



BAY CITY

REVISED MINUTES • MARCH 13, 2014

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	Present	
Mark Bricker	Mayor	Present	
Carolyn Thames	Mayor Pro-Tem	Present	
Julie Estlinbaum	Councilwoman	Present	
William Cornman	Councilman	Present	

2. INVOCATION & PLEDGE OF ALLEGIANCE - COUNCILMAN STEVEN JOHNSON

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 Janet Bell provided Mayor with a signed petition from residents along Avenue K and Marguerite Street. She stated that it was a strong thoroughfare and would like to see some sidewalks put in.

Charles Soechting wanted to thank Council for the Bay City Airport. He stated that the staff and management were the best in a long time. The Airport had good prices and clean restrooms. Mr. Sect commented that the City had good management in place that had a good relationship with TxDot.

Bay City Chamber of Commerce and Agriculture President Mitch Thames reminded Council of the difficult time the City had getting its name out. He stated that we brought Tenaris here; we want Tenaris. He wanted to point out that a fourth Tenaris may not receive the same incentives that were offered right now. He asked that Council honor the deal.

Bay City resident Joe Lozano stated that since his return back to Bay City the City had a great college, but needed additional low income housing. He stated that the most recent low income housing was near McAllister. Mr. Lozano pointed out that there were areas for this development in North and South end, and would encourage the City to bring additional housing to the City.

Roberto De Ayo of Tenaris stated that he was at the meeting for two reasons. He thanked

the City for signing the development agreement. He invited Mayor and Council to their facilities. They have over 350 employees working at the site, with at over 70 being local people. Mr. De Ayo reiterated that he was always available. Mr. De Ayo stated that he would like the opportunity to discuss the incentive agreement in an open meeting.

4. CONSENT AGENDA ITEMS FOR CONSIDERATION AND/OR APPROVAL

The following items may be acted upon in a single motion. No separate discussion or action on any of these items will be held unless requested by a member of the City Council. Public comment on consent agenda items may be heard without removing the item from the consent agenda. Each person providing public comment will be limited to 3 minutes.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Chrystal Folse, Councilwoman
SECONDER:	Steven Johnson, Councilman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

1. Appointment

CONSIDER AND/OR APPROVE MAYOR'S APPOINTMENT OF ZEINAB GHAI TO MAIN STREET COMMITTEE.

Mayor Mark A. Bricker

The Mayor explained that the appointment should be for the Historic Commission, not Main Street.

Enacted and approved this 13th day of March, 2014, at Bay City

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

1. Property

PUBLIC HEARING ON THE PROPOSED ANNEXATION OF APPROXIMATELY 254.3 ACRES OF LAND GENERALLY LOCATED EAST OF McCRUSKY ROAD AND NORTH OF STATE HIGHWAY 35 BY THE CITY OF BAY CITY.

The Mayor opened the Public Hearing at 7:19 a.m.

Bay City resident Joe Lozano asked where it would be located. The Mayor stated that it was going toward Van Vleck on the right.

The Mayor closed the Public Hearing at 7:20 a.m.

2. Property

CONSIDER AND/OR APPROVE AMENDING E4E LEASE OF THE GIRL SCOUT HOUSE WITH THE CITY OF BAY CITY.

Councilwoman Chrystal Folse

Mr. Hyde clarified that Council would be allow to speak on the agenda item since the organization was non-profit.

Ms. Robinson thanked the City for the renovations to the building. She wanted to clarify that the name was E4E2, not E4E. Ms. Robinson also clarified that the organization did not only provide GED services, it provided an array of programs.

Mr. Hyde explained the amendment to the lease. He stated that the approval would give them, E4E2, the permission to do what they wanted, which was sublet a portion of the building.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Steven Johnson, Councilman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

Enacted and approved this 13th day of March, 2014, at Bay City

3. Agreement

CONSIDER AND/OR APPROVE RENEWING THE BAY CITY ART LEAGUE LEASE AGREEMENT.

Mayor Mark A. Bricker

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Chrystal Folse, Councilwoman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

Enacted and approved this 13th day of March, 2014, at Bay City

4. Amendment

CONSIDER AND/OR APPROVE AN ORDINANCE ESTABLISHING A FRANCHISE FOR USE OF CITY STREETS FOR PURPOSES OF CONDUCTING NON CONSENT TOWING SERVICES; ESTABLISHING NON CONSENT TOWING FEES; AND ESTABLISHING ADDITIONAL PROVISIONS RELATING TO NON-EXCLUSIVE FRANCHISE AGREEMENTS FOR TOWING SERVICE PROVIDERS ON A ROTATIONAL BASIS.

Captain Christella Rodrgiuez

Mrs. Clegg explained that after Council instructed the Police Department to meet with the local industry, Captain Rodriguez asked that the item be withdrawn. Assistant Chief Lister added that they had spoken with the industry, but they had some questions that they wanted to pose to the City Attorney, and they were waiting on the Franchise Agreement.

Council asked how the subject was brought up. Assistant Chief Lister explained that they were having issues with consistency with the rates. Council was under the impression that the towing companies were subject to licensing. The Mayor stated that the rates were not. Mr. Hyde clarified that the ordinance did not pertain to private citizens, only police.

RESULT:	WITHDRAWN
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5. Personnel

CONSIDER AND/OR APPROVE TAKING ACTION TO APPROVE FUNDING FOR TWO ALLOCATED POLICE DEPARTMENT PATROL POSITIONS.

Assistant Chief Robert Lister

Assistant Chief Lister explained that four additional patrol positions had been

approved during the budget cycle. Two of the four received funding and two did not. Assistant Chief Lister requested the funding for the remaining two positions.

Council asked how much would the two positions cost for the remaining portion of the fiscal year. Assistant Chief Lister stated that he would be able to get that information and bring it back to them. It was the consensus of Council to move forward with the request. Council asked that the item be brought back to the next Council Meeting and a budget amendment be added as well.

RESULT: TABLED

Next: 3/20/2014 7:00 PM

6. Property

CONSIDER AND/OR APPROVE TAKING ACTION ON THE REQUEST TO DONATE TWO GETAC LAPTOP COMPUTERS ASSIGNED TO THE BAY CITY POLICE DEPARTMENT TO THE CITY OF SWEENEY POLICE DEPARTMENT.

Assistant Chief Robert Lister

Assistant Chief Lister explained that their current cars had Data 911, and the proposed laptops were what they previously used. He stated that they kept some just in case the ones they had broke down. Assistant Chief Lister stated that they would like to donate the laptops to the Sweeny Police Department because the needed them.

RESULT: APPROVED [UNANIMOUS]

MOVER: Carolyn Thames, Mayor Pro-Tem

SECONDER: Steven Johnson, Councilman

AYES: Folse, Johnson, Thames, Estlinbaum, Cornman

Enacted and approved this 13th day of March, 2014, at Bay City

7. Contract

CONSIDER AND/OR APPROVE TAKING ACTION ON AN AGREEMENT WITH DUNN HEAT EXCHANGERS AND THE TEXAS DEPARTMENT OF AGRICULTURE IN REGARDS TO A COMMUNITY DEVELOPMENT BLOCK GRANT FROM THE TEXAS CAPITAL FUND FOR WATER AND SEWER IMPROVEMENTS TO SERVE THE PROPOSED DUNN HEAT EXCHANGERS FACILITY.

Barry Calhoun, Director of Public Works

Mr. Calhoun explained that this was a formality of the Texas Capital Grant. He added that this was the final step before receiving the funds.

RESULT: APPROVED [UNANIMOUS]

MOVER: Julie Estlinbaum, Councilwoman

SECONDER: Carolyn Thames, Mayor Pro-Tem

AYES: Folse, Johnson, Thames, Estlinbaum, Cornman

Enacted and approved this 13th day of March, 2014, at Bay City

8. Contract

CONSIDER AND/OR APPROVE TAKING ACTION ON AN AGREEMENT WITH CP HOMES AND THE TEXAS DEPARTMENT OF AGRICULTURE IN REGARDS TO A COMMUNITY

DEVELOPMENT BLOCK GRANT FROM THE TEXAS CAPITAL FUNDS FOR WATER AND SEWER IMPROVEMENTS TO SERVE CP HOMES ASSISTED LIVING FACILITY.

Barry Calhoun, Director of Public Works

Mr. Calhoun explained that this was a formality of the Texas Capital Grant. He added that this was the final step before receiving the funds.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Chrystal Folse, Councilwoman
SECONDER:	Julie Estlinbaum, Councilwoman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

Enacted and approved this 13th day of March, 2014, at Bay City

9. Agreement

CONSIDER AND/OR APPROVE TAKING ACTION ON A TEXAS LOCAL GOVERNMENT CODE CHAPTER 380 INCENTIVE AGREEMENT AND TAX ABATEMENT AGREEMENT TO INCENTIVIZE THE CONSECUTION OF A NEW "9er's GRILL' RESTAURANT

D.C. Dunham, BCCDC Executive Director

Mrs. Dunham explained to Mayor and Council that Mr. Ali Qattam was looking at building a 9'ers Grill. She stated that he would build a new and improved version of the one in Wharton. Mrs. Dunham stated that some communities had done tax abatements, but the City had done 380 Agreements with tax reimbursements. She stated that Mr. Qattam was estimating to build a \$1.5 million establishment with the cost including equipment in the estimate. Mrs. Dunham stated that her estimates were a little conservative at \$1.1 million. Mr. Qattam would be purchasing City water, sewer and gas. The building would be located across from K-2 and Whataburger.

Mr. Qattam stated that this location would be similar to the one in Wharton. It will be approximately 4700 square feet with a playground that would be about 650 square feet with a water feature. Mr. Qattam informed Mayor and Council that the Wharton location with equipment cost about \$1.3 million. He went on to state that this location would offer breakfast 7 days a week; a real country breakfast. Mrs. Dunham added that they were estimating \$1.5 million dollars in sales a year, and with the City's 2% tax it would be about \$30,000.

Council asked when would the building be constructed. Mr. Qattam stated that it was still in design, but was shooting for May or June. The Mayor asked about employee housing. Mr. Qattam stated that he was thinking about it because he had some additional space. Council asked about the meeting room size, and Mr. Qattam stated that it would fit about 45-50 people.

Mr. Hyde stated that if Council wanted to agree to the schedule proposed, then it would be brought back to Council and the schedule would be a part of the agreement. Mayor and Council would like for Mrs. Dunham to make the schedule show more accurate numbers, but add the water and gas usage. Mr. Hyde stated that he would make the schedule an exhibit.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Steven Johnson, Councilman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

Enacted and approved this 13th day of March, 2014, at Bay City

10. Budget

CONSIDER AND/OR APPROVE TAKING ACTION ON A REQUEST TO AMEND THE BAY CITY COMMUNITY DEVELOPMENT CORPORATION'S BUDGET FOR ITS MARKETING CAMPAIGN.

D. C. Dunham, BCCDC Executive Director

Mrs. Dunham informed Mayor and Council that the CDC Board authorized them to redo the website and marketing to recruit new residents to Bay City. The budget amendment would be for \$29,920.00.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

Enacted and approved this 13th day of March, 2014, at Bay City

11. Amendment

CONSIDER AND/OR APPROVE TAKING ACTION ON SETTING INDUSTRIAL WATER AND SEWER UTILITY RATES.

The proposed rate was the recommendation of the Tenaris sub-committee.

MOTION BY MAYOR PRO TEM THAMES, SECOND BY COUNCILMAN CORNMAN, TO APPROVE THE INDUSTRIAL RATE PROPOSED BY THE TENARIS SUB-COMMITTEE. MOTION CARRIED BY UNANIMOUS VOTE.

Mr. Hyde asked for clarification on the rate. He asked if the rate was going to be the in-city rate or out-of-city rate.

MOTION BY COUNCILWOMAN FOLSE, SECOND BY MAYOR PRO TEM THAMES, TO CLARIFY THAT THE INDUSTRIAL RATE WILL BE FOR THE CITY OF BAY CITY'S ETJ AND INSIDE THE CITY OF BAY CITY. MOTION CARRIED BY UNANIMOUS VOTE.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Carolyn Thames, Mayor Pro-Tem
SECONDER:	William Cornman, Councilman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

Enacted and approved this 13th day of March, 2014, at Bay City

12. Agreement

CONSIDER AND/OR APPROVAL AN AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE CITY OF BAY CITY, TEXAS, FOR THE MAINTENANCE OF HIGHWAYS WITHIN THE CITY'S CORPORATE LIMITS.

Barry Calhoun, Director of Public Works

Mr. Calhoun informed Mayor and Council that the only amendment would be the addition of the maintenance of sidewalks along Highways 35 and 60.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Julie Estlinbaum, Councilwoman
SECONDER:	Chrystal Folsie, Councilwoman
AYES:	Folsie, Johnson, Thames, Estlinbaum, Cornman

Enacted and approved this 13th day of March, 2014, at Bay City

13. Property

CONSIDER AND/OR APPROVE AN ORDINANCE SETTING DATES, TIMES AND PLACE FOR PUBLIC HEARINGS ON THE PROPOSED ANNEXATION OF APPROXIMATELY 12 PLATTED LOTS WITHIN THE MOORE ESTATES SUBDIVISION GENERALLY LOCATED SOUTH OF 2nd STREET AND WEST OF MONROE AVENUE BY THE CITY OF BAY CITY; AUTHORIZING AND DIRECTING THE PUBLICATION OF THE NOTICE OF SUCH PUBLIC HEARINGS; AUTHORIZING AND DIRECTING THE PUBLIC WORKS DIRECTOR TO PREPARE A SERVICE PLAN.

Councilman Steven Johnson

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Steven Johnson, Councilman
SECONDER:	Chrystal Folsie, Councilwoman
AYES:	Folsie, Johnson, Thames, Estlinbaum, Cornman

Enacted and approved this 13th day of March, 2014, at Bay City

14. Report

DISCUSS THE STATUS AND CONDITION OF THE BAY CITY VOLUNTEER FIRE DEPARTMENT'S FIRE RESCUE EQUIPMENT.

Councilman Steven Johnson

Councilman Johnson informed the Mayor and the other members of Council of some equipment issues the Fire Department was faced with. He stated that one truck would cost between \$160,000 to \$170,000. There was a grant for up to \$160,000, but it required a 10% match from the City. Councilman Johnson stated that he wanted to provide Council with a heads up regarding the trucks with budget approaching.

The Mayor expressed his concerns with the update. He explained that the Fire Department had a spokesperson, the Fire Chief, as well as the Chief of Police; however, the Fire Chief had not notified Chief Barker of these issues. Councilman Johnson stated that he was merely asking Council to take a look at the equipment, in order to make them aware at budget time.

Council thanked Councilman Johnson for the information. The Mayor pointed out that the Pumper Truck issue would be brought to the County.

15. Amendment

CONSIDER AND/OR APPROVE AN ORDINANCE CANCELING THE GENERAL ELECTION SCHEDULED TO BE HELD ON MAY 10, 2014.

Rhonda Clegg, City Secretary

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Julie Estlinbaum, Councilwoman
SECONDER:	Chrystal Folse, Councilwoman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

Enacted and approved this 13th day of March, 2014, at Bay City

16. Personnel

DISCUSS, CONSIDER AND/OR APPROVE AMENDING THE SALARY RANGE FOR THE POSITION OF FINANCE DIRECTOR.

Mayor Mark A. Bricker

Mrs. Clegg explained that it had been difficult locating a qualified applicant for the current salary. She listed the different job posting forums, but felt the true issue was that of the salary.

Council asked that Mrs. Clegg provide a list of the salaries of the current City Directors, as well as any additional compensation one may receive, such as Car Allowance.

Councilman Cornman wanted to make it known that he did not like the current interviewing process.

