form prescribed by the director of public works and filed with the city. Applications shall be accompanied by a fee prescribed in section 98-42, and shall be accompanied by the following information:
  - A letter stating the date on which the land plan was approved by the planning commission or a preliminary development plan meeting the following requirement. Six (6) copies of the preliminary

development plan of the entire development drawn to scale and showing streets, utility easements, major landscaping features; relevant operational data, drawings and/or elevations clearly establishing the scale; and open space. Such development plan shall include maps and information on the surrounding area within 400 feet of the development. A boundary survey or a certified boundary description by a registered engineer or licensed surveyor, plus contour information, shall also be submitted. The elevation of all points used to determine the contours shall be indicated on the preliminary plan, and such points shall be given to true elevation above mean sea level. The base data shall be clearly indicated and all benchmarks shown. The following contour intervals are required:

- a. One-foot contour intervals for ground slopes up to five percent.
- b. Two-foot contour intervals for ground slopes between five percent and ten percent.
- c. Five-foot contour intervals for ground slopes exceeding ten percent.

All elements listed in this subsection shall be characterized as existing or proposed and sufficiently detailed to indicate intent and impact.

- (2) A tabulation of the land area to be devoted to various uses, and a calculation of the average residential density per net acre.
  - (3) A development schedule demonstrating that the developer intends to commence construction within one-year after the approval of the final development plan, and will proceed diligently to completion.
  - (4) If it is proposed that the final plan will be executed in stages, a schedule thereof shall be required.
- (b) Prior to submittal of the plat application to the planning commission for approval the director of public works shall determine whether the proposal conforms to city and other applicable regulations, and may approve or disapprove the application and the accompanying preliminary development plan or require such changes therein or impose such conditions of approval as are in the director of public works' judgment necessary to ensure conformity to the regulations. A plat application is not administratively complete until the director of public works provides to the planning commission a certificate of completeness that the plat application conforms to such regulations or the applicant submits a request for variance as to those matters for which the director of public works finds the application to be deficient. In the case of a request for variance(s), the issued certificate shall state that the matters of deficiency and the planning commission should not approve the plat unless it also approves the necessary variances in accordance with section 98-6
- (1) *Letter of certification, certificate of completeness and subdivisions plat review.* After respective certifying departments and agencies, which shall include the county drainage district no. 1, have determined whether the request for letters of certification and required technical data is complete each certifying department shall issue a letter of certification to the director of public works, within 50 days. When a certifying department or agency determines that the proposed plat or any of the required accompanying data does not conform with the requirements of this chapter, the applicant may at his/her option revise any nonconforming aspects. If any data is revised and resubmitted, the certifying department/agency shall have up to 50 days from the latest date of submission minus the number of days used for the initial review to issue or deny a letter of certification. In no case shall the certifying department have fewer than ten days to review a resubmittal. Upon receipt of all letters of certification from the respective reviewing departments and agencies the director of public works shall issue a certificate of completeness.
  - (2) *Failure to submit certificate of completeness.* If a certificate of completeness is not issued or denied within the time periods prescribed in subsection (1), the same shall be deemed issued and the applicant may submit an application for subdivision plat approval pursuant to subsection (3), without submitting the letter of certification.
  - (3) *Final submittal.* A final submittal for subdivision plat approval may be filed after a certificate of completeness, has been issued by the director of public works . An application for subdivision

plat shall not be complete and shall not approval shall not be filed until after a certificate of completeness has been issued. As required by V.T.C.A., Local Government Code § 212.008, an application for plat approval shall be filed with the planning commission. The public works director shall serve as the agent for the planning commission for purposes of accepting plat applications pursuant to this chapter. For the purpose of the time limits established by V.T.C.A., Local Government Code § 212.009, no plat shall be deemed filed with the planning commission until the plat, and all required items as set forth in this section and section 98-40, and performance agreements, as applicable, tax certificates, letters of certification and, if applicable, a request for a variance have been submitted to the planning commission. The plat application shall expire unless the plat application is heard by and approved by planning commission within 24 months from the date the plat application is submitted to the public works director.

- (c) No construction work shall be done on the ground until the final plat has been approved. The developer may at his own risk undertake certain ground excavations for clearing, grading and drainage purposes. Any required permits shall be issued prior to commencement of work.
- (d) Developers shall file four copies of the preliminary engineering design with the department of public works. After the filing of the preliminary development plan and preliminary engineering design, the director of public works shall forward the preliminary data to other appropriate city offices and private utilities for review of proposed improvements, including streets, utilities and drainage. The city council planning commission shall not act on a final plat until it has first received a written report approving the preliminary data submitted.

(Code 1985, § 27-28; Code 2000, § 98-43; Ord. of 4-26-2001; Ord. No. 1477, § 5, 10-24-2013)

#### Editor's note—

Ord. No. 1477, § 5, adopted October 24, 2013, amended § 98-39 to read as set out herein.  
Previously § 98-39 was titled preliminary approval.

#### Sec. 98-40. - Final approval.

- (a) The final plat shall be submitted to the director of public works at least seven fourteen (14) days prior to the planning commission meeting at which time final approval is sought and accompanied by the final filing fee as prescribed in section 98-42
- (b) Four sets of plans and specifications for water, sewer, paving, gas and drainage prepared by an engineer registered in this state, which must be approved in writing by the director of public works and the gas company, shall be submitted prior to the beginning of any construction of the subdivision.
- (c) The final plat shall comply with the following or shall show or be accompanied by the following data:
  - (1) Plats shall be drawn upon sheets 24 by 36 eighteen (18) inches by twenty-four (24) inches to the scale of 100 feet to the inch, unless another scale is approved by the director of public works; and street numbers shall be clearly marked on all lots on the plat or any subsequent replat.
  - (2) A title, including name of subdivision, owner or owners and the certification of licensed land surveyor or registered engineer or registered public surveyor responsible for the plat, and the scale and location of the subdivision with reference to original land grants or surveys, the date and north point.
  - (3) A certificate of ownership and dedication of all streets, easements, parks and playgrounds to public use forever, signed and acknowledged before a notary public by the owner and the lienholder of the land.
  - (4) An accurate on-the-ground boundary survey of the property with bearings and distances and showing the lines of all adjacent land, streets and easements with their names and widths. (Streets and lot lines in adjacent subdivisions shall be shown dotted.) All necessary data to reproduce the plat on the ground must be shown on the plat.

**Commented [MJ4]:** Is there where we add the construction plan review fee?

**Commented [MJ5]:** We need more time than to complete the report for the planning commission

**Commented [MJ6]:** Max size allowed by Mat County is 18x24

- (5) Certificate of approval to be signed by the mayor and city secretary of the city shall be placed on the face of the plat.
  - (6) A title report showing the correct ownership of land to be subdivided, dated within 30 days of the date of submission of the plat. A letter from the title company certifying "no change since issuance" will be acceptable for title policies outside of the 30 days.
  - (7) All construction shall be inspected while in progress by the city and must receive final approval upon completion by the director of public works before city utilities are provided to the development.
  - (8) A letter from the servicing utility companies, obtained by the developer, stating that the plat includes the easements required by them in the furnishing of utilities to this and future subdivisions.
  - (9) Two copies of deed restrictions.
  - (10) If any part of the plat lies in a flood hazard area, then one-foot contour lines shall be drawn with a very heavy line and designated. The plat shall also show the following statement in print equal in size to the certificates of approval: "parts of this plat lower than the 100-year flood elevation have a one-percent chance each year of being inundated by flooding."
  - (11) Electronic files of plat and construction drawings.
  - (12) Certificate of completeness.
- (d) The city shall be responsible for recording all plats and will retain a reproducible film of the original. Following the approval of the planning commission, a plat shall follow the following procedures for recordation:
- (1) Within six (6) months following the approval of the final plat by the planning commission, the developer shall submit the required number of originals to the city for signatures and recordation. The originals shall be on at least four (4) mil camera positive matte finish (both sides) film. All signatures shall be clearly affixed in permanent black ink. All seals shall be affixed in permanent black ink or a raised seal.
  - (2) A current title report for the specified tract and current tax certificate(s), in a form acceptable to the county clerk for plat recordation, shall be submitted and verified prior to the city signatures and seals being affixed on the plat.
  - (3) The developer shall forward a check for the appropriate amount with the submittal of the originals for signatures.. One (1) recorded original shall be returned to the city.
  - (4) All requirements of applicable ordinances shall have been met.
  - (5) The final plat shall not be submitted for recordation until detailed engineering plans have been approved by the city and/or the public improvements are complete. The approval of the plat and construction plans shall be valid for one (1) year, after which time they must be re-approved by the city, subject to current requirements before recordation.
  - (6) The restrictive covenants shall be provided and the recording information shall be shown in a note on the plat.
  - (7) An address map shall be provided. All addresses shall be coordinated with the city and/or the county 911 administrator.