Tabled until next Council Meeting, March 20, 2014

17. Amendment

CONSIDER AND/OR APPROVE TAKING ACTION ON AN ORDINANCE AMENDING THE CITY OF BAY CITY'S CODE OF ORDINANCES CHAPTER 118 (ENTITLED "VEHICLE FOR HIRE").

Rhonda Clegg, City Secretary

Mrs. Clegg explained that she recently received the ordinance, as well as the fares. She asked that the item be tabled until the next Council Meeting.

RESULT:	TABLED	Next: 3/20/2014 7:00 PM
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6. REPORTS

1. Report

COMMUNITY SERVICES DIRECTOR JOHN GARR SHALL PROVIDE COUNCIL WITH A REPORT ON THE STATUS OF THE USO BUILDING PHASE II PROJECT.

John Garr, Community Services Director

Mr. Garr provided a slideshow and PowerPoint presentation to Mayor and Council. He informed Council of the issues that they have encountered during the renovation process. Mr. Garr stated that the issues may lead to possible change orders.

Council asked what the total approved amount of the project was, and Mr. Garr stated \$147,000.

RESULT: WITHDRAWN

2. Report

COMMUNITY SERVICES DIRECTOR JOHN GARR SHALL PRESENT A REPORT ON THE STATUS OF THE BAY CITY MUNICIPAL AIRPORT.

John Garr, Community Services Director

Mr. Garr provided Mayor and Council with a PowerPoint presentation. He stated that there was a lot going on at the Airport, and that it was becoming more and more community involved. Mr. Garr publicly acknowledged and thanked Airport employee, James Mason.

RESULT: WITHDRAWN

7. EXECUTIVE SESSION

Mayor and Council did not go into Executive Session. Councilman Cornman stated that he would like to place the reimbursement for construction on the agenda.

1. Report

CITY COUNCIL SHALL CONVENE IN CLOSED SESSION TO CONSULT WITH THE CITY ATTORNEY REGARDING A LEGAL ISSUES AND TO DELIBERATE REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS WITH TENARIS/MAVERICK TUBE CORPORATION PURSUANT TO TEXAS GOVERNMENT CODE §551.071 AND §551.087.

8. OPEN SESSION

1. Report

CITY COUNCIL MAY RECONVENE IN OPEN SESSION AND CONSIDER AND/OR TAKE ACTION ON ANY ITEM LISTED ABOVE FOR CONSIDERATION/DISCUSSION IN EXECUTIVE SESSION (IF NECESSARY).

9. ITEMS / COMMENTS & MAYOR AND COUNCIL MEMBERS

Councilwoman Folse commented that she thought the roads would become a staple item on the agenda.

10.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, March 10, 2014 before 7:00 p.m. Any questions concerning the above items, please contact Mayor Mark A. Bricker at (979) 245-2137.

Rhonda Clegg
City Secretary



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 1363)

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Appointment
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1363

CONSIDER AND/OR APPROVE MAYOR'S APPOINTMENT OF ZEINAB GHAI TO MAIN STREET COMMITTEE.

RESULT:	APPROVED BY CONSENT VOTE [UNANIMOUS]
MOVER:	Chrystal Folse, Councilwoman
SECONDER:	Steven Johnson, Councilman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

CITY OF BAY CITY Volunteer Interest Form

Dear Resident:

This form will let the City Council know of your interest and qualifications to serve on a City board or commission. You are encouraged to contact a Council Member concerning your nomination. You may also submit a resume or brief background information regarding your qualifications. This form will be kept on file for a period of two years in the City Secretary's office.

PLEASE TYPE OR PRINT:

Date: 5.13.13

Name: Zeinab Ghais

Home Address: 2104 3rd St

City: Bay City

State: TX Zip: 77414

Home Phone: 323.369.5557 Business Phone: same

Employer: Self-employed Occupation: Designer

Resident of the Bay City Corporate City Limits: ☒ Yes (circle one) No Resident of City for 15 years

I am interested in serving on the following boards: (See back of this sheet for a listing of boards)

1. Keep Bay City Beautiful. Main St. Board

2. _____ 4. _____

Please list any involvement in civic groups or clubs, current or past service on city boards, or other information qualifying you for service:

design chairman for Main St. Board

Streetscape Committee

Zeinab Ghais
Signature

RECEIVED
MAY 21 2013



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Property
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1268

DISCUSSION ITEM (ID # 1268)

**PUBLIC HEARING ON THE PROPOSED ANNEXATION OF
APPROXIMATELY 254.3 ACRES OF LAND GENERALLY
LOCATED EAST OF McCRUSKY ROAD AND NORTH OF
STATE HIGHWAY 35 BY THE CITY OF BAY CITY.**



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 1377)

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Property
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1377

CONSIDER AND/OR APPROVE AMENDING E4E LEASE OF THE GIRL SCOUT HOUSE WITH THE CITY OF BAY CITY.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Steven Johnson, Councilman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 1364)

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Agreement
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1364

CONSIDER AND/OR APPROVE RENEWING THE BAY CITY ART LEAGUE LEASE AGREEMENT.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Chrystal Folse, Councilwoman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

The Art League

of Bay City/Matagorda County

1921 Fifth Street - Bay City, TX 77414 - Email: albcmc@yahoo.com

February 28, 2014

To the City Council of Bay City
 Mayor, Mark Bricker
 Mayor Pro-tem,
 Councilwoman, Carolyn Thames
 Councilman, Bill Cornman
 Councilwoman, Julie Estlinbaum
 Councilman, Steve Johnson
 Councilwoman, Chrystal Folse

From, The Art League of Bay City
 President, E. Marguerite Bundick
 Vice-Presidents,
 Linda Head
 Barbara Westbrook
 Linda Lee
 Secretary, Sharon Leonard
 Acting Treasurer, E. Marguerite
 Bundick

Subject,
 Renewing the Lease between the City of Bay City and the Art League of Bay City.

We, as a group of artists and supporters for the arts in Bay City want to renew Lease and agreements between the City of Bay City and the Art League of Bay City.

The present lease agreement will need to be renewed on before the 31st of March, 2014.

We have included in the renewal presentation, our current position as a tax-exempt, non-profit organization, and the Original Lease agreements, and signed approval by previous mayors; Glen White, Tommy Letulle, and Charlie Martinez.

Also included, are the By-Laws, and Incorporation papers, and the Tax exempt approval by the Federal Government.

During the past 14 years, we have renovated the outside and inside of the building with help from the City, Bay City Community Economic Development Board, and other supporters of the Arts.

We have continued art classes for school students and we hold exhibits in the gallery for the public, and support and promote an Annual Judge Show in the Matagorda Museum, open to School students through elderly area artists.

Because we are a member of the Lone Star Art Guild, that has an annual show of their 18 art groups, the awarded artists from our show is eligible to enter their show. Two years ago we were one of 4 host groups to have the exhibit here in Bay City.

We want to continue to work with the City Council to bring more outside art events to the Citizens of Matagorda County.

We hope this renewal request will be accepted by the Mayor and Council members.

With Best Regards, from the Board Members of the Art League of Bay City;
 E. Marguerite Bundick, Linda Head, Barbara Westbrook, Linda Lee, and Sharon Leonard.

Attachment: 20140313 - Art League (1364 : Art League Lease)



Office of the Secretary of State

CERTIFICATE OF FILING OF

ART LEAGUE OF BAY CITY, INC.
67832901

The undersigned, as Secretary of State of Texas, hereby certifies that a Restated Certificate of Formation for the above named domestic nonprofit corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

Dated: 08/03/2012

Effective: 08/03/2012



A handwritten signature in black ink, appearing to read "Hope Andrade".

Hope Andrade
Secretary of State

Attachment: 20140313 - Art League (1364 : Art League Lease)

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

DEC 02 2011

THE ART LEAGUE OF BAY CITY INC
C/O E MARGUERITE BUNDICK
1921 5TH STREET
BAY CITY, TX 77414

Employer Identification Number:
23-7293061

DLN:

401363011

Contact Person:

BRAD S FLETCHER

ID# 31669

Contact Telephone Number:

(877) 829-5500

Accounting Period Ending:

August 31

Public Charity Status:

509(a)(2)

Form 990 Required:

Yes

Effective Date of Exemption:

December 22, 2011

Contribution Deductibility:

Yes

Addendum Applies:

Yes

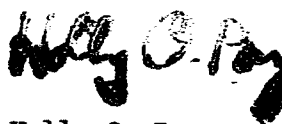
Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

Sincerely,



Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure: Publication 4221-PC

Attachment: 20140313 - Art League (1364 : Art League Lease)

THE STATE OF TEXAS

COUNTY OF MATAGORDA:

ARTICLES OF INCORPORATION
OF
ART LEAGUE OF BAY CITY, INC.
A NON-PROFIT CORPORATION

ARTICLE ONE

The name of the corporation is The Art League of Bay City, Inc.

ARTICLE TWO

The corporation is a non-profit corporation

ARTICLE THREE

The period of it's duration is perpetual.

ARTICLE FOUR

Section 2.01 The Art League of Bay City [corporation is organized exclusively for charitable and educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under the 501 c-3 of the Internal Revenue Code, or corresponding section of any future federal tax code.

The Corporation may not:

- A. Engage in any activity or take any action prohibited by the a applicable provisions of the Texas Business Organizations Code.
- B. Pay any dividend or distribute any part of the income of the Corporation to its members, if any, directors, or officers. However the Corporation may pay compensation in a reasonable amount to members, directors, or employees for services rendered in conformity with its purposes, provided such compensation is reasonable.

ARTICLE FIVE

The street address of the initial registered office of the Corporation is Art League of Bay City; 1921 5th Street, Bay City, Texas, 77414 and the name of its initial registered agent, [member] and acting in behave of the members of the Art League of Bay City, is Evelyn Marguerite Bundick, 2009 Merlin Street, Bay City, Texas, 77414

ARTICLE SIX

The number of initial directors is five [5] and the names and addresses of the directors are:

Linda Head 54 CR 507 Van Vleck, Texas 77482 President

Linda Lee 1901 Old Van Vleck Road, Bay City, Texas 77414

Past President [2011-2012]

Barbara Westbrook 2876 CR 218 Bay City, Texas 77414 Chairperson

Gay Joines 4121 FM 1096 Boling, Texas 77420 Secretary

E. Marguerite Bundick 2009 Merlin Street Bay City, Texas 77414

Treasurer and acting agent and organizer for the Organization

ARTICLE SEVEN

Supporting the application for Incorporating are:

Linda Head 54 CR 507 Van Vleck, Texas 77482

Linda Lee 1901 Old Van Vleck Road, Bay City, Texas 77414

Barbara Westbrook 2876 CR 218 Bay City, Texas 77414

Gay Joines 4121 FM 1096 Boling, Texas 77420

E. Marguerite Bundick 2009 Merlin Street Bay City, Texas 77414

Date 3 day June month 2012 year

May

Notarize by

Attachment: 20140313 - Art League (1364 : Art League Lease)

BYLAWS

of

The Art League of Bay City

A Texas Non-Profit Corporation

Mission Statement

The Art League of Bay City ("Corporation"), a Texas Non-Profit Corporation, is committed to promoting cultural and educational enrichment through the arts. The Corporation enhances public awareness and knowledge of the arts by holding classes and seminars at its primary place of business located at 1921 5th Street, Bay City, TX 77414. In addition, the Corporation supports artists in the community by providing information and networking.

Article One – Offices

Section 1.01. Principal Office. The principal office of the Corporation may be determined by the Board of Directors, and the Corporation may have other offices, either within or without the State of Texas, as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.

Section 1.02. Registered Office and Registered Agent. The Corporation will continuously maintain in the State of Texas a registered office and a registered agent whose office is identical with the registered office. The registered agent and address of the registered office may be changed from time to time by the Board of Directors.

Article Two-Purposes

Section 2.01. The Art League of Bay City [Corporation] is organized exclusively for charitable and educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under the section 501 [C] [3] of the Internal Revenue Code, or corresponding section of any future federal tax code.

The Corporation may not:

- A. Engage in any activity or take any action prohibited by the applicable provisions of the Texas Business Organizations Code.
- B. Pay any dividend or distribute any part of the income of the Corporation to its members, if any, directors, or officers. However, the Corporation may pay compensation in a reasonable amount to its members, directors, or employees for services rendered in conformity with its purposes, provided such compensation is reasonable.
- C. Make loans to the Corporation's directors/officers.

- D. Conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and its regulations as they now exist or as they may be amended, or by an organization, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code and regulations, as they now exist or as they may be amended.
- E. Serve any private interest except if clearly incidental to the public benefit provided by the Corporation.
- F. Allow any of the Corporation's net earning to inure to the benefit of any officer, director, or member, if any, of the Corporation, or any private shareholder or individual.
- G. Engage in more than an insubstantial degree in the carrying on of propaganda, or otherwise attempting, to influence legislation, and the Corporation shall not directly or indirectly participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of or against any candidate for public office, except as allowed by Internal Revenue Code and its regulations.

Upon dissolution of the Corporation or the winding up of its affairs, the assets of the Corporation shall be distributed exclusively for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Article Three – Members

Section 3.01. Members. The Corporation may have members, but the members will not have voting rights.

Section 3.02. Election of Members. Members will be elected by the Board of Directors by an affirmative majority vote. Members must meet any qualifications for membership that the Board of Directors may designate by resolution.

Section 3.03. Termination of Membership. An affirmative majority vote by the Board of Directors may suspend or expel a member for cause after an appropriate hearing.

Section 3.04. Resignation. Any member may resign by filing a written resignation with the Secretary.

Section 3.05. Reinstatement of Membership. Upon written request signed by a former member and filed with the Secretary, the Board of Directors may, by the affirmative majority vote by the Board of Directors, reinstate the former member to membership upon terms that the Board of Directors deems appropriate.

Section 3.06. Transfer of Membership. Membership in the Corporation is not transferable or assignable.

Article Four – Board of Directors

Section 4.01. General Powers. The affairs of the Corporation will be managed by its Board of Directors. The Board of Directors will have all powers allowed under the Texas Business Organizations Code.

Section 4.02. Number, Tenure, Qualifications, and Election. The number of directors will be not less than three nor more than twenty. The directors will serve staggered terms by initially serving terms of one, two and three years, as provided by the Board of Directors. After the initial terms of the initial directors expire, each director will serve for three years. The initial terms of additional directors shall be fixed to ensure that no more than one third of the directors are up for election in any given year. Directors may or may not be residents of Texas. After the initial Board of Directors, all subsequent Directors will be elected by a majority vote of the existing Board of Directors.

Section 4.03. Regular Meetings. The Board may determine, by resolution, the time and place of its regular meetings, whether within or without the State of Texas, provided that not less than three days' written notice stating the date, place and hour of meeting is given to each director. Regular meetings of the Board of Directors must be held at least annually.

Section 4.04. Special Meetings. The President or any two Directors may call special meetings of the Board of Directors. Special meetings of the Board of Directors must be held at the Corporation's principal place of business unless another place is agreed to by all of the directors then serving on the Board of Directors. The purpose of any special meeting of the Board of Directors must be disclosed in the notice of meetings. Notice of any special meeting of the Board of Directors must be given at least three days before the date of the special meeting.

Section 4.05. Quorum. A majority of the number of directors then serving on the Board of Directors, but never less than three, constitutes a quorum for the transaction of business at any meeting of the Board of Directors; but if less than a quorum of the directors is present at the meeting, a majority of the directors present may adjourn the meeting without further notice.

Section 4.06. Manner of Acting. If a quorum is present, the act of a majority of the directors present is an act of the Board of Directors, unless the act is a fundamental business transaction. If the act is a fundamental business transaction, the number of directors required to approve the transaction is a majority of the directors in office.

Section 4.07. Written Consent. Any action required by the Texas Business Organizations Code or other law to be taken at a meeting of the directors, or any action that may be taken at a meeting of the directors, may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of directors as would be necessary to take that action at a meeting at which all of the directors were present and voted. The consent must state the date of each director's signature. Prompt notice of the action or actions taken by the directors without a meeting by less than unanimous consent must be given to each director who did not consent in writing to such action.

Section 4.08. Voting in Person or by Proxy. A director may vote in person or by proxy executed in writing by the director. A proxy will expire three months after its execution. A proxy is revocable unless otherwise provided by the proxy or made irrevocable by law.

Section 4.09. Vacancies. Any vacancy occurring in the Board of Directors, and any directorship to be filled by reason of an increase in the number of directors, will be filled by a majority vote of the remaining Board of Directors. A director elected to fill a vacancy is elected for the unexpired term of his or her predecessor in office. However, vacancies need not be filled unless the vacancy would result in fewer than three directors remaining on the board.

Section 4.10. Compensation. Directors shall not receive any stated salaries for their services, but by resolution of the Board of Directors a reasonable fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular meeting or any special meeting of the Board; but nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation in that capacity.

Section 4.11. Resignation. Any director may resign by giving written notice to the President. The resignation is effective at the next called meeting of the Board of directors. The resigning director must be given notice of the meeting.

Section 4.12. Removal. Any director may be removed with or without cause by a majority of the directors then serving on the Board of Directors.

Article Five – Officers

Section 5.01. Officers. The officers of the Corporation are a President and a Secretary. Other officers, including but not limited to one or more Vice Presidents (the number of which will be determined by the Board of Directors) and a Treasurer may be elected in accordance with the provisions of this Article. The Board of Directors may elect officers as it deems desirable. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 5.02. Election and Term of Office. The officers of the Corporation will be elected by a majority vote of the Board of Directors at the regular meeting of the Board of Directors. New offices may be created and filled at any meeting of the Board of Directors. Each officer will hold offices until his or her successor is duly elected. However, the term of an officer shall not exceed three years.

Section 5.03. Removal. Any officer elected by the Board of Directors may be removed with or without cause by a majority vote of the directors then serving on the Board of Directors, but the removal will be without prejudice to the contract rights, if any, of the officer to be removed.

Section 5.04. Vacancies. A vacancy in any office because of death, resignation, disqualification, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term during a regular meeting of the Board of Directors or by special meeting.

Section 5.05. President. The President shall be the principal executive officer of the Corporation and shall supervise and control all of the ordinary business and affairs of the Corporation on a day-to-day basis. The President may sign together with the Secretary or any other officer of the Corporation authorized by a resolution of the Board of Directors to sign in the name of the Corporation any deeds, mortgages, bonds, contracts, or other instruments that the Board of Directors has authorized to be executed, except in cases where the signing and execution is expressly delegated by the Board of Directors or by the Bylaws or by statute to some other officer or agent of the Corporation. The President shall perform all duties prescribed by the Board of Directors, including participating in various committee meetings as a member or chairperson. He or she shall also be responsible for informing the Board of Directors of possible programs, meetings, and functions of the Corporation.

Section 5.06. Vice-President. In the absence of the President, or in the event of his or her inability or refusal to act, the Vice-President (or in the event there may be one or more Vice-President, the Vice-President in order of their election) shall perform the duties of President, and when so acting shall have all of the powers of and be subject to all the restrictions upon the President. Any Vice-President shall perform duties assigned to him or her by the President or Board of Directors.

Section 5.07. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation, receive and give receipts for moneys due and payable to the Corporation from any source, and deposit all monies in the name of the Corporation in banks, trust companies, or other depositories as may be selected in accordance with the provisions of the Bylaws. The Treasurer shall keep proper books of account and other books showing at all times the amount of funds and other property belonging to the Corporation. He or she shall also submit a report of the accounts and financial conditions of the Corporation at each annual meeting of the Board of Directors, and in general perform all the duties incident to the office of Treasurer and any other duties assigned to him or her by the President or by the Board of Directors.

Section 5.08. Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors in one or more books provided for that purpose, give all notices in accordance with the provisions of the Bylaws or as required by law, be custodian of the corporate records and of the seal of the Corporation, and affix the seal of the Corporation to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of the Bylaws or by resolution of the Board of Directors; and, in general, perform all the duties incident to the office of Secretary and any other duties assigned to him or her by the President or by the Board of Directors.

Section 5.09. Other Officers. Any other officers of the Corporation shall have powers and duties in the management of the Corporation as prescribed in a resolution by the Board of Directors and, to the extent not provided, as generally pertain to their respective offices, subject to the control of the Board of Directors.

Section 5.10. Security. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

at a meeting must be by a majority of those present. All acts performed by the Executive Committee in the exercise of its authority are deemed to be, and may be certified as, acts performed under authority of the Board of Directors. Vacancies in the Executive Committee shall be filled by election by the Board of Directors. All actions of the Executive Committee shall be recorded in writing in a minute book kept for that purpose and a report of all action shall be made to the Board of Directors at its next meeting. The minutes of the Board of Directors will reflect that such a report was made along with any action taken by the Board of Directors with respect to it.

Section 6.04. Advisory Committee. The function and purpose of the Advisory Committee shall be to advise the Board of Directors on matters relating to the purpose of the organization and to suggest projects that the Corporation may undertake. Members of the Advisory Committee may be asked to provide input to the Executive Committee and the Board of Directors, but recommendations of the Advisory Committee are not binding on the Corporation. Members of the Advisory Committee may serve on any committee except the Executive Committee.

Section 6.05. Other Committees. Other committees not having and exercising the authority of the Board of Directors in the management of the Corporation may be elected by a resolution of the Directors present at a meeting at which a quorum is present. Any member may be removed by the President or the Board of Directors if, in their judgment, the best interests of the Corporation is served by the removal. Members of the committees may or may not be directors.

Section 6.06. Term of Office. Each member of any committee elected under this Article 6 shall continue as a member until the next annual meeting of the members of the Board of Directors and until his or her successor is elected. unless the committee is sooner terminated, the member is removed from the committee, or the member ceases to qualify as a member of the committee.

Section 6.07. Chairpersons. One member of each committee will be elected chairperson by the person or persons authorized to elect members of the committee

Section 6.08. Vacancies. Vacancies in the membership of any committee may be filled by elections made in the same manner as original elections.

Section 6.09. Quorum. Unless otherwise provided in the resolution of the Board of Directors designating a committee or in the Bylaws, a majority of the whole committee constitutes a quorum and the act of a majority of the members present at a meeting at which a quorum is present is the act of the committee.

Section 6.10. Written Consent. Any action required by law to be taken at a meeting of a committee, or any action which may be taken at a meeting of a committee, may be taken without a meeting if a consent in writing setting forth the action so taken is signed by a sufficient number of committee members as would be necessary to take that action at a meeting at which all the committee members were present and voting. The consent must state the date of each committee member's signature. Prompt notice of the action or actions taken by the committee members

without a meeting by less than unanimous consent shall be given to each committee member who did not consent in writing to such action.

Section 6.11. Rules. Each committee may adopt rules for its governance not inconsistent with the Bylaws or with rules adopted by the Board of Directors.

Section 6.12. Committee Dissolution. The Board of Directors may, in its sole discretion, dissolve any committee with or without cause. Except for the Executive Committee, dissolution requires a majority vote of the Board of Directors in office. The Executive Committee shall only be dissolved by a vote of two-thirds of all the directors.

Article Seven – Contracts, Checks, Deposits and Gifts

Section 7.01. Contracts. The Board of Directors may authorize any officer or officers, agent or agents of the Corporation, in addition to the officers authorized by the Bylaws, to enter into any contract or exercise and deliver any instrument in the name and on behalf of the Corporation. The authority may be general or confined to specific instances.

Section 7.02. Checks and Drafts, Etc. All checks, drafts, or orders for the payment of money, notes, or other obligations for the payment of money issued in the name of the Corporation shall be signed by the officer or officers, agent or agents of the Corporation and in a manner that may be determined by the resolution of the Board of Directors. In the absence of this determination by the Board of Directors, the instruments shall be signed by the Treasurer and countersigned by the President, provided that the positions are held by different people. In the event the offices of President and Treasurer are held by the same person, all documents under this section shall be signed by the President and the Secretary.

Section 7.03. Deposits. All funds of the Corporation shall be deposited to the credit of the Corporation in banks, trust companies, or other depositories selected by resolution of the Board of Directors.

Section 7.04. Gifts. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the general purposes or for any other special purpose of the Corporation.

Article Eight – Books and Records

Section 8.01. Books and Records. The Corporation shall keep correct and complete books and records of account of the activities and transactions of the Corporation including minute book which will contain a copy of the Corporation's application for tax-exempt status, copies of the Corporation's IRS information and tax return, and a copy of the Certificate of Formation, Bylaws, and Amendments. The Corporation will keep financial records including all income and expenditures of the Corporation in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants. Copies of the financial records will be kept at the Corporation's principal place of business for at least three years after

the close of the fiscal year. The Corporation will also keep minutes of the proceedings of its Board of Directors and any committees having the authority of the Board of Directors.

Section 8.02. Inspection of Records. All books of the Corporation may be inspected by any director or his or her agent or attorney for any proper purpose at any reasonable time. Representatives of the Internal Revenue Service may inspect the books and records as necessary. All financial records of the Corporation shall be available to the public for inspection and or copying to the fullest extent required by law.

Section 8.03. Annual Reports. Using the records required in Section 8.01, the Board of Directors shall annually prepare or approve a financial report for the Corporation for the preceding year. The report must conform to generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants and must include: (1) a statement of support, revenue, and expenses; (2) a statement of changes in fund balances; (3) a statement of functional expenses; and (4) a balance sheet for each fund.

Article Nine – Indemnification

Section 9.01. Indemnification. The Corporation may indemnify and advance reasonable expenses to directors, officers, employees and agents of the Corporation to the fullest extent permitted by Chapter 8 of the Texas Business Organizations Code. The Corporation may purchase and maintain at its cost and expense insurance on behalf of directors, officers, employees and agents of the Corporation to the fullest permitted by Chapter 8 of the Texas Business Organizations Code.

Article Ten – Notice

Section 10.01. Notice. Notice required under the Bylaws shall be given by oral or written notice delivered personally or sent by mail, telegram, facsimile, email or any other message service or messenger to each director or committee member at his or her address as shown by the records of the Corporation. If mailed, the notice is deemed to be delivered when deposited in the United States mail so addressed with postage prepaid. If notice is given by telegram, the notice is deemed to be delivered when the telegram is delivered to the telegraph company. If notice is transmitted by facsimile or electronic message, the notice is considered to be given when the facsimile or electronic message is transmitted to a facsimile number or an electronic message address provided by the person, or to which the person consents, for the purpose of receiving notice.

Section 10.02. Waiver of Notice. Any director or committee member may waive notice of any meeting. The attendance of a director or committee member at any meeting constitutes a waiver or notice of such a meeting unless the director or committee member attends the meeting for the purpose of objecting to the manner of notice.

Article Eleven – Miscellaneous

Section 11.01. Annual Accounting Period. The fiscal year of the Corporation will be determined by the Board of Directors in a resolution.

Section 11.02. Seal. The Board of Directors may authorize a corporate seal.

Section 11.03. Amendments to Bylaws. The Bylaws may be altered, amended, or repealed and new Bylaws may be adopted by a majority of the directors present at any regular meeting or at any special meeting, if at least one day's written notice is given of an intention to alter, amend, or repeal the Bylaws or to adopt new Bylaws at such meeting.

Section 11.04. Amendments to Certificate of Formation. The Certificate of Formation may, to the extent allowed by law, be amended or restated and a new Certificate of Formation may be adopted by a majority of the directors in office, if at least one day's written notice is given of an intention to alter, amend, or restate the Certificate of Formation.

Section 11.05. Meetings Utilizing Electronic Media. Members of the Board of Directors or members of any committee designated by the Board of Directors may participate in and hold a meeting of that Board or committee by means of conference telephone or similar communication equipment. Participation by telephone or other electronic means constitutes presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully created.

Certificate

I Michelle Evans, on behalf of the Board of Directors of The Art League of Bay City
HEREBY CERTIFY that the foregoing is a true, complete and correct copy of the Bylaws of
the Art League of Bay City, Inc., a Texas non-profit Corporation, in effect on 14th day of
May, 2009.

Michelle Evans
Signature

Secretary
Title

Heather
Serrill

4th of May, 2012

Amendment to the By-Laws and Amendment to the Incorporation

This amendment was proposed by the Internal Revenue Services to proceed with the application for the Art League of Bay City 501 C-3 status.

Amendment change is: Article Two- Purposes

Section 2.01

The Art League of Bay City is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under the section 501 [C-3] of the Internal Revenue Code, or corresponding section of any future federal tax code.

This statement replaces: Article Two-Purposes

Section 2.01. The Corporation is organized exclusively for charitable and educational purposes. The Corporation may not engage in any activities, except to an insubstantial degree, that are not in furtherance of the purpose or purposes of the Corporation.

The Board Members of the Art League of Bay City agree to the amendment changes the Internal Revenue Services suggests.

The Board Members are representing the whole membership of the Art League of Bay City and this change will be presented to the members at the next meeting of the Membership, 15th of May, 2012

President: Linda Lee Linda M. Lee

Vice President: Linda Head Linda Head

Secretary: Heather Serrill Heather Serrill

Treasurer: E. Marguerite Bundick E. Marguerite Bundick

Past President: Barbara Westbrook Barbara Westbrook 5/03/2012

Attachment: 20140313 - Art League (1364 : Art League Lease)

CITY OF BAY CITY

GLEN WHITE, Mayor

COUNCIL MEMBERS:

C. B. (Cotton) KEENER, Mayor Pro-Tem
 MEYER DENN
 FRANK HENDERSON
 GEORGIA RICE HERRETH
 PASQUAL (Packy) MARTINEZ

BAY CITY, TEXAS

1901 FIFTH ST. 77414

713/245-5311

March 25, 1982

MARTHA J. ETIE
 Assessor-Collector
 CAROLYN BROUGHTON
 Secretary
 ROSEMARY RODRIGUEZ
 Treasurer
 SUE ROSSON TEJML
 City Attorney

Mrs. Martha Ottis
 President
 Bay City Art League
 1912 LeTulle
 Bay City, Texas 77414

Dear Mrs. Ottis:

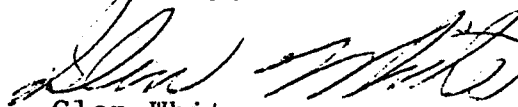
It has come to my attention that there has been some concern expressed by your membership due to the fact the League has been charging art instructors a nominal fee to cover the cost of electricity when they use the Art League building.

After reviewing the lease between the City of Bay City and the Art League, it is my opinion you are not violating this lease and I do not feel there is any valid reason for not requiring art instructors using these facilities to help defray the cost of the air conditioning, lights, etc.

The Art League is doing an outstanding job in promoting the appreciation of fine arts in our City, and I wish you continued success.