(Code 1985, § 27-29; Code 2000, § 98-44; Ord. of 4-26-2001; Ord. No. 1477, § 6, 10-24-2013)

#### Sec. 98-40.1. - Site improvements.

When site improvements, other than gas and electric lines, are required in conjunction with a plat, a performance agreement to ensure construction of the site improvements shall be executed by the applicant

**Commented [MJ7]:** This was proposed by a title company. Is it acceptable?

**Commented [MJ8]:** City of Rosenberg Ord 25

and filed with the planning commission together with the plat. Such instrument shall be approved by the city attorney and shall be filed with the city when a guarantee of performance is required. A request for an extension of time for plat recordation shall include a request for an extension of the performance agreement.

- (1) *Guarantee of performance.* An approved plat may be filed for record before the required site improvements are completed if one of the following guarantees of performance is approved and filed with the city within three years after the plat has been approved by the planning commission: a performance bond, a trust agreement, a or an irrevocable standby letter of credit, or a cash or cashier's check. All site improvement estimates submitted to the public works director shall detail the specific improvements needed, and shall bear the official seal and signature of a professional engineer attesting to the accuracy of the dollar amounts contained in the estimate. Any guarantee submitted shall clearly state the procedure and complete contact information for collection should a claim or draw be necessary, and shall cover the time period from submittal and approval to three years, or three years and 90 days in the case of a letter of credit, from the date of plat approval.
  - a. *Performance bond.* A single performance bond shall be executed by a surety company licensed in the state and listed at the time of bond submission on the department of the treasury's listing of approved sureties as a certified company. The amount shall equal the cost estimate, as approved by the director of development services, of all uncompleted and unaccepted improvements required by these regulations (other than gas and electric lines), with the condition that the subdivider shall complete such improvements and have them pass a final inspection by the public works director, within three years from the date of plat approval, or shall have received an approved extension at least 30 days prior to the expiration of the performance bond. A performance bond must be claimable through a state office designated on the bond and shall be approved by the city attorney. The public works director is authorized to sign the bond instrument on behalf of the city and the city attorney shall approve the same as to form prior to acceptance of the performance bond.
  - b. *Trust agreement.* The subdivider shall cause to be placed in a trust account on deposit with a "trust institution", as defined by the V.T.C.A., Finance Code tit. 3. Financial institutions and businesses, that is licensed to do business in the state, (specifically, a bank, trust company, savings bank, savings association or credit union as selected by the subdivider and approved by the public works director a sum of money equal to the cost estimate, as approved by the public works director, of all uncompleted and unaccepted site improvements (other than gas and electric lines) required by these regulations. The trust account must be drawable in the state and shall be established by agreement which shall be approved by the city attorney. The public works director is authorized to sign the agreement on behalf of the city and the city attorney shall approve same as to form.
  - c. *Irrevocable standby letter of credit.* The subdivider shall provide a single irrevocable letter of credit issued by a bank licensed to do business in the state in an amount equal to the cost estimate, as approved by the public works director, of all uncompleted and unaccepted site improvements (other than gas and electric lines) required by these regulations. The letter of credit must be drawable through a state office, state that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit, and shall be approved by the city attorney. The public works director is authorized to sign the agreement on behalf of the city and the city attorney shall approve same as to form prior to acceptance of the letter of credit.
  - d. *Cash or cashier's check.* The subdivider shall provide to the city cash or a cashier's check in an amount equal to the cost estimate as approved by the director of development services, of all uncompleted and unaccepted site improvements (other than gas and electric lines) required by these regulations. Such cash or cashier's check shall be deposited and handled as per city policy. The cash or cashier's check shall be submitted along with a cash performance deposit instrument. Such instrument shall be approved by the city attorney. Upon completion of the required improvements and the site improvements passing

inspection by the public works director, the amount will be refunded to the subdivider by the city.

- (2) *Substituting guarantees.* When a subdivider has given security in any of the forms hereinabove provided, and 50 percent of the required site improvements have been completed and approved in writing by the public works director, the subdivider may substitute for the original guarantee, a new single guarantee in an amount equal to the cost of the remaining site improvements. The cost estimate shall be approved by the public works director of development services. Such new guarantee need not be in the same form as the original guarantee so long as such guarantee is one that is listed in subsection (1). However, in no event shall the substitution of one security for another in any way change or modify the terms and conditions of the performance agreement or the obligation of the subdivider as specified in the performance agreement. Additionally, a guarantee (not including trust agreements) may not be substituted more than two times (not to include a one-time substitution approved by the public works director upon the granting of a time extension) and in no event shall the amount of a substituted guarantee be less than ten percent of the total amount of the original guarantee amount. For trust agreements, subdivider may withdraw from the trust amount when 50 percent or more of the remaining cost estimate has been completed and approved in writing by the director of development services. Subdivider may not withdraw more than four times (not to include a one-time substitution approved by the public works director upon the granting of a time extension) during the life of the trust. In no event shall the amount of the trust be less than 20 percent of the total amount of the original cost estimate until all improvements have been completed and approved.
- (3) *Supplementary guarantees.* Supplementary guarantees may be required as follows:
  - a. *Renewal.* Until the expiration of the three-year period from the date of plat approval, the public works director, shall periodically review the estimated cost of completing such site improvements as are not then completed and determine the adequacy of the existing performance guarantee. Should the public works director determine that the sum set out in the performance guarantee is inadequate to provide for the completion of the uncompleted site improvements, he or she shall require a substitute guarantee to cover the newly estimated cost or a supplemental guarantee to cover the additional sum needed for completion.
  - b. *Performance guarantee.* If a subdivider submits an original performance guarantee after a period of two years has elapsed from the date on which a plat was approved by the planning commission, the actual cost estimate of completing the uncompleted site improvements shall be increased by an amount, based upon a locally recognized construction cost index as approved by the director of development services, required to cover an estimated inflationary increase in the cost during the duration of the period covered by the performance guarantee.
  - c. *Failure to provide guarantee.* Should the subdivider fail to provide the necessary additional substitute guarantee within 30 days of a request for same by the public works director, the director shall refuse to accept from such subdivider a performance agreement or guarantee under any form which is related to a plat subsequently filed in which such subdivider has an interest.
- (4) *Release upon completion of site improvements.* Upon completion of the required site improvements and final inspection by the public works director, and county engineer if the site is located in the extraterritorial jurisdiction of the city, an instrument releasing the applicant from the provisions of the performance agreement and the performance guarantee shall be filed with the city. Such release shall be in such form as approved by the city attorney. If the necessary permits required to complete the site improvements (including, but not limited to, floodplain development permits) are denied by the city and are no longer required to serve the lots within the subdivision, the public works director shall approve and release the performance agreement and guarantee as provided herein.
- (5) *Site improvement time extensions.* Time extensions for an approved and filed guarantee of performance may be granted by the planning commission.

(Ord. No. 1477, § 7, 10-24-2013)

Sec. 98-41. - ~~Lot consolidation and lot line adjustment~~ Amending plats, minor plats and replats.

**Commented [MJ9]:** Name of section? Admin approval of plats

- (a) ~~Lot consolidation or adjustment may be accomplished without replatting, provided the appropriate regulations below are followed:~~
- (1) ~~In the case of lot consolidation:~~
    - a. ~~Lot consolidation may be made without replatting when approved by the city council.~~
    - b. ~~Normally, no more than three lots shall be affected by the proposed lot consolidation.~~
    - c. ~~No such adjustment shall alter any public right-of-way or public easement.~~
  - (2) ~~In the case of lot line adjustments:~~
    - a. ~~Lot line adjustment may be made without replatting when approved by the city council, provided there is concurrence of all owners of property affected by the lot line adjustment.~~
    - b. ~~The proposed adjusted lot line must be a single, straight line or parallel to the existing lot line.~~
    - c. ~~The lot line adjustment must not be more than a maximum of ten feet average relocation of the existing lot line.~~
    - d. ~~The lot line adjustment shall not be inconsistent with any provision of recorded subdivision restrictions or covenants.~~
- e. ~~No more than two lots are affected.~~ The Director of Public Works has approval responsibility for amending plats, minor plats and replats meeting the following requirements:
- (1) Involves four (4) or fewer lots.
  - (2) All property after proposed adjustments has the required access on existing streets.
  - (3) Does not require the creation of any new street or public right-of-way.
  - (4) Does not require the extension or relocation of any utilities or municipal facilities, except for the installation of service lines to the individual lot(s) from existing mains of adequate capacity.
  - (5) Does not propose to eliminate or vacate public street rights-of-way or easements.
  - (6) The proposed development does not require any significant drainage improvements and, if contained wholly or partially within the one hundred-year flood plain, conforms to Federal Emergency Management Agency Flood plain management rules.
  - (7) If it is a replat, a public hearing is held in accordance with the requirements of law for replats before final approval.
- (b) The following shall be submitted to the department of public works 14 days prior to the ~~city council meeting at date~~ which action is sought:
- (1) Completed application ~~for lot line adjustment form~~ accompanied by a filing fee of ~~\$20.00~~, paid to the public works department.
  - (2) Submit a final plat meeting the drawing requirements of Section 98-40 and c ~~Copies of deeds and restrictive covenants applicable to all lots involved.~~
  - (3) Scale drawing on legal size paper showing all lots and structures involved, as platted, and as desired. ~~Complete recordation in accordance with Section 98-40(d).~~
- (c) Action of the ~~city council~~ director of public works shall be final, and no proposal regarding the same lots shall be considered for a period of 60 days. ~~Copies of the city council action and scale drawings shall~~

~~be filed with the county clerk for inclusion in the county deed records within 90 days of the date of council approval.~~

- ~~-(d) For purposes of keeping the planning commission and the general public informed of platting activity, the regular monthly planning commission agenda shall include an agenda item reporting all lot consolidations, lot line adjustments and/or minor plats processed during the preceding month.~~

~~(Code 1985, § 27-30; Code 2000, § 98-45; Ord. of 4-26-2001)~~

Sec. 98-42. - Filing fee for plats.

- (a) All applications ~~to the city council~~ for the approval of any proposed plat required to be submitted to the ~~city council~~ planning commission shall be submitted to the department of public works and shall be accompanied by a filing fee of \$50.00 applicable to the final fee paid to the public works department. Applicants shall also furnish additional fees as determined in conformance with the following schedule, and the city council shall not act upon any plat submitted to it unless all fees as provided in this section have been received. Preliminary fees shall cover a maximum of 180 days.
- (b) The fee to be paid for a final plat shall be \$1.00 per dwelling unit plus \$5.00 per acre for other uses, but not less than \$50.00, paid to the public works department.
- (c) The fee to be paid to the city for vacation of a subdivision shall be \$25.00, plus \$15.00 per acre (gross area of the whole tract), paid to the public works department.

(Code 1985, § 27-31; Code 2000, § 98-46; Ord. of 4-26-2001)

Sec. 98-43. - Land use for nonresidential purposes.

- (a) Reserves in the case of land use for nonresidential purposes shall be labeled A, B and C rather than numbered as blocks and lots.
- (b) Minimum building lines in the case of land use for nonresidential purposes are to be provided for reserves.

(Code 1985, § 27-32; Code 2000, § 98-47; Ord. of 4-26-2001)

Secs. 98-44—98-74. - Reserved.

Sec. 98-44 Land Approval Plan

(a) General requirements. A land plan consisting of a general plan, master plan, and/or concept plan shall be submitted to the Director of Public Works or designee for review by the commission prior to or in conjunction with the submittal of any preliminary plat, except as noted below, for any tract of land over fifty (50) acres in size. If the Director of Public Works or designee determines that an area less than fifty (50) acres contains unique features or is surrounded by existing or proposed subdivisions with potential limited access, a land plan may be required to be reviewed prior to the preliminary or final plat submittal. The decision of the Director of Public Works or designee to require a land plan shall be deemed final and binding as a condition prerequisite to further review of the proposed subdivision plan.

(b) Purpose. The purpose of the land plan is to allow the planning commission to review the proposed major thoroughfare and collector street patterns, land use, environmental issues, conformance to the comprehensive master plan, the property's relationship to adjoining subdivisions or properties, as well as such additional developmental or infrastructure review as deemed necessary by the city.

**Commented [MJ10]:** Need to revise fees for  
Also need to add fees for land plan review and  
construction plan review.

**Commented [MJ11]:** We have a fee but I have  
found the process to vacate or reference to LGC  
Ordinance.

**Commented [MJ12]:** City of Rosenberg Ord 2

While certain items may be required or supplied without requirement, recommendation of approval of a land plan by the planning commission to proceed is granted only for infrastructure, thoroughfare and collector street patterns, land use (not density or lot layout), environmental issues, conformance to the master plan, and relationship to adjacent properties. The planning commission cannot recommend approval beyond this scope.

(c) *Partial development.* Where a phased or partial development is proposed, the land plan area shall include the entire property from which the initial or any subsequent phase is being subdivided. Where the applicant can demonstrate that natural or manmade features, such as creeks and thoroughfares, make unnecessary the inclusion of the entire property in the land plan to adequately review the proposed subdivision for compliance with all of the terms and provisions of this Code, the subdivider may request approval from the planning commission for a submittal of a smaller land plan area. Boundaries such as thoroughfares (existing or proposed), creeks, political subdivisions, or other such natural or man-made features may be used to delineate the smaller land plan area.

(d) *Not required.* A land plan shall not be required if the preliminary plat(s) contains sufficient information to provide for the proper coordination of development.

(e) *Application and fees.*

(1) The land plan shall be accompanied by the completed application and appropriate fees at least twenty-one (21) days prior to the commission meeting at which it is to be considered.

(2) Two (2) copies of prints of the proposed subdivision, drawn on sheets at a size of eighteen (18) inches by twenty-four (24) inches and four (4) copies of the print reduced to a size of eleven (11) inches by seventeen (17) inches shall be submitted. After an administrative review of the land plan, a revised submittal may be required. If required, the revised land plan shall be submitted seven (7) days prior to the commission meeting and shall include Two (2) copies of the plan drawn on sheets at a size of twenty-four (24) by thirty-six (36) and four (4) copies of the plan reduced to a size of eleven (11) inches by seventeen (17) inches.

(f) *Traffic impact analysis.* Any land plan or subdivision plat involving a change to a thoroughfare plan or is seventy-five (75) acres or more in size must accompany with its application a traffic impact analysis in such format and under such procedures as the Director of Public Works or designee may from time to time require or specify. Failure to provide a traffic impact analysis and/or traffic study or to meet any other requirements that may be imposed by the Director of Public Works or designee shall be grounds to deny the filing of any subdivision plat tendered or offered for filing.

Additionally, a traffic impact analysis may be required by the Director of Public Works or designee, or by the commission, to address the following:

(1) Increased traffic loadings on existing streets.

(2) Traffic patterns and street classifications within proposed development.

(3) Traffic control devices within the proposed development and on adjacent streets.

(g) Effect of approval. The recommendation by the planning commission to proceed in relation to the land plan shall not be deemed to grant or vest in the applicant any approvals or grants other than as specifically provided in this Code and does not constitute approval of the subsequent plats within the plan boundaries.

The land plan recommendation does not exempt a developer from meeting all ordinances in effect at the time of the recommendation and any and all amendments or newly-adopted ordinances after recommendation and prior to final plat approval, unless agreed to by the city council under a separate development or utility agreement.

(h) Length of recommendation. Unless agreed to by the city council under a separate development or utility agreement, the recommendation of a land plan shall be valid for a period of eighteen (18) months. Extension(s) may be approved by the planning commission for up to an additional six (6) months for a total of two (2) years. Upon approval by the planning commission of a final plat of individual sections of the development, the land plan approval is automatically extended for an additional eighteen (18) months. However, unless agreed to by the city council under a separate development or utility agreement, the approval of a land plan shall not be valid for a combined period of more than five (5) years.

(i) Graphic requirements. The following are the graphic requirements of a land plan:

(1) A scale of one (1) inch = two hundred (200) feet or one (1) inch = four hundred (400) feet.

(2) A title block within the lower right corner of the land plan.

(3) A vicinity or location map that delineates the location of the proposed subdivision with respect to major thoroughfares, freeways, water courses and ditches. The vicinity map shall be located in the upper right corner of the drawing or map.

(4) Proposed name of the development.

(5) The name and address of the subdivider and the land planner, engineer, or surveyor responsible for the design or survey.

(6) A graphic scale indicating the scale at which the drawing is prepared.

(7) Date of the drawing.

(8) The legal description of the tract according to the abstract and survey records of the county.

(9) North clearly indicated to the top or left of the plan.

(10) The perimeter of the boundary drawn in a bold solid line.

(11) The names of adjacent additions or subdivisions with respective recording information and/or owners of adjoining parcels of unplatted land with respective recording information.