With best personal regards, I remain,

Sincerely,



Glen White,
 Mayor

GW/shs

Attachment: 20140313 - Art League (1364 : Art League Lease)

LEASE

ORIGINAL

THE STATE OF TEXAS §
COUNTY OF MATAGORDA §

KNOW ALL MEN BY THESE PRESENTS that the CITY OF BAY CITY, Texas, a municipal corporation in Matagorda County, Texas, hereinafter called Lessor, for an in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLAR and other good and valuable considerations to it in hand paid by the ART LEAGUE OF BAY CITY, the receipt and sufficiency of which is hereby acknowledged and confessed, does hereby lease and demise to said ART LEAGUE OF BAY CITY, hereinafter called Lessee, the following described property lying and being situated in the CITY OF BAY CITY, County of Matagorda and State of Texas and being more particularly described as follows:

All of Lot No. Six (6) and the East 37½ feet by 140 feet of Lot No. Five (5) in Block One Hundred Eighteen (118) of the Original Townsite of the City of Bay City, Texas, said Lot No. Six (6) and East part of Lot No. Five (5) fronting 87½ feet on Fifth Street and running back between parallel lines 140 feet to a 20-foot alley, situated within the corporate limits of the City of Bay City, Texas, according to the Map or Plat of City of Bay City recorded in Volume 5, pages 36-39 of the Deed Records of said Matagorda County, Texas, together with all improvements now on said property,

for a period of twelve (12) years beginning April 1, 1992 and ending March 31, 2004, subject to termination by Lessor as hereinafter provided.

1. **Termination:** It is agreed by and between the Parties that the Lessor CITY OF BAY CITY may terminate this lease at any time during its term by the giving of one hundred eighty (180) days written notice to Lessee. In the event that Lessor chooses to terminate this lease, then Lessee will be given the first option of continuing to use the existing house and structure under the remaining lease terms then existing conditioned upon the relocation of the house and structure to another lot owned by Lessor. If Lessee wishes to exercise such option, Lessee shall give Lessor written notice within sixty (60) days after notification of termination.
2. **Costs for Moving:** It is further agreed and understood that all costs associated with the moving of the existing structure, including but not limited to the house mover's expenses, shall be the sole responsibility of the Lessee.

Attachment: 20140313 - Art League (1364 : Art League Lease)

3. **Lease Rentals:** The consideration for this lease is the annual rent of ONE AND NO/100 (\$1.00) DOLLAR per year to be paid in advance and the covenants and obligations herein set out.

4. **Improvements:** The ART LEAGUE OF BAY CITY shall have the right, at its sole costs, to make improvements on said property and to repair and recondition said building. Prior to the making of any improvements or other actions, such plans shall be submitted to the City Building and Inspection Department and to the Mayor for approval. It is further agreed that any improvements made to said building must comply with any and all Americans With Disabilities Act of 1990 requirements.

5. **Utilities:** Lessee agrees to pay before delinquency all charges for water, gas, heat, electricity, power, and other similar charges incurred by Lessee with respect to and during its occupancy of the demised premises.

6. **Taxes:** Lessee will pay before delinquency any and all taxes levied or assessed upon Lessee's fixtures, equipment, and personal property in and on the demised premises, whether or not affixed to the real property. If at any time after any tax or assessment has become due or payable, the Lessee, or its legal representative, neglects to pay such tax or assessment, Lessor shall be entitled to pay the same at any time thereafter and such amount so paid by Lessor shall be deemed to be additional rent for the leased premises, due and payable by the Lessee.

7. **Indemnity:** Lessee hereby covenants and agrees at all times to indemnify and save harmless the Lessor and the demised premises from and against any cost, liability, or expense arising out of any claims of any person or persons whatsoever by reason of the use or misuse of the demised premises, parking area, or common facilities by Lessee or any person or persons holding under Lessee. Lessee shall indemnify and save harmless the Lessor from any penalty, damage, or charge incurred or imposed by reason of any violation of law or ordinance by Lessee or any person or persons holding under Lessee, and from any cost, damage, or expense arising out of the death of or injury to any person or persons holding under Lessee.

8. **No Subletting or Assignment:** This lease may not be assigned or sublet in whole or in part without the written permission of the City Council of the CITY OF BAY CITY, Texas.

9. **Facilities Open to Public:** All functions, operations, or projects held on said land or premises or in the building thereon shall be open to the entire citizenship of the CITY OF BAY CITY, Texas, and to the public generally, on the same fair and equal basis for all.

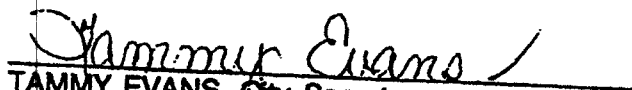
10. **Succession to Former Lease:** It is further agreed that this lease shall succeed the former lease dated March 9, 1989, and that said lease is hereby terminated in all respects.

IN WITNESS WHEREOF the CITY OF BAY CITY, Texas, and the ART LEAGUE OF BAY CITY have caused these presents to be signed by its Mayor and President, respectively, authorized by a vote by the City Council of Bay City, Texas, and the Board of Directors of the ART LEAGUE OF BAY CITY, respectively, this 2nd day of April, 1992.

CITY OF BAY CITY, TEXAS


TOMMY Z. LETOLLE, Mayor
City of Bay City, Texas

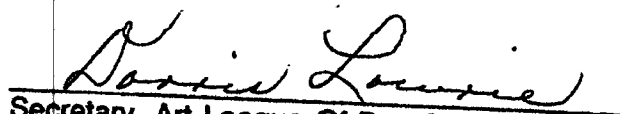
ATTEST:


TAMMY EVANS, City Secretary

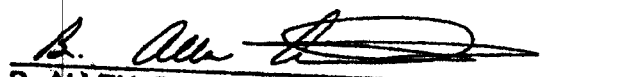
ART LEAGUE OF BAY CITY


President, Art League Of Bay City

ATTEST:


Secretary, Art League Of Bay City

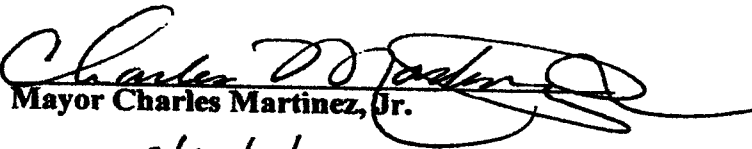
APPROVED AS TO FORM:


B. ALLEN CUMBIE, City Attorney

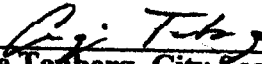
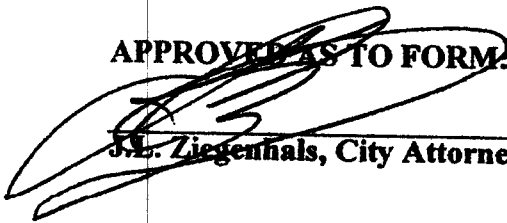
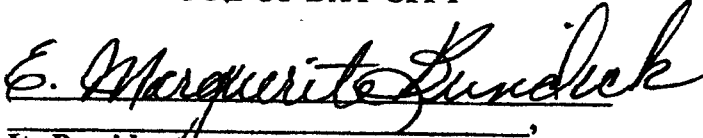
RENEWAL OF LEASE**LESSOR: City of Bay City****LESSEE: The Art League of Bay City**

The parties hereto hereby renew, for a term of ten (10) years, that one certain lease dated April 2, 1992, a copy of which is attached hereto as Exhibit "A", under the same terms and conditions as said original lease, said term to begin effective April 1, 2004 and end March 31, 2014.

Pursuant to Paragraph 8 of said agreement, Lessee is hereby granted permission to sublease to the Literacy Volunteers of America such portion of the premises, and upon such terms, as it shall solely determine.

CITY OF BAY CITYBy: 

Mayor Charles Martinez, Jr.

Date: 3/25/04**ATTEST:**
Angie Tenberg, City Secretary**APPROVED AS TO FORM:**
J.L. Ziegenhals, City Attorney**THE ART LEAGUE OF BAY CITY**By: 

Its President

Date: 31st Mar 2004

Attachment: 20140313 - Art League (1364 : Art League Lease)

RENEWAL OF LEASE

LESSOR: City of Bay City, Texas

LESSEE: The Art League of Bay City

The Parties hereto hereby renew, for a term of ten (10) years, that one certain lease, dated April 2, 1992, a copy of which is attached hereto as Exhibit "A", as renewed by the Renewal of Lease, dated March 25, 2004, a copy of which is attached hereto as Exhibit "B", under the same terms and conditions as the original lease, said term to being effective April 1, 2014 and end March 31, 2024.

Pursuant to Paragraph 8 of said lease agreement, Lessee is hereby granted permission to sublease to the Literacy Volunteers of America such portion of the premises, and upon such terms, as it shall solely determine.

CITY OF BAY CITY

By: _____
Mark A. Bricker Mayor

Date: _____

ATTEST:

By: _____
Rhonda Clegg, City Secretary

THE ART LEAGUE OF BAY CITY

By: _____

Printed Name: _____

Title: _____

Date: _____

Attachment: 20140313 - Art League Renewal (1364 : Art League Lease)

EXHIBIT "A"

ORIGINAL

LEASE

THE STATE OF TEXAS §
COUNTY OF MATAGORDA §

KNOW ALL MEN BY THESE PRESENTS that the CITY OF BAY CITY, Texas, a municipal corporation in Matagorda County, Texas, hereinafter called Lessor, for an in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLAR and other good and valuable considerations to it in hand paid by the ART LEAGUE OF BAY CITY, the receipt and sufficiency of which is hereby acknowledged and confessed, does hereby lease and demise to said ART LEAGUE OF BAY CITY, hereinafter called Lessee, the following described property lying and being situated in the CITY OF BAY CITY, County of Matagorda and State of Texas and being more particularly described as follows:

All of Lot No. Six (6) and the East 37½ feet by 140 feet of Lot No. Five (5) in Block One Hundred Eighteen (118) of the Original Townsite of the City of Bay City, Texas, said Lot No. Six (6) and East part of Lot No. Five (5) fronting 87½ feet on Fifth Street and running back between parallel lines 140 feet to a 20-foot alley, situated within the corporate limits of the City of Bay City, Texas, according to the Map or Plat of City of Bay City recorded in Volume 5, pages 36-39 of the Deed Records of said Matagorda County, Texas, together with all improvements now on said property,

for a period of twelve (12) years beginning April 1, 1992 and ending March 31, 2004, subject to termination by Lessor as hereinafter provided.

1. **Termination:** It is agreed by and between the Parties that the Lessor CITY OF BAY CITY may terminate this lease at any time during its term by the giving of one hundred eighty (180) days written notice to Lessee. In the event that Lessor chooses to terminate this lease, then Lessee will be given the first option of continuing to use the existing house and structure under the remaining lease terms then existing conditioned upon the relocation of the house and structure to another lot owned by Lessor. If Lessee wishes to exercise such option, Lessee shall give Lessor written notice within sixty (60) days after notification of termination.

2. **Costs for Moving:** It is further agreed and understood that all costs associated with the moving of the existing structure, including but not limited to the house mover's expenses, shall be the sole responsibility of the Lessee.

Attachment: 20140313 - Art League Renewal (1364 : Art League Lease)

3. *Lease Rentals:* The consideration for this lease is the annual rent of ONE AND NO/100 (\$1.00) DOLLAR per year to be paid in advance and the covenants and obligations herein set out.

4. *Improvements:* The ART LEAGUE OF BAY CITY shall have the right, at its sole costs, to make improvements on said property and to repair and recondition said building. Prior to the making of any improvements or other actions, such plans shall be submitted to the City Building and Inspection Department and to the Mayor for approval. It is further agreed that any improvements made to said building must comply with any and all Americans With Disabilities Act of 1990 requirements.

5. *Utilities:* Lessee agrees to pay before delinquency all charges for water, gas, heat, electricity, power, and other similar charges incurred by Lessee with respect to and during its occupancy of the demised premises.

6. *Taxes:* Lessee will pay before delinquency any and all taxes levied or assessed upon Lessee's fixtures, equipment, and personal property in and on the demised premises, whether or not affixed to the real property. If at any time after any tax or assessment has become due or payable, the Lessee, or its legal representative, neglects to pay such tax or assessment, Lessor shall be entitled to pay the same at any time thereafter and such amount so paid by Lessor shall be deemed to be additional rent for the leased premises, due and payable by the Lessee.

7. *Indemnity:* Lessee hereby covenants and agrees at all times to indemnify and save harmless the Lessor and the demised premises from and against any cost, liability, or expense arising out of any claims of any person or persons whatsoever by reason of the use or misuse of the demised premises, parking area, or common facilities by Lessee or any person or persons holding under Lessee. Lessee shall indemnify and save harmless the Lessor from any penalty, damage, or charge incurred or imposed by reason of any violation of law or ordinance by Lessee or any person or persons holding under Lessee, and from any cost, damage, or expense arising out of the death of or injury to any person or persons holding under Lessee.

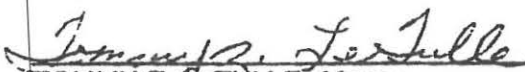
8. *No Subletting or Assignment:* This lease may not be assigned or sublet in whole or in part without the written permission of the City Council of the CITY OF BAY CITY, Texas.

9. *Facilities Open to Public:* All functions, operations, or projects held on said land or premises or in the building thereon shall be open to the entire citizenship of the CITY OF BAY CITY, Texas, and to the public generally, on the same fair and equal basis for all.

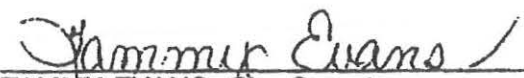
10. *Succession to Former Lease:* It is further agreed that this lease shall succeed the former lease dated March 9, 1989, and that said lease is hereby terminated in all respects.

IN WITNESS WHEREOF the CITY OF BAY CITY, Texas, and the ART LEAGUE OF BAY CITY have caused these presents to be signed by its Mayor and President, respectively, authorized by a vote by the City Council of Bay City, Texas, and the Board of Directors of the ART LEAGUE OF BAY CITY, respectively, this 2nd day of April, 1992.

CITY OF BAY CITY, TEXAS


TOMMY Z. LETULLE, Mayor
City of Bay City, Texas

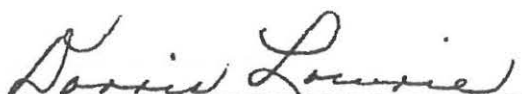
ATTEST:


TAMMY EVANS, City Secretary

ART LEAGUE OF BAY CITY


President, Art League Of Bay City

ATTEST:


Secretary, Art League Of Bay City

APPROVED AS TO FORM:

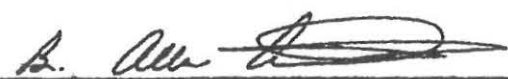

B. ALLEN CUMBIE, City Attorney

EXHIBIT “B”

RENEWAL OF LEASE

LESSOR: City of Bay City

LESSEE: The Art League of Bay City

The parties hereto hereby renew, for a term of ten (10) years, that one certain lease dated April 2, 1992, a copy of which is attached hereto as Exhibit "A", under the same terms and conditions as said original lease, said term to begin effective April 1, 2004 and end March 31, 2014.

Pursuant to Paragraph 8 of said agreement, Lessee is hereby granted permission to sublease to the Literacy Volunteers of America such portion of the premises, and upon such terms, as it shall solely determine.

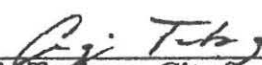
CITY OF BAY CITY

By: 

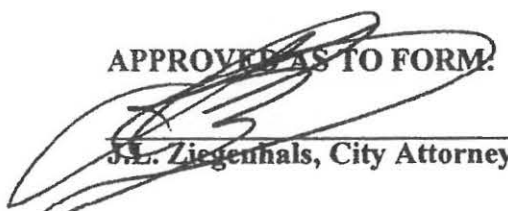
Mayor Charles Martinez, Jr.