(12)

(13) The location, width and names of all existing or platted streets or other public rights-of-way within and/or adjacent to the tract.

(14) Existing permanent buildings.

(15) Railroad rights-of-way.

(16) Topography with contours at appropriate intervals. The following contour intervals are required:

a. One-foot contour intervals for ground slopes up to five percent.

b. Two-foot contour intervals for ground slopes between five percent and ten percent.

c. Five-foot contour intervals for ground slopes exceeding ten percent.

(17) Existing drainage channels or creeks and other important natural features.

(18) Existing pipelines, fee strips and easements.

(19) Adjacent political subdivisions and corporate limits.

(20) Applicable district boundaries.

(21) The proposed layout and width of proposed thoroughfares, collector streets and minor streets.

(22) Designation of tracts as lots or reserves in accordance with anticipated usage.

(23) A table indicating the number of typical lot sizes and the percentages of each by phase or sections and total development.

(24) The city shall be provided with an electronic file of the land plan in the format(s) designated by the city.

(j) *Changes to land plan.* Changes to the land plan may be acceptable up through the platting procedures as long as the changes are minor and are not critical or greatly affect the configuration of thoroughfares and collector streets, drainage or other infrastructure, entrances, land uses, etc. The Director of Public Works or his designee will determine if a change is minor or if there is a need for a new land plan.

Sec 98-45. –Deed approval of certain parcels.

**Commented [MJ13]:** Need this section to address properties that were not dividing in accordance LGC 212. Allows permitting of existing divided properties, in most cases, without going through platting process.

(a) The purpose of the deed approval process is to provide for a method of approving the issuance of building permits on existing, unplatted parcels, in cases where platting is neither necessary nor productive. The deed approval process shall only apply to parcels which have not been subdivided or resubdivided since the adoption of original subdivision regulations by the City of Bay City (Month DATE, Year) and all required public facilities are existing.

(b) Under certain circumstances, approval may be given for the issuance of building permits on existing unplatted parcels, through the deed approval process. In order to be approved through the deed approval process, a parcel shall meet the following conditions:

- (1) The subject parcel shall not have been subdivided or resubdivided since the date of the original adoption of subdivision regulations by the City of Bay City.
- (2) No new lot(s) may be created by the deed approval; and
- (3) Deed approval shall not be granted for the any parcel which would require the extension of any street(s) or municipal utilities to be dedicated to and maintained by the City.
- (4) Deed approval shall only be granted for the issuance of single-family residential, manufactured home placement, and duplex building permits. Deed approval may not be granted for non-residential uses.

(c) Application for deed approval shall be submitted to the Director of Public Works. The application shall consist of the following:

- (1) A completed applications form.
- (2) The deed to the subject property and any other necessary documentation to substantiate that the parcel has not been subdivided since the adoption of the subdivision regulations; and
- (3) The appropriate application fee. This fee is not refundable.

(d) The Director of Public Works shall review the deed approval application, and either approve or disapprove the deed approval within fifteen (15) working days after its submittal. If the deed approval application is disapproved, the applicant may submit either a minor or major subdivision plat, whichever is applicable.

**Commented [MJ14]:** Victoria uses their ordinance adoption date. The task force discussed using the LGC 212 went into effect. Another option would be to use the option date of this ordinance or the date that the city started enforcing LGC 212.

**Commented [MJ15]:** City of Victoria charges a fee for deed approval.



**City Council**  
1901 5Th Street  
Bay City, TX 77414

Meeting: 02/12/15 07:00 PM  
Department: Police Department  
Category: Grant  
Prepared By: Robert Lister  
Initiator: Roger Barker  
Sponsors:  
DOC ID: 1760

**ADOPTED**

**AGENDA ITEM (ID # 1760)**

**CONSIDER AND/OR APPROVE A RESOLUTION TO ACCEPT  
THE 2015 LOCAL BORDER SECURITY GRANT (LBSP) IN THE  
AMOUNT OF \$15,791.63.**

|                  |                                                                   |
|------------------|-------------------------------------------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>                                       |
| <b>MOVER:</b>    | Carolyn Thames, Mayor Pro-Tem                                     |
| <b>SECONDER:</b> | Julie Estlinbaum, Councilwoman                                    |
| <b>AYES:</b>     | Chrystal Folse, Carolyn Thames, Julie Estlinbaum, William Cornman |
| <b>EXCUSED:</b>  | Steven Johnson                                                    |

# TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

[www.dps.texas.gov](http://www.dps.texas.gov)



STEVEN C. McCRAW  
DIRECTOR  
DAVID G. BAKER  
ROBERT J. BODISCH, SR.  
DEPUTY DIRECTORS



COMMISSION  
A. CYNTHIA LEON, CHAIR  
MANNY FLORES  
FAITH JOHNSON  
STEVEN P. MACH  
RANDY WATSON

February 3, 2015

Dear Authorized Official:

Attached are FY2015 Local Border Security Program (LBSP) grant award documents for your jurisdiction/agency. This letter, and the attached documents, contain important information about the grant and provide instructions requiring your immediate action for grant acceptance.

Please follow the instructions at the top of the first page of the Terms and Conditions, and return all documents as instructed below to the Texas Department of Public Safety, Texas Homeland Security State Administrative Agency (THSSAA) **no later than March 19, 2015**.

The Grant Recipient Agreement (GRA) which includes the Grant Award, the Terms and Conditions, and attached Exhibits must be filled out, and signed by the person identified (Authorized Official) on the grant award. Signature by anyone else will only be accepted if a letter of designation from the governing body is attached authorizing the person to sign for the Grantee. Letters of signature designation will be deemed as authorization for that person to sign any future documents related to the grant award unless the letter indicates otherwise.

## **Return GRA via E-mail**

The FY2015 GRA documents should be returned via email to [SAA-LBSP@dps.texas.gov](mailto:SAA-LBSP@dps.texas.gov) by the date indicated above. Please title the subject line of your email "LBSP" and name of jurisdiction (i.e. LBSP Austin, City of). Submit the executed (signed) GRA (including a signed Award and the signed Terms and Conditions) as an attachment to the email using the same naming convention (i.e. LBSP Travis County.pdf).

Please retain the original copy of each document submitted to the THSSAA for your records. The grant awards may be withdrawn if all required documents are not completed and submitted to the THSSAA within the deadline established above.

## **FY2015 LBSP Key Dates**

|                  |                                                                                                                                          |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| February 1, 2015 | Grantee Performance Begin Date                                                                                                           |
| March 19, 2015   | Deadline for signed Grant Recipient Agreement (GRA) to be returned to the SAA /<br>Deadline for meeting and verifying special conditions |
| August 31, 2015  | End of Grantee's Performance Period                                                                                                      |
| October 15, 2015 | Liquidation Date (Final invoices/reimbursement requests are due to the SAA)                                                              |

Thank you, again, for taking the time to apply. We encourage you to continue working with your regional Joint Operations Intelligence Center (JOIC) to support border security activities. If you have any questions regarding the LBSP grant, please contact Susan Walch at 512-377-0016.

Sincerely,

Garry Jones  
Deputy Assistant Director  
Texas Homeland Security State Administrative Agency

EQUAL OPPORTUNITY EMPLOYER  
COURTESY • SERVICE • PROTECTION

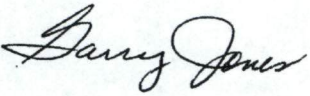
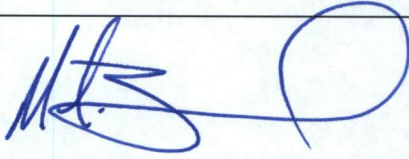
Attachment: Border Star Grant (1760 : Resolution to Accept)

**Texas Department of Public Safety  
Texas Homeland Security State Administrative Agency**

**2015 Recipient Grant Award**

|                                                       |                                                                                                                                              |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Sub-Recipient Name:</b>                            | Bay City, City of                                                                                                                            |
| <b>Sub-Recipient Authorized Official and Address:</b> | The Honorable Mark Bricker<br>2201 Avenue H<br>Bay City, Texas 77414                                                                         |
| <b>SAA Award Number:</b>                              | LBSP-15-0003                                                                                                                                 |
| <b>Amount of Grant:</b>                               | \$15,791.63                                                                                                                                  |
| <b>Amount of Match:</b>                               | No Matching Funds Required                                                                                                                   |
| <b>Grant Period:</b>                                  | From: February 1, 2015 To: August 31, 2015                                                                                                   |
| <b>Date of Grant Award</b>                            | February 3, 2015                                                                                                                             |
| <b>Program Title:</b>                                 | Local Border Security Program FY 2015 (LBSP-15)                                                                                              |
| <b>Authority/Funding Instrument:</b>                  | Senate Bill 1, Article V, Rider 35 of the Texas General Appropriations Act (83 <sup>rd</sup> Legislature)                                    |
| <b>CFDA:</b>                                          | NA – These are State Appropriated Funds                                                                                                      |
| <b>Method of Payment:</b>                             | Primary method is reimbursement                                                                                                              |
| <b>Administered by:</b>                               | Texas Department of Public Safety<br>Texas Homeland Security State Administrative Agency<br>1033 La Posada, Suite 160<br>Austin, Texas 78752 |

**Sub-Recipient Acceptance:** I have read, understood and agree to this Grant Recipient Agreement consisting of this Award and the attached Terms & Conditions.

| <b>AWARDING AGENCY<br/>APPROVAL</b>                                                                                                     | <b>RECIPIENT GRANT ACCEPTANCE</b>                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
|                                                      |  |
| Garry Jones<br>Deputy Assistant Director<br>Texas Homeland Security<br>State Administrative Agency<br>Texas Department of Public Safety | Printed Name: <u>MARK A. BRICKER</u><br>Title: <u>MAYOR</u>                          |
| Date: February 3, 2015                                                                                                                  | Date: <u>2/4/15</u>                                                                  |

The signed Award with Terms and Conditions must be returned to [SAA-LBSP@dps.texas.gov](mailto:SAA-LBSP@dps.texas.gov) on or before this **Grant Acceptance Due Date: March 19, 2015**. Access to funds will be on hold until receipt of the signed Award with Terms and Conditions.

Attachment: Border Star Grant (1760 : Resolution to Accept)

# 2015 TERMS AND CONDITIONS

## Instructions:

The Recipient shall:

1. Fill in the information and sign the Grant Recipient Award;
2. Certify they have read and understand these Terms and Conditions;
3. Certify to the statements provided in Exhibits A and B located at the back of this document by filling in contact information and signing all exhibits, and
4. Return all documents via email to [SAA\\_SRA@dps.texas.gov](mailto:SAA_SRA@dps.texas.gov) on or before the date provided in the transmittal letter and/or in this Grant.

### Recipient Specific Conditions:

None.

## 1. Grant Recipient Agreement

This Grant Recipient Agreement (consisting of this 2015 Grant Recipient Award and these Terms and Conditions) is made and entered into by and between the Department of Public Safety / Texas Homeland Security State Administrative Agency, an agency of the State of Texas, hereinafter referred to as "DPS/THSSAA," and the funds recipient, hereinafter referred to as the "Recipient" or "Grantee." Furthermore, DPS/THSSAA and the Recipient are collectively hereinafter referred to as the "Parties." This Grant Recipient Agreement, or otherwise referred to herein as "this Grant" or "this Agreement", is only an offer until Recipient returns the signed copy of this Grant on or before the date provided in the transmittal letter and/or in this Grant Recipient Award.

The FY 2015 Local Border Security Program, hereinafter referred to as "LBSP-15," is funded by the Eighty-third Texas Legislature, Regular Session 2013, Senate Bill 1, Article V, Rider 35 of the Texas General Appropriations Act. The Texas Legislature has appropriated funds for:

- a. Overtime and operational costs for increased patrol and investigative capacity for certified peace officers along with other law enforcement support personnel (i.e., Communications Officers/Dispatchers, Jailers); and
- b. Certain operational costs incurred as part of these overtime patrols and investigations, such as fuel/mileage and additional costs for minor emergency repairs, such as tire repair, fan belt replacement for vehicles or equipment being used in the program operations (limited to a maximum of \$150.00 per incident).

Recipient will not assign or transfer any interest in this Grant without the express, prior written consent of DPS/THSSAA. If Recipient issues sub-awards as part of this Grant project, Recipient shall include and require its sub-awardees to comply with the terms and conditions of this Grant.

## 2. Overview and Performance Standards

All allocations and use of funds under this Grant must be in accordance with and will comply with all provisions of the "Local Border Security Program Guide, FY 2015 (LBSP-15)" dated November 20, 2014, which is incorporated by reference herein. Recipient shall read, understand and by signature accept all terms of the Program Guide and these Terms and Conditions as binding.

Standard of Performance. Recipient shall perform all activities and projects which were approved by DPS/THSSAA. Any change to a project shall require prior written approval by DPS/THSSAA. Recipient shall perform all activities in accordance with all terms and conditions, provisions and requirements set forth in this Grant, including but not limited to the following Exhibits:

1. Certifications, hereinafter referred to as "Exhibit A"

2. Assurances, hereinafter referred to as "Exhibit B"

### **3. Failure to Perform**

In the event Recipient fails to comply with any and/or all required conference calls, meetings, financial reporting requirements, or any requirement of this Grant, in addition to the remedies specified in this Grant, Recipient is liable to DPS/THSSAA for the amount not to exceed the award amount of this Grant and may be barred from applying and receiving additional DPS/THSSAA grant program funds or any other program funds administered by DPS/THSSAA until repayment is made and any other compliance or audit finding is satisfactorily resolved. Failure to timely implement projects may reduce future funding in additional grant programs administered by DPS/THSSAA.

### **4. Funding Obligations**

- A. DPS/THSSAA will not be liable to Recipient for any costs incurred by Recipient that are not allowable costs.
- B. Notwithstanding any other provision of this Grant, the total of all payments and other obligations incurred by DPS/THSSAA under this Grant will not exceed the Total Award Amount listed on the Grant Recipient Award.
- C. DPS/THSSAA will not be liable to Recipient for any cost incurred prior to execution of this Grant.
- D. Recipient shall refund to DPS/THSSAA any sum of these Grant funds that has been determined by DPS/THSSAA to be an overpayment to Recipient or that DPS/THSSAA determines has not been spent by Recipient in accordance with this Grant. No refund payment(s) will be made from local, state or federal grant funds unless repayment with Grant funds is specifically permitted by statute or regulation. Recipient shall make such refund to DPS/THSSAA within thirty (30) calendar days after DPS/THSSAA requests such refund.
- E. Notwithstanding any other provisions, DPS/THSSAA's obligations under this Grant are contingent upon the receipt of adequate funds to meet DPS/THSSAA's liabilities hereunder, except as required by LBSP-15. DPS/THSSAA will not be liable to Recipient for costs which exceed the amount specified in this Grant.

### **5. Performance Period**

The performance period for this Grant is listed on the Grant Recipient Award. All goods and services will be received within the performance period AND all reimbursement requests will be submitted to DPS/THSSAA within the performance period. Recipient shall have expended all Grant funds and submitted reimbursement requests and any invoices to DPS/THSSAA by the end of the performance period. DPS/THSSAA will not be obligated to reimburse expenses incurred or submitted after the performance period.

### **6. State Requirements for Grants**

Recipient shall comply with all federal, state, and local laws and regulations applicable to this Grant including but not limited to the laws and the regulations promulgated in Texas Government Code, Chapter 783, Uniform Grant and Contract Management, State Administrative Agency Information Bulletins, available at [http://www.txdps.state.tx.us/director\\_staff/saa/information\\_bulletins.htm](http://www.txdps.state.tx.us/director_staff/saa/information_bulletins.htm), Texas Uniform Grants Management Standards (UGMS) available at <http://www.window.state.tx.us/procurement/catrad/ugms.pdf>, and the State Administrative Agency Sub-recipient Manual, available at [http://www.txdps.state.tx.us/director\\_staff/saa/documents/sub-recipientManual.pdf](http://www.txdps.state.tx.us/director_staff/saa/documents/sub-recipientManual.pdf). Recipient shall, in addition to the assurances and certifications, comply and require each of its sub-contractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders, terms and conditions of this Grant, and the approved application.

Recipient shall comply with the State of Texas, General Appropriations Act, Art. IX, Part 4, as follows:

- 1. Grant funds may not be expended for a grant to a law enforcement agency regulated by Texas Occupations Code, Chapter 1701, unless the law enforcement agency requesting the grant is in compliance with all rules developed by the Commission on Law Enforcement Officer Standards and Education or the Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.