Date: 3/25/04

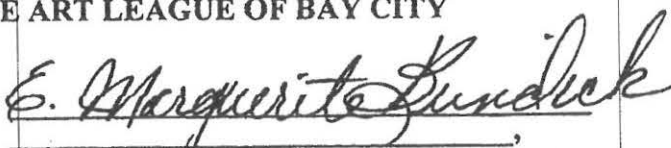
ATTEST:


Angie Tenberg, City Secretary

APPROVED AS TO FORM:


J.L. Ziegenhals, City Attorney

THE ART LEAGUE OF BAY CITY

By: 

Its President

Date: 31st Mar 2004

Attachment: 20140313 - Art League Renewal (1364 : Art League Lease)



City Council
1901 5Th Street
Bay City, TX 77414

WITHDRAWN

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Amendment
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1302 A

AGENDA ITEM (ID # 1302)

**CONSIDER AND/OR APPROVE AN ORDINANCE
ESTABLISHING A FRANCHISE FOR USE OF CITY STREETS
FOR PURPOSES OF CONDUCTING NON CONSENT TOWING
SERVICES; ESTABLISHING NON CONSENT TOWING FEES;
AND ESTABLISHING ADDITIONAL PROVISIONS RELATING
TO NON-EXCLUSIVE FRANCHISE AGREEMENTS FOR
TOWING SERVICE PROVIDERS ON A ROTATIONAL BASIS.**

HISTORY:

02/27/14 **City Council** **TABLED** **Next: 03/13/14**

RESULT: WITHDRAWN

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 NONCONSENT TOWING SERVICES; ESTABLISHING NONCONSENT TOWING FEES; AND ESTABLISHING ADDITIONAL PROVISION RELATING TO NON-EXCLUSIVE FRANCHISE AGREEMENTS FOR TOWING SERVICE PROVIDERS ON A ROTATIONAL BASIS; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE

WHEREAS, The proper and safe functioning of the auto wrecker towing business has a significant impact on the safety and welfare of the general public since it involves the use of public streets of the City, often in circumstances necessitating prompt, competent removal of dangerous traffic obstructions, and providing appropriate services to citizens who can be stranded in particularly vulnerable positions; and

WHEREAS, The City has the authority granted under state law and 49 U.S.C. Section 14501(c) (2) (A) and (C) to regulate auto wreckers with regard to safety, minimum amounts of proof of financial responsibility and with regard to prices charged by auto wreckers in transporting motor vehicles without the prior consent or authorization of the owner or operator of the motor vehicle; 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.

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

Article II, Administration and Enforcement of Chapter 110 of the City's Code of Ordinances is hereby amended as reflected in the attached Exhibit "A" which is hereby incorporated as if fully set out herein.

DIVISION 3. – NONCONSENT TOWING

Section 110.86. ADMINISTRATION.

- (A) The police ~~department~~chief shall administer and enforce this chapter.
- (B) The police chief may adopt rules for the administration and enforcement of this chapter. The rules 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 110.87. COMPLIANCE REQUIRED

- (A) A person commits an offense if the person:
- (1) performs an act prohibited by this chapter;
 - (2) fails to perform an act required by this chapter; or
 - (3) violates a rule adopted under this chapter.
- (B) A violation of this chapter is a Class C misdemeanor.
- (C) Proof of a mental state is not required for the prosecution of a violation of this chapter.

Section 110.88. This chapter does not apply to towing that is performed by a governmental entity.

Section 110.89. DEFINITIONS

In this chapter:

- (1) **CONSENT TOW** means a 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.
- (2) **DEPARTMENT** means the Bay City Police Department.
- (3) **DROP FEE:** The price to be charged in lieu of a towing fee where, after an auto wrecker/tow truck has been dispatched to, or is at the scene of a tow, and has started to physically attach or connect the vehicle to the auto wrecker, and the vehicle has not been towed from the scene when the vehicle owner requests its release.
- (4) **MANUFACTURER'S CERTIFICATE** means a plate permanently affixed to either a truck or towing equipment by the manufacturer which states the truck or equipment's gross poundage capacity.
- (5) **NON-CONSENT TOW** means any tow conducted without the permission or authorization of the vehicle's legal or registered owner or the owner's authorized

representative, regardless of the vehicle's location or condition. Towing of the vehicle of a person who has been taken into custody by a law enforcement agency or a person who is unable to select a wrecker service due to accident or injury is considered a non-consent tow. An impoundment tow from the scene of an accident is considered a non-consent tow. This definition includes all tows from private property conducted without the vehicle owner's or representative's consent (Private Property Impound Tow). A non-consent tow under this article does not include tows initiated by law enforcement agencies other than the Bay City Police Department.

- (6) **PARKING FACILITY:** Any public or private property used, in whole or in part, for paid or restricted parking.
- (7) **Texas Department of Licensing and Regulation (TDLR):** The State of Texas agency, or successor agency, responsible for the regulation and issuance of licenses for tow truck operations and vehicle storage facilities within the State of Texas.
- (8) **TOW TRUCK** means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle.
- (9) **TOWING COMPANY** means 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 but does not include a political subdivision of the state.
- (10) **UNAUTHORIZED VEHICLE** means a vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.
- (11) **VEHICLE STORAGE FACILITY** has the meaning ascribed by Section 2308.002 (Definitions) of the Texas Occupations Code

Section 110.92. Towing Services Provided By Franchisees Only

The City Related Towing Franchise is regulated by Bay City Municipal Code Chapter 110 and the corresponding franchise agreement with the towing services provider. No person shall perform towing services under this ordinance for the City unless such person has obtained a franchise from the City of Bay City. The City Council may award one or more franchises for towing services on such terms and conditions as the Council may establish in its sole discretion. 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; or
- (3) an officer or employee of the city in the course of official duty

Section 110.93. COMPLIANCE WITH STATE LAW

- (A) A towing company shall comply with all applicable state laws related to towing.

Section 110.94. EQUIPMENT REQUIRED

(A) A person may not operate a tow truck in the city unless the tow truck is equipped as required by state law and this chapter and meets the requirements of a Category A, [of] Category B, or Category C tow truck.

(B) A towing company shall maintain a tow truck and its required equipment in a safe operating condition at all times that the tow truck is operating on a public roadway.

Sec. 110.95 TOW TRUCK INSPECTION.

A peace officer may stop and inspect a tow truck to determine whether the tow truck is equipped as required by this article and whether the equipment is in working order.

Section 110.96. PEACE OFFICER NOT TO INFLUENCE SELECTION OF TOWING BUSINESS.

A peace officer may not recommend a particular towing company to a person or influence, or attempt to influence, a person's selection of a towing business, auto repair shop, or automobile dealer.

Section 110.97. MINIMUM EQUIPMENT REQUIREMENTS

(A) Except as provided by Subsection (B), a towing company must have at least one registered Category A, ~~one registered Category B, or one registered Category C~~ tow truck ~~to tow a vehicle only~~.

(B) A towing company must own or have a contract for the use of a vehicle storage facility and have at least one registered Category A tow truck to tow a vehicle that is parked illegally in a private parking facility.

Section 110.98. SOLICITING TOWING BUSINESS ON CITY STREETS RESTRICTED

A towing company may not solicit business from a City street to provide towing service to a vehicle disabled in an accident on a City street. This prohibition applies to a solicitation to tow, remove, repair, wreck, store, trade, sell, or purchase the vehicle.

Section 110.99. NOTIFICATION OF VEHICLE REMOVAL

(A) 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 shall notify the department not later than one hour after the removal.

(B) The notification must include:

- (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.

Section 110.100. TOWING RESTRICTED

(A) 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 in the fee schedule and removes the vehicle within 30 minutes.

(B) 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 110.101. TOWING FEE SCHEDULE

(A) In this section FULLY PREPARED FOR TRANSPORT describes a vehicle that is attached to a tow truck, is lifted, with tow lights and safety chains attached and, if required, is placed on a dolly in a raised position.

(B) The council shall establish a Tow Fee Schedule which the city council is hereby authorized to amend from time to time as it deems necessary and in accordance with the provisions of this ordinance. The fee schedule shall be maintained in the office of the City Secretary.

Section 110.102 PROHIBITED CHARGES FOR NON-CONSENT TOWS

(A) A person may not charge or attempt to charge a fee related to non-consent towing under this chapter:

- (1) in excess of the fee established in the tow fee schedule;
- (2) for a service not performed or equipment not used; or
- (3) that is not authorized by ordinance.

(B) This section applies to 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. This section does not apply to a

repossession. A towing company may charge a towing fee only as provided in this section. A towing company may not charge more than one fee under this section for towing a single vehicle.

(C) A towing company may charge a fully prepared for transport fee when a vehicle has been fully prepared for transport but has not been removed from the property.

(D) A towing company may charge the standard non-consent fee when it removes a vehicle from the property

Section 110.103 VEHICLE STORAGE FACILITY REQUIRED

A towing company shall own or have a contract to use a designated vehicle storage facility to store vehicles removed in a non-consent tow that is:

- (1) licensed by the State of Texas; and
- (2) located within 5,000 feet of the full or limited purpose annexation areas of the City.

Section 110.104. REMOVAL TO DESIGNATED FACILITY

(A) Except as provided in Subsection (B), a towing company that performs a non-consent tow of a vehicle from private property:

- (1) shall immediately tow the vehicle to the towing company's designated vehicle storage facility; and
- (2) may not unload the towed vehicle at a place other than the company's designated vehicle storage facility.

(B) A towing company that performs a non-consent tow of a vehicle from private property may unload a vehicle at a place other than its vehicle storage facility only:

- (1) if safety reasons or mechanical breakdown require the transfer of the vehicle to another tow truck; or
- (2) to transfer the vehicle to another tow truck, within 100 feet of the private property, if the original tow truck is the company's only available truck that is capable of entering the property and removing a vehicle, and the original truck is needed immediately for additional towing from the private property.

Section 110.105. RELEASE OF VEHICLE FROM STORAGE, IMPOUNDMENT

(A) A vehicle storage facility may not refuse to release a vehicle in its possession to the vehicle owner, or the owner's agent, after the person pays the applicable fees, unless a law enforcement agency directed that the vehicle not be released or release of the vehicle is prohibited by a court order.

(B) A person may not remove or attempt to remove a vehicle that is lawfully stored by a vehicle storage facility unless the applicable charges are paid and accepted, or the person removing the vehicle has obtained permission from the vehicle storage facility.

(C) A towing company must release a vehicle when a peace officer directs the towing company to release the vehicle.

(D) A person who pays a towing fee in cash or who tenders payment in cash meets the payment requirements under this chapter in all circumstances.

(E) A towing company shall provide a vehicle owner the option of ~~paving~~ paying the towing fee by cash or a major credit card.

Section 110.106. ACCIDENT SCENE ACCESS RESTRICTED

Except as provided under this chapter, a towing company may not enter an accident scene or other site under a peace officer's control without the officer's permission. In this article, the term "accident scene" includes a scene of a disabled vehicle.

Section 110.107. ACCIDENT SCENE REQUIREMENTS

(A) A person may not drive, or cause another person to drive, a tow truck to an accident scene on a City street unless:

- (1) the person is summoned to the scene by a peace officer or by a person involved in the accident; or
- (2) it is necessary to prevent death or bodily injury, and emergency medical personnel are not present.

(B) A towing company that is summoned to an accident scene by a person involved in an accident shall:

- (1) immediately notify the department that the towing company is responding to the accident scene; and
- (2) obtain the person's signature and information on a form provided by the police chief, if the person is present and willing to sign.

(C) A towing company stopping to protect an accident scene may not tow a vehicle from the accident scene unless it is a non-consent tow rotation or a traffic incident call at the direction of a peace officer in charge.

(D) A towing company that is summoned to an accident scene by a peace officer or a person involved in the accident shall comply with the rules adopted by the police chief or this article.

(E) A towing company that does not deliver a tow truck, of the category specified by a peace officer, to an accident scene by the deadline prescribed by this section or by a rule adopted under

this chapter may, in the discretion of a peace officer at the accident scene, forfeits the call for towing service. Regardless of whether the call was forfeited, the towing company may be subject to administrative action related to its continued listing on the non-consent tow rotation list.

Section 110.108. NON-CONSENT TOW ROTATION LISTS

(A) This section does not apply to non-consent tows of disabled vehicles from private property.

(B) The department shall maintain a rotation list of towing companies that are available to perform non-consent tows from an accident scene, from the scene of a disabled vehicle or from any location the Department is authorized to tow a vehicle. The department shall use the list to assign towing companies to perform non-consent tows in accordance with this article.

Section 110.109. LIST CATEGORIES

[(A)] The department shall assign each tow truck [towing company] on the rotation list to Category A, Category B, or Category C as provided in rules adopted by the police chief.

Section 110.110 ROTATION LIST REQUIREMENTS

(A) Any person, firm, corporation, or partnership desiring to operate one or more auto wreckers for "non-consent" towing in the City shall submit a written request for inclusion on the City's rotation list to the chief of police or designee with the following information:

1. A copy of the Applicant's current TDLR Tow Truck Permit including the following Permit attachments: Company Information and Insurance;
2. A copy of the Applicant's current TDLR Vehicle Storage Facility Permit including the following Permit attachments: Company Information; and Insurance.
3. Owner shall provide a written statement that he will comply with the provisions of this ordinance and all other ordinances, statutes and state laws applicable to motor vehicles and auto wrecker businesses. Further, that owner will ensure compliance with said laws by all his auto wrecker drivers.
4. Owner shall provide a copy of owner's Texas Sales and Use Tax Permit, for a location within one (1) mile of the city limits of the City of Bay City.
5. Only one (1) auto wrecker business may operate at any one (1) business address and/or location, regardless of whether the same person, partnership, or corporation owns more than one (1) permitted auto wrecker business.
6. Each owner shall maintain sufficient personnel to provide twenty-four hour auto wrecker service under normal circumstances. Each owner shall have: at least one telephone number which is answered twenty-four hours a day, seven days a week by that

auto wrecker business at its business address and or location without routing telephone calls through a switchboard. Routing telephone calls through a switchboard shall be grounds for removing the wrecker service from the non-consent rotation list.

7. Owner shall promptly provide written confirmation to the chief of police or designee of any changes, revisions, renewals, or non-renewals to owner's TDLR Tow Permit or TDLR Vehicle Storage Facility Permit.

Section 110.111. USE OF LISTS

(A) When a peace officer at an accident or incident scene contacts the department to send a tow truck to the scene, the department shall call the towing company whose name appears at the beginning of the non-consent tow rotation list for the category of tow truck required at the scene.

(B) If the first towing company contacted is unable to send a tow truck, the department shall continue to call towing companies in the order in which they appear on the list until a towing company on the list responds.

(C) After the department calls a company whose name appears on the non-consent tow rotation list, the company's name shall be moved to the bottom of the list.

Section 110.112. TRAFFIC INCIDENT MANAGEMENT PROGRAM

The police chief may establish a traffic incident management towing program on any major street. The program shall be established by rules adopted by the chief.

In facilitating this program, the chief may:

- (1) designate one or more zones on a street;
- (2) maintain a list of interested towing companies authorized to remove a disabled vehicle from the right-of-way of a designated street;
- (3) establish operating times and days of the week of the program;
- (4) prescribe qualifications, response times, and procedures for a participating towing company;
- (5) prohibit a towing company from charging for removal of a vehicle from the right-of-way, and authorize a towing company to charge a fee for towing to another authorized location;
- (6) remove a towing company from the list if the company fails to comply with state law, this chapter, or rules adopted under this chapter; and
- (7) impose other requirements as deemed appropriate.

Section 110.113. REMOVAL FROM NON-CONSENT TOW ROTATION LIST

(A) The police chief may remove a tow truck operator from participation in a nonconsent rotation list, including a list of the traffic incident management program, if the tow truck operator fails to comply with state law, this chapter, or rules adopted under this chapter.

(B) Except as provided in subsection C~~Θ~~, the police chief may remove a towing company from a non-consent rotation list, including a list of the traffic incident management program, if the company fails to comply with state law, this chapter, or rules adopted under this chapter.