2. Grant funds may not be granted to or expended by any entity which performs political polling. This prohibition does not apply to a poll conducted by an academic institution as part of the institution's academic mission that is not conducted for the benefit of a particular candidate or party.
3. Grant funds may not be expended to a unit of local government unless the following limitations and reporting requirements are satisfied:
  - a. Texas General Appropriations Act, Art. IX, Parts 2 and 3, except there is no requirement for increased salaries for local government employees;
  - b. Texas Government Code Sections 556.004, 556.005, and 556.006, including not using any money or vehicle to support the candidacy of any person for office; not influencing positively or negatively the payment, loan, or gift to a person or political organization for a political purpose; and not using grant funds to influence the passage or defeat of legislation including not assisting with the funding of a lobbyist, or using grant funds to pay dues to an organization with a registered lobbyist;
  - c. Texas Government Code Sections 2113.012 and 2113.101 including not using grant funds to compensate any employee who uses alcoholic beverages on active duty plus Recipient may not use grant funds to purchase an alcoholic beverage and may not pay or reimburse any travel expense for an alcoholic beverage;
  - d. Texas General Appropriations Act, Art. IX, Section 6.13 requiring Recipients to make every effort to attain key performance target levels associated with this grant award, including performance milestones, milestone time frames, and related performance reporting requirements; and
  - e. General Appropriations Act, Art. IX, Sections 7.01 and 7.02, and Texas Government Code §2102.0091, including grant funds may only be expended if Recipient timely completes and files its reports.

## 7. **Restrictions and General Conditions**

- A. **Use of Funds.** DPS/THSSAA grant funds may only be used for the purposes set forth in this Grant, and will be consistent with the authority for this Grant. Grant funds may not be used for matching funds for other Federal grants/cooperative agreements, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, State funds may not be used to sue the State of Texas or any other government entity.
- B. **Lobbying Prohibited.** No funds will be expended by Recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of State Legislature, an officer or employee of the State Legislature, or an employee of a Member of the State Legislature in connection with any State action concerning the award or renewal of any State contract, grant, loan, cooperative agreement, Tex. Gov't Code § 556.0055. Recipient will not use any State funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government.
- C. **Transferring Funds.** Recipient is prohibited from transferring funds between grant programs (such as SHSP, UASI, and OPSG) or between each year of this Grant
- D. **Notices.** All notices or communications required or permitted to be given by either party hereunder will be deemed sufficiently given if mailed by registered mail or certified mail, return receipt requested, or sent by overnight courier, such as Federal Express or Lone Star, to the other party at its respective address. For notice to DPS/THSSAA see address set forth below.

| DPS/THSSAA Contact Information              |
|---------------------------------------------|
| Deputy Assistant Director                   |
| Texas Homeland Security State Admin. Agency |
| Texas Department of Public Safety           |
| P.O. Box 4087                               |
| Austin, TX 78773-0220                       |

- F. **Points of Contacts.** Within 30 calendar days of any change, Recipient shall notify DPS/THSSAA of any change or correction to the chief elected official, program, and/or financial points of contact.
- G. **DUNS Number (optional).** Recipient confirms its Data Universal Numbering Systems (DUNS) Number is the number listed on this Grant. The DUNS Number is the nine digit number established and assigned by Dun and Bradstreet, Inc. If Recipient does not have a DUNS number, it may obtain one by calling 866/705-5711 or going to <http://fedgov.dnb.com/webform>.
- H. **Direct Deposit.** If Recipient has not received LBSP reimbursements from DPS/THSSAA within the past eleven (11) months (prior to date of award), it shall forward a new/updated direct deposit form to DPS/THSSAA. Completed direct deposit forms from Recipient shall be emailed to [SAA-LBSP@dps.texas.gov](mailto:SAA-LBSP@dps.texas.gov). The email subject line and attachment name will include the jurisdiction name and identify the document attached (i.e. "Sample County DD form"). The direct deposit form is currently available at

<http://www.window.state.tx.us/taxinfo/taxforms/74-176.pdf>. Recipient may simultaneously sign up for the Advance Payment Notification (APN) email feature which provides State of Texas payees with a one-business-day advance notice that a direct deposit payment has been sent to its financial institution. After receiving an APN, a payee may securely access its payment details online.

- I. Procurements. Recipient shall comply with all applicable state, and local laws and requirements, including but not limited to proper competitive solicitation processes where required, for any procurement which utilizes state funds awarded under this Grant.
- J. Use of DPS/THSSAA Seals and Non-Endorsement. Recipient shall obtain DPS/THSSAA's prior written approval before using its name, seal, logo, crest or reproductions. Funding of this Grant does not equate to endorsement of use of DPS/THSSAA's name.
- K. Recipient shall submit the following reports:
  1. Border Incident Assessment Report (BIAR): Recipient shall email, fax or hand deliver all BIARs to its supporting JOIC as soon as possible, but no later than 9:00 AM daily following each reporting period.
  2. Steady State Report: Steady State activities are defined as normal patrol or investigative duties that do not use these Grant funds, but directly impact the overall LBSP mission. Recipient shall report this information to the Joint Operations and Intelligence Center.
  3. Uniform Crime Reporting (UCR): Recipient shall submit UCR data to the Crime Records Division of the Texas Department of Public Safety on a monthly basis.
  4. Criminal History Reporting: Recipient shall submit criminal history reporting data, including information on arrest, charges, and dispositions as required by Article 60 of the Texas Code of Criminal Procedure.
  5. LBSP-14 Financial Reports. Recipient shall submit financial reports (reimbursement request) preferably on a monthly basis, but at least quarterly.
- L. Unified Command (UC) Teleconferences/Meetings. Recipient shall participate in all scheduled UC teleconferences or meetings.
- M. Site Visits. DPS/THSSAA, through its authorized representative, has the right at all reasonable times to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by DPS/THSSAA on the premises of Recipient or a contractor under this Grant, Recipient shall provide and shall require its contractors to provide all reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations will be performed in such a manner that will not unduly delay the work.
- N. Americans with Disabilities Act of 1990. Recipient shall comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits Recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities. 42 U.S.C. §§ 12101-12213.
- O. Public Dissemination of Sensitive Information. Recipient shall notify DPS/THSSAA of any workshops, conferences, seminars or other public venues at least one hundred (100) calendar days before presenting any potentially sensitive information regarding this project. No sensitive information may be presented by Recipient without DPS/THSSAA prior written approval.
- P. Security Concerns/Violations. Recipient shall inform the DPS/THSSAA's Deputy Assistant Director in writing within two (2) calendar days of Recipient being made aware of any security concerns with individuals having access to government facilities or sensitive information. In the event that sensitive information is divulged in violation of Recipient's security procedures, Recipient shall immediately notify the DPS/THSSAA Deputy Assistant Director and take appropriate law enforcement and legal action.

## 8. Monitoring

DPS/THSSAA, or its authorized representative, reserves the right to perform periodic desk/office-based and/or on-site monitoring of Recipient's compliance with this Grant and of the adequacy and timeliness of Recipient's performance pursuant to this Grant. After each monitoring visit, DPS/THSSAA shall provide Recipient with a written report of the monitor's findings. If the monitoring report notes deficiencies in Recipient's performance under this Grant, the monitoring report will include requirements for the timely correction of such deficiencies by Recipient. Failure by Recipient to take action specified in the monitoring report may be cause for suspension or termination of this Grant pursuant to the Suspension and/or Termination Section herein.

## 9. Audit

Audit of State Funds. Recipient shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this Grant as required by the State Single Audit Circular within the Texas Uniform Grant Management Standards (UGMS). Recipient shall comply, as applicable, with Texas Government Code, Chapter 783 and the Uniform Grant Management Standards (UGMS).

Right to Audit. Recipient shall provide the Texas State Auditor, DPS/THSSAA, or any of their duly authorized representatives, access to and the right to conduct a financial or compliance audit of grant funds received and performances rendered under this Grant. Recipient shall permit DPS/THSSAA or its authorized representative to audit Recipient's records. Recipient shall provide any documents, materials or information necessary to facilitate such audit.

Recipient's Liability for Disallowed Costs. Recipient shall be liable to DPS/THSSAA for any costs disallowed pursuant to any financial or compliance audit(s) of these funds. Recipient further understands and agrees that reimbursement to DPS/THSSAA of such disallowed costs will be paid by Recipient from funds that were not provided or otherwise made available to Recipient pursuant to this Grant.

Recipient's Facilitation of Audit. Recipient shall take such action to facilitate the performance of such audit(s) conducted pursuant to this section as DPS/THSSAA may require of Recipient. Recipient shall ensure that this clause concerning the authority to audit funds received indirectly by sub-contractors through Recipient and the requirement to cooperate is included in any sub-contract it awards.

State Auditor's Clause. Acceptance of funds under this Grant acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Recipient agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Recipient shall ensure that this clause concerning the State Auditor's Office's authority to audit funds and the requirement to cooperate fully with the State Auditor's Office is included in any sub-grants or sub-contracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Recipient relating to this Grant.