(C) A towing company may be removed from a rotation list based upon a tow truck operator's failure to comply with state law, this chapter, or rules adopted under this chapter only if:

- (1) the company directed, encouraged, or solicited a tow truck operator's conduct; or
- (2) the company knew or should have known that the operator or other operators have repeatedly engaged in such conduct and has failed to take corrective action within a reasonable time.

Section 110.114. NOTICE REQUIRED

(A) Before taking adverse action under this article, the police chief shall notify the applicant or holder of the intended action, except that advance notice is not required in actions related to:

- (1) safety hazards;
- (2) absence of state motor carrier registration; or
- (3) absence of ownership or contract with licensed vehicle storage facility.

(B) The police chief shall send the notice by certified mail, return receipt requested to the mailing address listed on the person's application, certificate, or license, as applicable.

(C) The notice is presumed to have been received on the 10th working day after mailing, unless an earlier date is indicated on the return receipt.

(D) Except for actions that are authorized to take effect without advance notice, a [A] denial, suspension, [of] revocation, or removal is effective on the 20th day after the notice is mailed.

(E) If the police chief takes action without advance notice, the police chief shall send a notice to the person or company affected by the action that includes the factual basis for the action.

Section 110.115. HEARING

(A) The person to whom the notice is sent may request a hearing.

(B) The request must be in writing and received by the police chief not later than the 15th day after the notice was sent. If the person fails to submit to the police chief a request for hearing not later than the 15th day after the notice is sent, the suspension, revocation or denial of the license or certificate, or the removal from the list or program, becomes final on expiration of the time specified in the notice.

(C) The police chief shall hold an informal [a] hearing not later than the 15th day after the request for a hearing is received. At the hearing the formal rules of evidence do not apply. The police chief shall decide the appeal on the basis of the preponderance of the evidence presented.

(D) The police chief shall make a determination on the appeal not later than the 10th day after the hearing. The police chief may affirm, reverse, or modify the previous determination.

Section 110.116. APPEAL

(A) A person may appeal the police chief's decision in writing to the ~~city manager~~Mayor not later than the 10th day after the effective date of the decision. The person must include a statement of the grounds for the appeal.

The notice of appeal does not stay the police chief's decision.

(C) The ~~city manager~~Mayor shall schedule a public hearing not later than the 15th day after receipt of the notice of appeal. The ~~city manager~~Mayor shall give notice of the time and place set for the hearing to the police chief and the appellant not less than five days before the hearing.

Section 110.117. APPEAL PROCEDURE

(A) At an appeal hearing under Section 13-6-136 (Appeal), the police chief and the appellant may present evidence, testimony, and argument.

(B) The ~~city manager~~Mayor's decision is final.

Section 110.118. 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 ~~city manager~~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 city manager; and
- (2) deposit with the city manager 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 ~~city-manager~~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 ~~city-manager~~Mayor shall present to the city council the results of the towing fee study. The ~~city-manager~~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 ~~City-Manager~~Mayor shall present to the City Council recommendations for adjustments to the fees established by ordinance for non-consent tows.

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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 ON A ROTATIONAL BASIS; PROVIDING FOR PENALTY, CUMULATIVE AND CONFLICTS CLAUSE, SEVERABILITY, PUBLICATION AND AN EFFECTIVE DATE

WHEREAS, The proper and safe functioning of the auto wrecker towing business has a significant impact on the safety and welfare of the general public since it involves the use of public streets of the City, often in circumstances necessitating prompt, competent removal of dangerous traffic obstructions, and providing appropriate services to citizens who can be stranded in particularly vulnerable positions; and

WHEREAS, The City has the authority granted under state law and 49 U.S.C. Section 1450l(c) (2) (A) and (C) to regulate auto wreckers with regard to safety, minimum amounts of proof of financial responsibility and with regard to prices charged by auto wreckers in transporting motor vehicles without the prior consent or authorization of the owner or operator of the motor vehicle; 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.

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 27th day of February, 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
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, Mayor Pro Tem	_____	_____	_____

Mark A. Bricker, Mayor,
City of Bay City

ATTEST:

Rhonda Clegg, City Secretary

APPROVED AS TO FORM:

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

Attachment: ORDINANCE NO. - Towing Final (1302 : Towing)

EXHIBIT “A”
NON-CONSENT TOWING ORDINANCE

Attachment: ORDINANCE NO. - Towing Final (1302 : Towing)

DIVISION 3. – NON-CONSENT TOWING

Section 110.86. ADMINISTRATION.

- (A) The Police Department shall administer and enforce this chapter.
- (B) The police chief may adopt rules for the administration and enforcement of this chapter. The rules 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 110.87. COMPLIANCE REQUIRED

- (A) A person commits an offense if the person:
 - (1) performs an act prohibited by this chapter;
 - (2) fails to perform an act required by this chapter; or
 - (3) violates a rule adopted under this chapter.
- (B) A violation of this chapter is a Class C misdemeanor.
- (C) Proof of a mental state is not required for the prosecution of a violation of this chapter.

Section 110.88. This chapter does not apply to towing that is performed by a governmental entity.

Section 110.89. DEFINITIONS

In this chapter:

- (1) **CONSENT TOW** means a 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.

- (2) **DEPARTMENT** means the Bay City Police Department.
- (3) **DROP FEE:** The price to be charged in lieu of a towing fee where, after an auto wrecker/tow truck has been dispatched to, or is at the scene of a tow, and has started to physically attach or connect the vehicle to the auto wrecker, and the vehicle has not been towed from the scene when the vehicle owner requests its release.
- (4) **MANUFACTURER'S CERTIFICATE** means a plate permanently affixed to either a truck or towing equipment by the manufacturer which states the truck or equipment's gross poundage capacity.
- (5) **NON-CONSENT TOW** means any tow conducted without the permission or authorization of the vehicle's legal or registered owner or the owner's authorized representative, regardless of the vehicle's location or condition. Towing of the vehicle of a person who has been taken into custody by a law enforcement agency or a person who is unable to select a wrecker service due to accident or injury is considered a non-consent tow. An impoundment tow from the scene of an accident is considered a non-consent tow. This definition includes all tows from private property conducted without the vehicle owner's or representative's consent (Private Property Impound Tow). A non-consent tow under this article does not include tows initiated by law enforcement agencies other than the Bay City Police Department.
- (6) **PARKING FACILITY:** Any public or private property used, in whole or in part, for paid or restricted parking.
- (7) **Texas Department of Licensing and Regulation (TDLR):** The State of Texas agency, or successor agency, responsible for the regulation and issuance of licenses for tow truck operations and vehicle storage facilities within the State of Texas.
- (8) **TOW TRUCK** means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle.
- (9) **TOWING COMPANY** means 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 but does not include a political subdivision of the state.
- (10) **UNAUTHORIZED VEHICLE** means a vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.
- (11) **VEHICLE STORAGE FACILITY** has the meaning ascribed by Section 2308.002 (Definitions) of the Texas Occupations Code

Section 110.92. Towing Services Provided By Franchisees Only

The City Related Towing Franchise is regulated by Bay City Municipal Code Chapter 110 and the corresponding franchise agreement with the towing services provider. No person shall perform towing services under this ordinance for the City unless such person has obtained a franchise from the City of Bay City. The City Council may award one or more franchises for towing services on such terms and conditions as the Council may establish in its sole discretion. 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; or
- (3) an officer or employee of the city in the course of official duty

Section 110.93. COMPLIANCE WITH STATE LAW

- (A) A towing company shall comply with all applicable state laws related to towing.

Section 110.94. EQUIPMENT REQUIRED

- (A) A person may not operate a tow truck in the city unless the tow truck is equipped as required by state law and this chapter and meets the requirements of a Category A, [of] Category B, or Category C tow truck.
- (B) A towing company shall maintain a tow truck and its required equipment in a safe operating condition at all times that the tow truck is operating on a public roadway.

Sec. 110.95 TOW TRUCK INSPECTION.

A peace officer may stop and inspect a tow truck to determine whether the tow truck is equipped as required by this article and whether the equipment is in working order.

Section 110.96. PEACE OFFICER NOT TO INFLUENCE SELECTION OF TOWING BUSINESS.

A peace officer may not recommend a particular towing company to a person or influence, or attempt to influence, a person's selection of a towing business, auto repair shop, or automobile dealer.

Section 110.97. MINIMUM EQUIPMENT REQUIREMENTS

- (A) Except as provided by Subsection (B), a towing company must have at least one registered Category A tow truck.
- (B) A towing company must own or have a contract for the use of a vehicle storage facility and have at least one registered Category A tow truck to tow a vehicle that is parked illegally in a private parking facility.

Section 110.98. SOLICITING TOWING BUSINESS ON CITY STREETS RESTRICTED

A towing company may not solicit business from a City street to provide towing service to a vehicle disabled in an accident on a City street. This prohibition applies to a solicitation to tow, remove, repair, wreck, store, trade, sell, or purchase the vehicle.

Section 110.99. NOTIFICATION OF VEHICLE REMOVAL

(A) 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 shall notify the department not later than one hour after the removal.

(B) The notification must include:

- (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.

Section 110.100. TOWING RESTRICTED

(A) 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 in the fee schedule and removes the vehicle within 30 minutes.

(B) 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 110.101. TOWING FEE SCHEDULE

(A) In this section FULLY PREPARED FOR TRANSPORT describes a vehicle that is attached to a tow truck, is lifted, with tow lights and safety chains attached and, if required, is placed on a dolly in a raised position.

(B) The council shall establish a Tow Fee Schedule which the city council is hereby authorized to amend from time to time as it deems necessary and in accordance with the provisions of this ordinance. The fee schedule shall be maintained in the office of the City Secretary.

Section 110.102 PROHIBITED CHARGES FOR NON-CONSENT TOWS

(A) A person may not charge or attempt to charge a fee related to non-consent towing under this chapter:

- (1) in excess of the fee established in the tow fee schedule;
- (2) for a service not performed or equipment not used; or
- (3) that is not authorized by ordinance.

(B) This section applies to 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. This section does not apply to a repossession. A towing company may charge a towing fee only as provided in this section. A towing company may not charge more than one fee under this section for towing a single vehicle.

(C) A towing company may charge a fully prepared for transport fee when a vehicle has been fully prepared for transport but has not been removed from the property.

(D) A towing company may charge the standard non-consent fee when it removes a vehicle from the property

Section 110.103 VEHICLE STORAGE FACILITY REQUIRED

A towing company shall own or have a contract to use a designated vehicle storage facility to store vehicles removed in a non-consent tow that is:

- (1) licensed by the State of Texas; and
- (2) located within 5,000 feet of the full or limited purpose annexation areas of the City.

Section 110.104. REMOVAL TO DESIGNATED FACILITY

(A) Except as provided in Subsection (B), a towing company that performs a non-consent tow of a vehicle from private property:

- (1) shall immediately tow the vehicle to the towing company's designated vehicle storage facility; and
- (2) may not unload the towed vehicle at a place other than the company's designated vehicle storage facility.

(B) A towing company that performs a non-consent tow of a vehicle from private property may unload a vehicle at a place other than its vehicle storage facility only:

- (1) if safety reasons or mechanical breakdown require the transfer of the vehicle to another tow truck; or

(2) to transfer the vehicle to another tow truck, within 100 feet of the private property, if the original tow truck is the company's only available truck that is capable of entering the property and removing a vehicle, and the original truck is needed immediately for additional towing from the private property.

Section 110.105. RELEASE OF VEHICLE FROM STORAGE, IMPOUNDMENT

(A) A vehicle storage facility may not refuse to release a vehicle in its possession to the vehicle owner, or the owner's agent, after the person pays the applicable fees, unless a law enforcement agency directed that the vehicle not be released or release of the vehicle is prohibited by a court order.

(B) A person may not remove or attempt to remove a vehicle that is lawfully stored by a vehicle storage facility unless the applicable charges are paid and accepted, or the person removing the vehicle has obtained permission from the vehicle storage facility.

(C) A towing company must release a vehicle when a peace officer directs the towing company to release the vehicle.

(D) A person who pays a towing fee in cash or who tenders payment in cash meets the payment requirements under this chapter in all circumstances.

(E) A towing company shall provide a vehicle owner the option of paying the towing fee by cash or a major credit card.

Section 110.106. ACCIDENT SCENE ACCESS RESTRICTED

Except as provided under this chapter, a towing company may not enter an accident scene or other site under a peace officer's control without the officer's permission. In this article, the term "accident scene" includes a scene of a disabled vehicle.

Section 110.107. ACCIDENT SCENE REQUIREMENTS

(A) A person may not drive, or cause another person to drive, a tow truck to an accident scene on a City street unless:

- (1) the person is summoned to the scene by a peace officer or by a person involved in the accident; or
- (2) it is necessary to prevent death or bodily injury, and emergency medical personnel are not present.

(B) A towing company that is summoned to an accident scene by a person involved in an accident shall:

- (1) immediately notify the department that the towing company is responding to the accident scene; and

(2) obtain the person's signature and information on a form provided by the police chief, if the person is present and willing to sign.

(C) A towing company stopping to protect an accident scene may not tow a vehicle from the accident scene unless it is a non-consent tow rotation or a traffic incident call at the direction of a peace officer in charge.

(D) A towing company that is summoned to an accident scene by a peace officer or a person involved in the accident shall comply with the rules adopted by the police chief or this article.

(E) A towing company that does not deliver a tow truck, of the category specified by a peace officer, to an accident scene by the deadline prescribed by this section or by a rule adopted under this chapter may, in the discretion of a peace officer at the accident scene, forfeits the call for towing service. Regardless of whether the call was forfeited, the towing company may be subject to administrative action related to its continued listing on the non-consent tow rotation list.

Section 110.108. NON-CONSENT TOW ROTATION LISTS

(A) This section does not apply to non-consent tows of disabled vehicles from private property.

(B) The department shall maintain a rotation list of towing companies that are available to perform non-consent tows from an accident scene, from the scene of a disabled vehicle or from any location the Department is authorized to tow a vehicle. The department shall use the list to assign towing companies to perform non-consent tows in accordance with this article.

Section 110.109. LIST CATEGORIES

[(A)] The department shall assign each tow truck [towing company] on the rotation list to Category A, Category B, or Category C as provided in rules adopted by the police chief.

Section 110.110 ROTATION LIST REQUIREMENTS

(A) Any person, firm, corporation, or partnership desiring to operate one or more auto wreckers for "non-consent" towing in the City shall submit a written request for inclusion on the City's rotation list to the chief of police or designee with the following information:

1. A copy of the Applicant's current TDLR Tow Truck Permit including the following Permit attachments: Company Information and Insurance;
2. A copy of the Applicant's current TDLR Vehicle Storage Facility Permit including the following Permit attachments: Company Information; and Insurance.
3. Owner shall provide a written statement that he will comply with the provisions of this ordinance and all other ordinances, statutes and state laws applicable to motor vehicles

and auto wrecker businesses. Further, that owner will ensure compliance with said laws by all his auto wrecker drivers.

4. Owner shall provide a copy of owner's Texas Sales and Use Tax Permit, for a location within one (1) mile of the city limits of the City of Bay City.

5. Only one (1) auto wrecker business may operate at any one (1) business address and/or location, regardless of whether the same person, partnership, or corporation owns more than one (1) permitted auto wrecker business.

6. Each owner shall maintain sufficient personnel to provide twenty-four hour auto wrecker service under normal circumstances. Each owner shall have: at least one telephone number which is answered twenty-four hours a day, seven days a week by that auto wrecker business at its business address and or location without routing telephone calls through a switchboard. Routing telephone calls through a switchboard shall be grounds for removing the wrecker service from the non-consent rotation list.

7. Owner shall promptly provide written confirmation to the chief of police or designee of any changes, revisions, renewals, or non-renewals to owner's TDLR Tow Permit or TDLR Vehicle Storage Facility Permit.

Section 110.111. USE OF LISTS

(A) When a peace officer at an accident or incident scene contacts the department to send a tow truck to the scene, the department shall call the towing company whose name appears at the beginning of the non-consent tow rotation list for the category of tow truck required at the scene.

(B) If the first towing company contacted is unable to send a tow truck, the department shall continue to call towing companies in the order in which they appear on the list until a towing company on the list responds.

(C) After the department calls a company whose name appears on the non-consent tow rotation list, the company's name shall be moved to the bottom of the list.

Section 110.112. TRAFFIC INCIDENT MANAGEMENT PROGRAM

The police chief may establish a traffic incident management towing program on any major street. The program shall be established by rules adopted by the chief.

In facilitating this program, the chief may:

- (1) designate one or more zones on a street;
- (2) maintain a list of interested towing companies authorized to remove a disabled vehicle from the right-of-way of a designated street;
- (3) establish operating times and days of the week of the program;

- (4) prescribe qualifications, response times, and procedures for a participating towing company;
- (5) prohibit a towing company from charging for removal of a vehicle from the right-of-way, and authorize a towing company to charge a fee for towing to another authorized location;
- (6) remove a towing company from the list if the company fails to comply with state law, this chapter, or rules adopted under this chapter; and
- (7) impose other requirements as deemed appropriate.

Section 110.113. REMOVAL FROM NON-CONSENT TOW ROTATION LIST

- (A) The police chief may remove a tow truck operator from participation in a non-consent rotation list, including a list of the traffic incident management program, if the tow truck operator fails to comply with state law, this chapter, or rules adopted under this chapter.
- (B) Except as provided in subsection C, the police chief, or his designee, may remove a towing company from a non-consent rotation list, including a list of the traffic incident management program, if the company fails to comply with state law, this chapter, or rules adopted under this chapter.
- (C) A towing company may be removed from a rotation list based upon a tow truck operator's failure to comply with state law, this chapter, or rules adopted under this chapter only if:
 - (1) the company directed, encouraged, or solicited a tow truck operator's conduct; or
 - (2) the company knew or should have known that the operator or other operators have repeatedly engaged in such conduct and has failed to take corrective action within a reasonable time.

Section 110.114. NOTICE REQUIRED

- (A) Before taking adverse action under this article, the police chief shall notify the applicant or holder of the intended action, except that advance notice is not required in actions related to:
 - (1) safety hazards;
 - (2) absence of state motor carrier registration; or
 - (3) absence of ownership or contract with licensed vehicle storage facility.
- (B) The police chief shall send the notice by certified mail, return receipt requested to the mailing address listed on the person's application, certificate, or license, as applicable.
- (C) The notice is presumed to have been received on the 10th working day after mailing, unless an earlier date is indicated on the return receipt.
- (D) Except for actions that are authorized to take effect without advance notice, a [A] denial, suspension, [of] revocation, or removal is effective on the 20th day after the notice is mailed.

(E) If the police chief takes action without advance notice, the police chief shall send a notice to the person or company affected by the action that includes the factual basis for the action.

Section 110.115. HEARING

(A) The person to whom the notice is sent may request a hearing.

(B) The request must be in writing and received by the police chief not later than the 15th day after the notice was sent. If the person fails to submit to the police chief a request for hearing not later than the 15th day after the notice is sent, the suspension, revocation or denial of the license or certificate, or the removal from the list or program, becomes final on expiration of the time specified in the notice.

(C) The police chief shall hold an informal [a] hearing not later than the 15th day after the request for a hearing is received. At the hearing the formal rules of evidence do not apply. The police chief shall decide the appeal on the basis of the preponderance of the evidence presented.

(D) The police chief shall make a determination on the appeal not later than the 10th day after the hearing. The police chief may affirm, reverse, or modify the previous determination.

Section 110.116. APPEAL

(A) A person may appeal the police chief's decision in writing to the Mayor not later than the 10th day after the effective date of the decision. The person must include a statement of the grounds for the appeal.

The notice of appeal does not stay the police chief's decision.

(C) The Mayor shall schedule a public hearing not later than the 15th day after receipt of the notice of appeal. The Mayor shall give notice of the time and place set for the hearing to the police chief and the appellant not less than five days before the hearing.

Section 110.117. APPEAL PROCEDURE

(A) At an appeal hearing under Section 13-6-136 (Appeal), the police chief and the appellant may present evidence, testimony, and argument.

(B) The Mayor's decision is final.

Section 110.118. 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 Mayor 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: 03/13/14 07:00 PM
Department: Police Department
Category: Personnel
Prepared By: Robert Lister
Initiator: Roger Barker
Sponsors:
DOC ID: 1370

TABLED

AGENDA ITEM (ID # 1370)

**CONSIDER AND/OR APPROVE TAKING ACTION TO
APPROVE FUNDING FOR TWO ALLOCATED POLICE
DEPARTMENT PATROL POSITIONS.**

Funding approval of these two remaining allocated patrol positions will allow the department to post job openings.



City Council
1901 5Th Street
Bay City, TX 77414

Meeting: 03/13/14 07:00 PM
Department: Police Department
Category: Property
Prepared By: Robert Lister
Initiator: Roger Barker
Sponsors:
DOC ID: 1354

ADOPTED

AGENDA ITEM (ID # 1354)

**CONSIDER AND/OR APPROVE TAKING ACTION ON THE
REQUEST TO DONATE TWO GETAC LAPTOP COMPUTERS
ASSIGNED TO THE BAY CITY POLICE DEPARTMENT TO THE
CITY OF SWEENY POLICE DEPARTMENT.**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Carolyn Thames, Mayor Pro-Tem
SECONDER:	Steven Johnson, Councilman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman



MADE IN CHINA
P/N: 242830700003

S400 52628307100A

S/N: RAB39S0039

-15°C



avoid continuous body contact and do not place this
while it is operating.

MADE IN CHINA
P/N:242830700003

S400 52628307100A



S/N:RAB39S0063



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 1367)

Meeting: 03/13/14 07:00 PM
Department: Public Works
Category: Contract
Prepared By: Barry Calhoun
Initiator: Barry Calhoun
Sponsors:
DOC ID: 1367

CONSIDER AND/OR APPROVE TAKING ACTION ON AN AGREEMENT WITH DUNN HEAT EXCHANGERS AND THE TEXAS DEPARTMENT OF AGRICULTURE IN REGARDS TO A COMMUNITY DEVELOPMENT BLOCK GRANT FROM THE TEXAS CAPITAL FUND FOR WATER AND SEWER IMPROVEMENTS TO SERVE THE PROPOSED DUNN HEAT EXCHANGERS FACILITY.

CONSIDER AND/OR APPROVE THE CITY OF BAY CITY, TEXAS TO ENTER INTO AN AGREEMENT WITH DUNN HEAT EXCHANGERS, INC. IN RELATION TO THE TEXAS DEPARTMENT OF AGRICULTURE FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FROM THE TEXAS CAPITAL FUND TO PROVIDE FUNDING FOR WATER AND SEWER IMPROVEMENTS ALONG STATE HIGHWAY 60 FROM 3158 TO FM 3516.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Julie Estlinbaum, Councilwoman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

STATE OF TEXAS §
 KNOW ALL MEN BY THESE PRESENTS
 MATAGORDA TEXAS §

**CONTRACTOR/COMPANY AGREEMENT
 TEXAS CAPITAL FUND CONTRACT NO. 713092¹**

1. DATES AND PARTIES: The effective date of this Agreement is _____, 2014, and the parties are the following:

COMPANY NAME: **Dunn Heat Exchangers, Inc.**
 410 21st St. S.
 P.O. Box 3028
 Texas City, TX 77592

TCF CONTRACTOR: **City of Bay City**
 1901 5th Street
 Bay City, TX 77414

2. RESPONSIBILITIES: The TCF Contractor and Company shall complete the activities specified Exhibits A, Performance Statement, and B, Budget, of Texas Department of Agriculture TCF Contract No. 713092 (TCF Contract) as follows:

Project Summary

The purpose of this Economic Development project is to provide infrastructure activities in the form of easement acquisition, water and sewer improvements, as well as engineering and administrative services in support of the Company. The Company shall be constructing manufacturing facility located at 1702 State Highway 60 in Bay City, TX. The location of the building and land is defined as the Companies project site. The infrastructure activities shall allow the Company to begin its operations in the City of Bay City, Texas. The Company is a manufacturer of power boilers and heat exchangers. National objective of this CDBG economic development program is to primarily benefit LMI persons through permanent job creation and retention.

Project Activities

The Contractor shall provide to the Department documentation showing winning bid(s) for "minimum necessary" infrastructure activities that are needed to adequately serve only the Company. These bids also shall contain the alternate provisions for the winning bid(s) addressing oversizing, extra activities or improvements. Oversizing and/or extra activities are defined as activities exceeding the "minimum necessary" needed for this project and are ineligible for payment with contract funds. The Contractor is responsible for payment of all oversizing or extra activities and/or cost overruns and may be required to provide evidence of expenditure(s) prior to drawing contract funds.

The "minimum necessary" activities are identified below and the Contractor shall expend a total of Five Hundred Thousand and No/100 Dollars (\$500,000.00) of contract funds on these activities
Acquisition Activities of needed real property, easements and/or rights-of-way in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and HUD implementing regulations (49 C.F.R. Part 24). **Water Activities** The "minimum necessary" activities are to consist of two thousand six hundred eighty linear feet (2,680 l.f.) of twelve-

¹ A fully executed Contractor/Company Agreement must be submitted to TDA within 6 months of the contract execution date of September 20, 2013

inch (12") water line, five (5) standard fire hydrants, three (3) gate valves, as well as additional activity to support above mentioned improvements. These improvements shall be in the following locations:

Location	From	To	Distance
SH 60	2,600 ft N of FM 3158	FM 3516	2,680 l.f.

Sewer Activities The "minimum necessary" activities are to consist of six thousand one hundred sixty linear feet (6,160 l.f.) of six-inch (6") force main, ten linear feet (10 ft) of twelve-inch (12") sewer line; one (1) lift station, one (1) manhole, one (1) tap with cleanout, as well as additional activity to support above mentioned improvements. These improvements shall be in the following locations:

Location	From	To	Distance
SH 60	2,600 ft N of FM 3158	Lift Station near Pine Knoll St.	6,160 l.f.

Engineering Activities for eligible project-related engineering services, including preliminary and final design plans and specifications, interim and final inspections.

Administration Activities to carry out project administration activities, including the cost associated with the required program fiscal and compliance audit as required in Section 19.

In the Contractor's economic development application for this project, the Contractor provided documentation ensuring the Company has injected at a minimum Four Hundred Seventy-five Thousand and No/100 Dollars (\$475,000.00) for real estate equity for this project.

The Contractor shall ensure that the Company injects Twenty-five Thousand and No/100 Dollars (\$25,000.00) for this project for working capital.

Upon the Department's request, the Contractor shall provide evidence that contract funds were expended as specified in Exhibits A and B.

Project Objective

As a result of this project, the Contractor shall ensure that the Company creates twenty (20) permanent jobs. Of these permanent jobs, fifty-one percent (51%) of the Company's jobs shall be held by LMI persons prior to Date of Termination. In the event more than the obligated permanent jobs are created, the Contractor shall ensure that at least fifty-one percent (51%) of all permanent jobs created, by the Company, during the contract period are held by LMI persons. All jobs to be created and/or retained shall be located at the Company's project site, as described in the Project Summary. Any employee transferring from another Company location or related business operation shall be identified and may not be considered as a created and/or retained permanent job.

3. **JOB CREATION:** A condition requiring that the Company create twenty (20) permanent jobs. Fifty-one percent (51%) or eleven (11) of these permanent jobs shall be held by LMI persons prior to Date of Termination. In the event more than twenty (20) permanent jobs are created, the Contractor shall ensure that at least fifty-one percent (51%) of all permanent jobs created, during the contract period, are held by LMI persons.
4. **PAYROLL REPORTS:** A condition requiring the Company submit to the Contractor a copy of the Company's starting payroll, which may be in electronic file format, verifying the number of persons employed at the Bay City, Texas, location as of Date of Execution to establish a starting benchmark². At a minimum, the payroll report shall provide the following employee information:

² As per the Contract between TDA and the City of Bay City, TCF Grant funds cannot be drawn until documentation is provided to TDA.

- a) the employee's full name;
- b) the last four digits of the employee's social security number;
- c) an indication of whether employee is full time or part time as defined in the current version of the TXCDBG Project Implementation Manual;
- d) Date Hired;
- e) Wages; and
- f) Hours Worked.

Full Time:

- 1. A position wherein gainful engagement (employment) in an occupation, business, trade, profession, etc., is performed for production of goods or services;
- 2. A position that is a permanent job for which continuation of employment is not dependent on funds provided through the Texas Community Development Program;
- 3. A position that provides employment for 1,820 hours or more per year and 35 hours or more per week.

Part Time:

- 1. A position wherein gainful engagement (employment) in an occupation, business, trade, profession, etc., is performed for production of goods or services;
- 2. A position that is a permanent job for which continuation of employment is not dependent on funds provided through the Texas Community Development Program
- 3. A part-time job is generally defined as permanent employment for at least 1,040 hours per year and 20 hours or more per week per person on an annualized basis. Two part-time jobs equal one full-time job. Employees working less than 20 hours per week will not be considered as part of job creation.

In addition, an ending payroll report shall be submitted with the closeout documents, to document the number of permanent jobs created and identify the LMI persons.

5. EMPLOYEE CERTIFICATION REPORT: The Company shall submit to TCF Contractor the Employee Certification Report, the first page of the Texas Workforce Commission Report and if the Company has more than one (1) location in Texas, a Quarterly Payroll Report, no later than the fifth (5th) day of the second (2nd) month after the calendar quarter end.

6. REPAYMENT OF GRANT FUNDS: The Company shall be liable to the TCF Contractor for an amount not to exceed the Department's maximum contractual obligation (\$500,000.00) in the event that Company fails to satisfy the terms of this Agreement such that any repayment of TCF Contract funds is required by the Department. Company agrees to pay directly to the TCF Contractor an amount equal to the repayment amount required by the Department. In addition, Company agrees to pay TCF Contractor for any outstanding expenditures for project engineering, administration, acquisition or construction activities for work performed, materials purchased, or other related costs incurred prior to the date that Company's failure to satisfy the terms of this Agreement becomes known to TCF Contractor. All payments shall be furnished by Company to TCF Contractor within thirty (30) days of request.

7. ASSET RESTRICTION: Assets are restricted from being transferred out of the Company without the Department's written consent except during the normal course of business (i.e. cash, fixed assets used in the production process and accounts receivable) during the contract period.

8. TAXES: The Company certifies that all federal taxes and taxes originating in Texas are currently paid or shall be paid within thirty (30) days of Date of Execution and all future taxes shall be paid when due. The Department or the Contractor may require at any time that the Company provide proof of payment of these taxes.

9. QUARTERLY VISITS: TCF Contractor and the Department shall be allowed to have access and make quarterly on-site visits to the Company to assess or monitor the progress toward job creation and requiring the Company to provide to local officials at the time of on-site visits information regarding job creation and any

other information deemed necessary by the TCF Contractor and the Department to administer the TCF contract and the agreement between the Company and the TCF Contractor.

10. RECORDS: The Company shall maintain records and reports regarding the documentation of LMI job creation and LMI percentages, LMI benefit and beneficiaries by race, ethnicity, gender and disability status in the same manner and to the same extent as the Department requires of TCF Contractor.

11. OWNERSHIP: The Company's principals are restricted from reducing their proportionate Company ownership without prior written approval from the TCF Contractor and the Department during the contract period.