## 10. Retention and Accessibility of Records

Retention of Records. Recipient shall maintain fiscal records and supporting documentation for all expenditures of this Grant's funds pursuant to all applicable state and local laws, rules, and regulations, including but not limited to Tex. Loc. Gov't Code Ch. 203, UGMS §.42, and this Grant. Recipient shall retain these records and any supporting documentation for a minimum of three (3) years from the later of the completion of this project's public objective, submission of the final expenditure report, any litigation, dispute, or audit. Records will be retained for three (3) years after any real estate or equipment final disposition.

Access to Records. Recipient shall give the Texas State Auditor, DPS/THSSAA, or any of its duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by Recipient pertaining to this Grant including records concerning the past use of DPS/THSSAA funds. Such rights to access will continue as long as the records are retained by Recipient. Recipient shall maintain such records in an accessible location and provide citizens reasonable access to such records consistent with the Texas Public Information Act, Texas Government Code, Chapter 552.

Inclusion in Sub-contracts. Recipient shall include the substance of the Retention of Records and Access to Records section herein in all sub-contracts.

After Action Reporting. Recipient shall complete, deliver to the appropriate source, and retain copies of all after-action reports and certificates of completion for all training and exercises paid for by this Grant.

## 11. Legal Authority

Signatory Authority. Recipient assures and guarantees that Recipient possesses the legal authority to enter into this Grant, receive grant funds and to perform the project Recipient has obligated itself to perform pursuant to this Grant.

Authorized Representative. The person or persons signing and executing this Grant on Recipient's behalf do warrant and guarantee that he/she has been duly authorized by Recipient to execute this Grant on Recipient's behalf and to validly and legally bind Recipient to all terms and conditions and performance obligations.

Conflicts in Requirements. If conflict exists between federal, state, or local requirements, Recipient shall comply with the strictest requirement.

## **12. Notice of Litigation and Claims**

Recipient shall provide DPS/THSSAA immediate notice in writing of any action or claim, including any proceeding before an administrative agency, filed against Recipient arising out of performance of this Grant. Except as otherwise directed by DPS/THSSAA, Recipient shall furnish immediately to DPS/THSSAA copies of all documentation or pleadings received by Recipient with respect to such action or claim.

## **13. No Liability for Employees and Officers**

DPS/THSSAA shall have no liability whatsoever for the actions or omissions of an individual employed or contracted by Recipient, regardless of where the individual's actions or omissions occurred.

## **14. Non-Waiver of Defaults**

Any failure of DPS/THSSAA, at any time, to enforce or require the strict keeping and performance of any provision of this Grant will not constitute a waiver of such provision, and will not affect or impair same or the right of DPS/THSSAA at any time to avail itself of same. A waiver does not become effective unless DPS/THSSAA expressly agrees to such waiver in writing. Any payment by DPS/THSSAA will not constitute a waiver or otherwise impair or prejudice any right, power, privilege, or remedy available to DPS/THSSAA to enforce its rights, as such rights, powers, privileges, and remedies are specifically preserved.

## **15. Changes and Amendments**

Modification. DPS/THSSAA may modify this Grant after an award has been made. Once notification has been made in writing, any subsequent request for funds indicates Recipient's acceptance of the changes to this Grant. Any alteration, addition, or deletion to this Grant by Recipient is not valid.

Written Amendment. Alterations, additions or deletions to this Grant, such as changes to period of performance and award amounts, must be made through an executed Grant Adjustment Notice (GAN).

Authority to Amend. During the period of performance for this Grant, DPS/THSSAA may issue policy directives that serve to establish, interpret or clarify this Grant's performance requirements. Such policy directives will be promulgated by DPS/THSSAA in the form of Information Bulletins and Sub-recipient Manuals and will have the effect of modifying this Grant and will be binding upon Recipient as if written in this Grant.

Effect of Changes in State Laws. Any alterations, additions, or deletions to this Grant that are required by changes in state laws or regulations are automatically incorporated into this Grant without written amendment to this Grant and will become effective upon the date designated by such law or regulation. In the event DPS/THSSAA determines that changes are necessary to this Grant after an award has been made, including changes to the period of performance or terms and conditions, Recipient shall be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate Recipient's acceptance of the changes to this Grant.

## **16. Headings**

Headings and captions of this Grant are only for convenience and reference. These headings and captions will not affect or modify the terms and conditions or be used to interpret or assist in the construction of this Grant.

## **17. Venue**

Venue will lie in Travis County, Texas, and this Grant is governed by the laws of the State of Texas.

## **18. Suspension**

In the event Recipient fails to comply with any term of this Grant, DPS/THSSAA may, upon written notification to Recipient, suspend this Grant, in whole or in part, withhold payments to Recipient and prohibit Recipient from incurring additional obligations of this Grant's funds.

## 19. Termination

DPS/THSSAA shall have the right to terminate this Grant, in whole or in part, at any time before the end of the Performance Period, if DPS/THSSAA determines that Recipient has failed to comply with any term of this Grant. DPS/THSSAA shall provide written notice of the termination and include:

1. The reason(s) for such termination;
2. The effective date of such termination; and
3. In the case of partial termination, the portion of this Grant to be terminated.

## 19. Enforcement

If Recipient materially fails to comply with any term of this Grant, whether stated in a federal or state statute or regulation, an assurance, in a state plan or application, a notice of award, or elsewhere, DPS/THSSAA may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by Recipient or more severe enforcement action by DPS/THSSAA;
2. Disallow, that is, deny both use of funds and matching credit for, all or part of the cost of the activity or action not in compliance;
3. Wholly or partially suspend or terminate this Grant for Recipient's program;
4. Withhold further awards for the program; or
5. Take other remedies that may be legally available.

The costs of Recipient resulting from obligations incurred by Recipient during a suspension or after termination of this Grant are not allowable unless DPS/THSSAA expressly authorizes them in the notice of suspension or termination or subsequently. Other Recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

1. The costs resulting from obligations which were properly incurred by Recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are non-cancellable; and
2. The costs would be allowable if this Grant were not suspended or expired normally at the end of the funding period in which the termination takes effects.

The enforcement remedies identified in this section, including suspension and termination, do not preclude Recipient from being subject to "Debarment and Suspension" under E.O. 12549 or 44 C.F.R. §13.35.

## 20. Conflict of Interest

No employee, officer or agent of Recipient shall participate in the selection, or in the award or administration of a contract supported by State funds if a conflict of interest, real or apparent, is involved or otherwise creates the appearance of impropriety.

## 21. Closing of the Grant

- A. DPS/THSSAA shall close this Grant after receiving Recipient's final performance report indicating that all approved work has been completed and all funds have been disbursed, completing a review to confirm the accuracy of the reported information, and reconciling actual costs to award modifications and payments. If the close out review and reconciliation indicates that Recipient is owed additional funds, DPS/THSSAA shall send the final payment automatically to Recipient. If Recipient did not use all the funds received, DPS/THSSAA shall issue a Grant Adjustment Notice (GAN) to recover the unused funds. Recipient shall return the funds to the DPS/THSSAA within 30 calendar days of receiving the GAN.
- B. At the completion of Recipient's performance period, DPS/THSSAA shall de-obligate all uncommitted / unexpended funds, which will be returned to DPS/THSSAA, and will no longer be available to Recipient once de-obligated.

C. The closeout of this Grant does not affect:

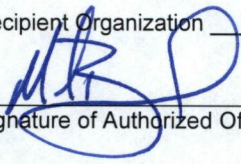
1. DPS/THSSAA's right to disallow costs and recover funds on the basis of a later audit or other review;
2. Recipient's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
3. Records retention requirements, property management requirements, and audit requirements, as set forth herein; and
4. Any other provisions of this Grant that impose continuing obligations on Recipient or that govern the rights and limitations of the parties to this Grant after the expiration or termination of this Grant.

***Please fill in the appropriate information and certify by signing below that you have read, understood, and agree to the terms of this Grant.***

Print Name of Authorized Official MARK A. BRECKER

Title MAYOR

Recipient Organization CITY OF BAY CITY

Signature of Authorized Official  Date 2/4/15

**EXHIBIT A****CERTIFICATIONS**

1. **DRUG-FREE WORKPLACE** - Recipient certifies that it shall provide a drug-free workplace by:
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
  - B. Establishing a drug-free awareness program to inform employees about:
    - i. the dangers of drug abuse in the workplace;
    - ii. Recipient's policy of maintaining a drug-free workplace;
    - iii. any available drug counseling, rehabilitation, and employee assistance programs; and
    - iv. the penalties that may be imposed upon employees for drug abuse violations.
  - C. Requiring each employee to be engaged in the performance of this Grant be given a copy of the statement required by paragraph (A).
  - D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under this Grant, the employee shall:
    - i. abide by the terms of the statement, and
    - ii. notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five calendar days after such conviction.
  - E. Notifying DPS/THSSAA within ten calendar days after receiving notice under sub-paragraph (D) (ii) from an employee or otherwise receiving actual notice of such conviction.
  - F. Taking one of the following actions with respect to any employee who is so convicted:
    - i. appropriate personnel action against such an employee, up to and including termination; or
    - ii. requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
  - G. Making a good faith effort to continue to maintain a drug-free workplace through the implementation of this section.
2. **LOBBYING** - Recipient certifies that:
  - A. It will not use grant funds, either directly or indirectly, in support of the enactment, repeal, modification, or adoption of any law, regulation or policy, at any level of government.
  - B. If any non-grant funds have been or will be used in support of the enactment, repeal, modification, or adoption of any law, regulation or policy, at any level of government, it shall notify DPS/THSSAA to obtain the appropriate disclosure form.
  - C. It shall include the language of paragraphs (A) and (B) of this section in the award documents for all sub-awards or sub-contracts at all tiers and shall require all sub-recipients and sub-contractors to certify accordingly.

***Please fill in the appropriate information and sign to certify this Exhibit A, if applicable.***

Print Name of Authorized Official MARK A. BRICKER

Title MAYOR

Recipient Organization CITY OF BAY CITY

Signature of Authorized Official [Signature]

Date 2/4/15

Attachment: Border Star Grant (1760 : Resolution to Accept)

**EXHIBIT B****ASSURANCES**

As the duly authorized representative of Recipient, I certify that Recipient:

1. Shall comply with Texas Government Code, Chapter 573, by ensuring that no officer, employee, or member of Recipient's governing body or of Recipient's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition will not prohibit the employment of a person who has been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
2. Shall insure that all information collected, assembled, or maintained by Recipient relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, unless otherwise expressly prohibited by law.
3. Shall comply with Texas Government Code, Chapter 551, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.
4. Shall comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.
5. Will not contract with or issue a license, certificate, or permit to the owner, operator, or administrator of a facility if Recipient is a health, human services, public safety, or law enforcement agency and the license, permit, or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.
6. Shall comply with all rules adopted by the Texas Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 1701, Texas Occupations Code, or shall provide the grantor agency with a certification from the Texas Commission on Law Enforcement Officer Standards and Education that the agency is in the process of achieving compliance with such rules if Recipient is a law enforcement agency regulated by Texas Occupations Code, Chapter 1701.
7. Shall follow all assurances. When incorporated into a grant award or contract, standard assurances contained in the application package become terms or conditions for receipt of grant funds. Administering state agencies and Recipients shall maintain an appropriate contract administration system to insure that all terms, conditions, and specifications are met. (See UGMS Section 36 for additional guidance on contract provisions).
8. Shall comply with the Texas Family Code, Section 261.101, which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Recipient shall also ensure that all program personnel are properly trained and aware of this requirement.
9. Shall comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990 including Titles I, II, and III of the Americans with Disability Act which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities, 44 U.S.C. §§ 12101-12213; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this Grant.
10. Shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction sub-agreements.
11. Shall comply with the provisions of the Hatch Political Activity Act (5 U.S.C. §§7321-29), which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.
12. Shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.
13. Shall insure that the facilities under its ownership, lease, or supervision which will be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it shall notify the Federal grantor

agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA (EO 11738).

14. Shall comply with all State of Texas tax laws and are solely responsible for filing all required state and federal tax forms.
15. Shall comply with all applicable requirements of all state laws, executive orders, regulations, and policies governing this program.
16. Certifies that it and its principals are eligible to participate and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and it is not listed on a state or federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement have Exclusions listed at <https://www.sam.gov/portal/public/SAM/>.
17. Shall adopt and implement applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.

**Please fill in the appropriate information and sign to certify this Exhibit B.**

Print Name of Authorized Official MARK A. BRICKER

Title MAYOR

Recipient Organization CITY OF BAY CITY

Signature of Authorized Official [Signature] Date 2/4/15

February 10, 2015

Susan Walch  
Grants Coordinator II  
Texas Homeland Security, SAA  
Texas Department of Public Safety  
1033 La Posada, Suite 100, Austin, TX 78752  
Office: (512) 377-0016 Fax: (512) 206-3137  
[susan.walch@dps.texas.gov](mailto:susan.walch@dps.texas.gov)

Re: Bay City 2015 Border Security Application

Dear Ms. Walch:

Please allow this correspondence to advise that the enclosed resolution shall be presented to City Council at its regularly scheduled on February \_\_, 2015 for consideration and approval.

Please do not hesitate to contact the undersigned should you have any questions.

Sincerely,

Mark Bricker, Mayor

Enclosures

cc: Captain Robert Lister w/out enclosures

Attachment: city memo 2015 (1760 : Resolution to Accept)

**CITY OF BAY CITY**

**R-2015-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF BAY CITY APPROVING THE SUBMISSION OF A GRANT APPLICATION FOR A LOCAL BORDER SECURITY PROGRAM GRANT; AND DESIGNATING THE MAYOR TO ACT AS THE CITY'S AUTHORIZED OFFICIAL IN REGARDS TO THE GRANT APPLICATION**

**WHEREAS**, in September 2007, Texas Governor, Rick Perry, launched operation "Border Star" to provide monetary grants to local police and sheriff departments to promote the protection of the State against crime cartels, smuggling and other unlawful activity; and

**WHEREAS**, the City Council of the City of Bay City finds it in the best interest of the citizens of Bay City, Texas, that the Operation Border Star – Bay City Police Department LBSP 2015 project be operated for the period of February 1, 2015 through August 31, 2015; and

**WHEREAS**, the City Council of the City of Bay City understands that the City need not provide any matching fund in order to participate in this project; and

**WHEREAS**, the City Council of the City of Bay City agrees that in the event of loss or misuse of the General Appropriation funds, the city of Bay City assures that the funds will be reimbursed to the Texas Criminal Justice Division in full; and

**WHEREAS**, the City Council of the City of Bay City designates the Hon. Mark Bricker, Mayor of the City of Bay City as the grantee's authorized official and give the authorized official the authority to apply for, accept, reject, alter or terminate the grant on behalf of the City, as applicant agency.

**NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF BAY CITY, TEXAS, THAT:**

**Section one.**

The City Council of the City of Bay City approves the submission of the grant application for the Operation Border Star – Bay City Police Department project on behalf of the Department of Public Safety / Texas Homeland Security State Administrative Agency.

**Section two.**

The Mayor is hereby designated to serve as the City's authorized official and is delegated with all authority and discretion necessary to apply for, accept, reject, alter or terminate the grant on

Attachment: R-2015- Border Security Grant (1760 : Resolution to Accept)

behalf of the City, as applicant agency, and to execute all documents required for such acceptance, rejection, alteration or termination as the case may be

**PASSED AND APPROVED** the \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Mark Bricker, Mayor

City of Bay City, Texas

ATTEST

APPROVED AS TO FORM AND CONSENT

\_\_\_\_\_  
Rhonda Clegg

City Secretary

\_\_\_\_\_  
George Hyde

City Attorney

Attachment: R-2015- Border Security Grant (1760 : Resolution to Accept)



**City Council**  
1901 5Th Street  
Bay City, TX 77414

**SCHEDULED**

Meeting: 02/12/15 07:00 PM  
Department: City Secretary  
Category: Report  
Prepared By: Rhonda Clegg  
Initiator: Rhonda Clegg  
Sponsors:  
DOC ID: 1764

**DISCUSSION ITEM (ID # 1764)**

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## **REPORT ON HOW SURPLUS REAL PROPERTY MAY BE SOLD.**



**City Council**  
1901 5Th Street  
Bay City, TX 77414

**SCHEDULED**

Meeting: 02/12/15 07:00 PM  
Department: City Secretary  
Category: Report  
Prepared By: Rhonda Clegg  
Initiator: Rhonda Clegg  
Sponsors:  
DOC ID: 1766

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**DISCUSSION ITEM (ID # 1766)**

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**DIRECTION TO STAFF REGARDING THE ELECTION TO BE  
HELD MAY 9, 2015, INCLUDING: A) THE GENERAL  
ELECTION; AND B) A POSSIBLE SPECIAL ELECTION FOR  
THE PURPOSES OF AUTHORIZING THE SALE OF CERTAIN  
CITY PARKLAND.**