12. PERMITS: The Company shall obtain any and all applicable permits or approvals required by any federal, state or local entity or regulatory agency with jurisdiction.³

13. UNDOCUMENTED WORKERS: The Company certifies that it does not and will not knowingly employ any undocumented worker who is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in the United States. If, after receiving any public subsidy from Contractor, the Company is convicted of a violation under 8 U.S.C. 1324a(f), the Company shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Subtitle F, Title 10 of the Texas Government Code Sec. 2264.053, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the Company of the violation.

14. SECURITY DOCUMENT:⁴ The Contractor shall provide the Department a copy of a contract or performance bond, letter of credit or an irrevocable line of credit issued by a financial institution ("Security Document") in the minimum amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00). The Contractor or the Company must obtain the security document to guarantee the contract. The security document must contain provisions that indicate, at a minimum:

- a. The manner in which Contractor may make a claim for failure to meet contract requirements, which includes failure to meet job creation requirements or termination of the Contract;
- b. Benefitting parties to the document;
- c. Specific reference to the contract and TDA;
- d. Notice to TDA in the event that the security document is terminated or the dollar value is reduced;
- e. The length of duration of the security document; and
- f. The dollar amount covered by the security document.

15. CERTIFICATE OF FLOOD INSURANCE⁵: In the same manner and to the same extent that the Department requires of TCF contractor, the Company shall provide the TCF Contractor with a copy of a certificate of insurance verifying flood insurance covering the Company's project site specified in Exhibit A or an original signed statement from the Contractor's authorized signatory that indicates such property does not require flood insurance.

16. PROJECT SIGNAGE: All construction projects, including, but not limited to, buildings, structures, water transmission lines, sewer collection lines, gas transmission lines, electric transmission lines, drainage, roadways and railroad improvements utilizing TCF/CDBG funding shall have temporary signage erected in a prominent location at the construction project site or along a major thoroughfare close to the construction area. Such signage, which may be provided to Contractor by the Department, shall be erected when construction begins, be legible from a distance of at least three (3) feet, and remain in place until construction is complete.

All project signage required by this section shall contain the following wording: "Funding from the Texas Department of Agriculture, in cooperation with the United States Department of Housing and Urban Development, helped make this economic development project possible."

³ As per the Contract between TDA and the City of Bay City, TCF Grant construction funds cannot be drawn until documentation is provided to TDA.

⁴ As per the Contract between TDA and the City of Bay City, TCF Grant funds cannot be drawn until documentation is provided to TDA.

⁵ As per the Contract between TDA and the City of Bay City, TCF Grant construction funds cannot be drawn until documentation is provided to TDA.

- 17. CONSTRUCTION COST OVERRUNS/OVERSIZING:** Pursuant to the terms of the TCF Contract, TCF grant funds can only be used for the “minimum necessary” infrastructure activities that are needed to adequately serve only the Company and cannot be used for oversizing or extra activities and/or cost overruns. Therefore, under this agreement, the party responsible to pay for all costs related to oversizing or extra activities and/or all cost overruns is the Dunn Heat Exchangers.

TCF Contractor and its agents shall use all reasonable efforts to ensure that plans and specifications for construction and acquisition activities are the “minimum necessary” infrastructure activities and are designed/constructed such that they may be completed within the available TCF Contract construction and acquisition budget of \$ 450,000 .

Upon receipt of the bid tabulation and/or the acquisition purchase documents, TCF Contractor shall notify the Company of potential cost overruns known to TCF Contractor. TCF Contractor shall not award a contract or execute an agreement that exceeds the TCF Contract funds available without prior written authorization by Company.

TCF Contractor shall not make or approve contract change orders that extend the scope of work beyond the “minimum necessary” activities required to satisfy the TCF Contract Performance Statement. In the event that a change order(s) that exceeds the available grant funds is required, TCF Contractor shall not execute the change order without prior written approval from the Company.

If Company fails to authorize cost overruns or change orders for any portion of the \$ 500,000 TCF Contract budget that are for activities required to complete the “minimum necessary” activities such that the TCF Contractor is unable to satisfy the terms and conditions of the TCF Contract and the Department demands repayment or reimbursement of sums previously approved and paid by the Department to TCF Contractor, the Company shall pay all such sums on demand by TCF Contractor. In addition, the Company shall pay any and all outstanding construction, acquisition, engineering, and administration costs incurred by TCF Contractor that have not yet been paid by the Department.

If cost overruns occur in any portion of the \$ 500,000 TCF Contract budget which were not anticipated by TCF Contractor and are not proximately caused by the sole negligence of TCF Contractor, Company shall be responsible for payment of all such costs upon demand by TCF Contractor.

18. UNIFORM RELOCATION ASSISTANCE AND/OR REAL PROPERTY ACQUISITION POLICIES ACT OF 1970:⁶ TCF Contractor shall ensure that all acquisition of real property, easements and/or rights-of-way, for this proposed project be in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.), HUD implementing regulations (49 C.F.R. Part 24) and submit a real property acquisition report. In the same manner and to the same extent that the Department requires of TCF Contractor, Company shall submit to TCF Contractor certification from the Company’s authorized signatory or legal counsel that all warranty deeds, easements and/or rights-of-way have been recorded or real estate acquisition was not required for both private and public real property. Company shall grant by donation to TCF Contractor all necessary easements or rights-of-way pertaining to the Project Activities under the TCF Contract.

19. START OF BUILDING CONSTRUCTION⁷: In the same manner and to the same extent that the Department requires of TCF contractor, Company shall provide to the Contractor evidence of the start of building construction on the Company’s project site as specified in Exhibit A.

20. MATCHING FUNDS⁸: In the same manner as the Department requires of the TCF Contractor, the Company shall submit to TCF Contractor a ledger with support documentation that includes copies of invoices

⁶ As per the Contract between TDA and the City of Bay City, TCF Grant construction or acquisition funds cannot be drawn until documentation is provided to TDA.

⁷ As per the Contract between TDA and the City of Bay City, TCF Grant construction funds cannot be drawn until documentation is provided to TDA.

⁸ As per the Contract between TDA and the City of Bay City, TCF Grant contract cannot be closed out until documentation is provided to TDA.

and proof of payment (i.e. paid receipts, canceled checks, wire transfer receipt) documenting match expenditures in the minimum amount of \$ Twenty-five Thousand and No/100 Dollars (\$25,000.00) from the Company for working capital within sixty (60) days of expenditure of funds, but no later than thirty (30) days prior to Date of Termination.

21. ENDING PAYROLL⁹: The Company shall submit to the Contractor an ending payroll at least 30 days prior to the contract expiration date, which may be in electronic file format, verifying the number of persons employed at the Bay City, Texas, location for the close out of this contract. A *Family Income/Size Certification (Form D7)* for each LMI employee must also be included with the ending payroll

The Final Payroll Report for the Company must report all employees that were working for the business prior to the execution date of the Grant Recipient TCF contract AND all newly hired employees reported for job creation requirements. For **each employee** the report must contain at a minimum:

- a) the employee's full name;
- b) the last four digits of the employee's social security number;
- c) an indication of whether employee is full time or part time as defined in the current version of the TXCDBG Project Implementation Manual;
- d) Date Hired;
- e) Wages; and
- f) Hours Worked.

22. FINANCIAL STATEMENTS: During the contract period and when requested by the Department, the Company shall submit to TCF Contractor a copy of the Company's compiled Balance Sheet and Income Statement or an audited Balance Sheet and Income Statement. During the contract term, and when requested by the Department, the Contractor shall submit to the Department a copy of personal financial statements for all Companies principals in the time prescribed by the Department

23. HAZARD AND LIABILITY INSURANCE¹⁰: The Contractor shall provide the Department with a copy of a certificate of hazard and liability insurance coverage for the Company's real estate improvements located on the project site within sixty (60) days of construction completion, but no later than thirty (30) days prior to contract's expiration date. This coverage shall be the greater of a minimum of Four Hundred Fifty thousand and No/100 Dollars or an amount equal to the building's replacement value and names the Contractor as a loss payee

24. VIOLATION OF LAW: Company shall not use the Project Activities constructed under the agreement between the Department and TCF Contractor in violation of any Texas laws or regulations.

25. REPRESENTATION: Company warrants and represents, which warranties and representations shall be continuing during the contract period that Company utilizes no trade names in the conduct of its business, except as disclosed above, has not changed names, or acquired any other business, other than indicated hereinabove.

26. NAME CHANGE: Company will notify Contractor in writing prior to any change in Company's name, or if an organization, any change in identity or structure.

27. DEFINITION OF TERMS: Unless the context otherwise indicates, all terms used herein which are defined in the Texas Uniform Commercial Code shall have the meaning therein stated.

28. SUCCESSORS: This agreement shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties.

⁹ As per the Contract between TDA and the City of Bay City, TCF Grant contract cannot be closed out until documentation is provided to TDA.

¹⁰ As per the Contract between TDA and the City of Bay City, TCF Grant contract cannot be closed out until documentation is provided to TDA.

29. IF UNENFORCEABLE: If any provision of this agreement proves unlawful or unenforceable by a court having jurisdiction over the parties or the subject matter, such provision shall be severable from the other provisions of this agreement, and all remaining provisions shall be fully enforceable.

30. MAIN CONTACT PERSONS: The main contact person for the Company is Pete Dunn Jr., Owner for employee related issues, grant closeout, construction progress, and all other issues. The main contact person for TCF Contractor is Barry Calhoun, Public Works Director of Bay City, TX.

31. GOVERNING LAW AND VENUE: This agreement shall be governed by the laws of Texas, which State shall also be deemed the place where this agreement was entered into and the place of performance and transaction of business of the parties. In the event of litigation pertaining to the agreement, the exclusive forum, venue and place of jurisdiction shall also be Matagorda Co, Texas, and the State of Texas unless otherwise designated in writing by TCF Contractor.

32. SPECIAL CONDITIONS: Any other relevant details or special conditions placed on this agreement as outlined in the agreement between TCF Contractor and the Department and the then current Texas CDBG Implementation Manual, policy issuances, or any other program requirements, to include all program related compliance responsibilities shall be incorporated into this agreement for all purposes as if they were written here.

33. AUTHORITY TO MAKE AND USE COPIES: Company authorizes TCF Contractor to make copies, photocopies, reproductions and other facsimiles (copies) of this original agreement for the purpose of filing and for any other purposes permitted as if such copies were the original.

34. TERM OF AGREEMENT: The term of this agreement shall commence upon its execution by the parties and shall be completed either by termination date of the TCF Contract between TCF Contractor and Department or upon completion and close out of the TCF Contract between TCF Contractor and the Department, whichever is later.

35. ADDITIONAL SERVICES: The Company shall pay all fees charged for additional engineering and administrative services associated with the TCF Contract activities that are a result of any action or request by the Company. Additional service fees may only be incurred by the company for additional engineering and administrative services when requested by the company in writing and shall be determined by the rates and terms stated in the engineering and administrative services agreements executed by TCF Contractor and attached hereto and incorporated by reference herein.

36. ADDITIONAL ADMINISTRATIVE FEES FOR WORK BEYOND 36 MONTHS: Should the Company fail to meet its job creation and reporting obligations under this Agreement or the TCF State Contract during the original 36-month period, the Company shall be responsible for activities required to maintain the TCF Contractor's compliance with the terms of the State Contract. Fees are payable directly to the TCF Contractor's grant administrator: Extension Request Fee of \$500.00: Fee includes preparation and processing of amendment documents required to submit an Extension Request to TDA in order to allow additional time for the Company to fulfill its job creation and reporting requirements under this Agreement and/or the TCF Contract. Fee is due and payable directly to the grant administrator on the submission date of the Amendment Request to Extend the contract. Quarterly Reporting Fee of \$500.00 per Quarter: Fee includes preparing and processing of quarterly reports as outlined in Section 5 of this Agreement. Fee is due and payable directly to the grant administrator on the first business day of the quarter for all quarters that the project remains open after the original 36-month period.

37. ADMINISTRATIVE FEES FOR ADDITIONAL LABOR STANDARDS SERVICES: If TCF Contractor's grant administrator must furnish Additional Labor Standards services beyond its contracted scope of work, such services shall be paid for by the Company directly to the grant administrator at an hourly rate of Seventy-five and no/100 Dollars (\$75.00). Additional Labor Standards services shall be required when: 1) a prime construction contractor utilizes more than three (3) sub-contractors; and/or 2) there are more than two (2) prime construction contracts.

38. HOLD HARMLESS AND INDEMNITY: In the event Company fails to perform its Contractual obligations under this agreement Company shall hold harmless and indemnify TCF Contractor from any and all claims, demands, causes of action, obligations and liabilities resulting from or caused or created by said failure of Company, including but not limited to and by way of illustration and not limitation, the following: a failure to pay change orders, a failure to pay cost overruns, a failure to perform its obligations regarding job creation, etc.

39. ATTORNEY'S FEES: The prevailing party in any dispute concerning the interpretation and enforcement of this agreement shall be entitled to its reasonable attorney's fees.

IN WITNESSETH HEREOF, the Company and Contractor have executed this Agreement as of the date indicated above.

DUNN HEAT EXCHANGERS, INC.

By: _____

Its: OWNER _____

CITY OF BAY CITY

By: _____
MAYOR

ATTEST:



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 1366)

Meeting: 03/13/14 07:00 PM
Department: Public Works
Category: Contract
Prepared By: Barry Calhoun
Initiator: Barry Calhoun
Sponsors:
DOC ID: 1366

**CONSIDER AND/OR APPROVE TAKING ACTION ON AN
AGREEMENT WITH CP HOMES AND THE TEXAS
DEPARTMENT OF AGRICULTURE IN REGARDS TO A
COMMUNITY DEVELOPMENT BLOCK GRANT FROM THE
TEXAS CAPITAL FUNDS FOR WATER AND SEWER
IMPROVEMENTS TO SERVE CP HOMES ASSISTED LIVING
FACILITY.**

CONSIDER AND/OR APPROVE THE CITY OF BAY CITY, TEXAS TO ENTER INTO AN AGREEMENT WITH CP LIVING 23, LP dba COUNTRY PLACE SENIOR LIVING OF BAY CITY IN RELATION TO THE TEXAS DEPARTMENT OF AGRICULTURE FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FROM THE TEXAS CAPITAL FUND TO PROVIDE FUNDING FOR WATER AND SEWER IMPROVEMENTS FOR THEIR ASSISTED LIVING FACILITY.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Chrystal Folse, Councilwoman
SECONDER:	Julie Estlinbaum, Councilwoman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

STATE OF TEXAS §
 KNOW ALL MEN BY THESE PRESENTS
 MATAGORDA COUNTY §

**CONTRACTOR/COMPANY AGREEMENT
 TEXAS CAPITAL FUND CONTRACT NO. 713102¹**

1. DATES AND PARTIES: The effective date of this Agreement is _____, 2014, and the parties are the following:

COMPANY NAME: CP Living 23, LP dba Country Place Senior Living of Bay City
 3131 McKinney Avenue, suite 475
 Dallas, TX 75204

TCF CONTRACTOR: City of Bay City
 1901 Fifth Street
 Bay City, TX 77414

2. RESPONSIBILITIES: The TCF Contractor and Company shall complete the activities specified Exhibits A, Performance Statement, and B, Budget, of Texas Department of Agriculture TCF Contract No. 713102 (TCF Contract) as follows:

Project Summary

Bay City The purpose of this Economic Development project is to provide infrastructure activities in the form of easement acquisition, and sewer improvements in support of the Company. The Company shall be constructing an assisted living facility located at Nile Valley Rd and MLK Jr. Blvd in Bay City, TX. The location of the building and land is defined as the Company's project site. The infrastructure activities shall allow the Company to begin its operations in the City of Bay City, Texas. The Company is a provider of assisted living care. National objective of this CDBG economic development program is to primarily benefit LMI persons through permanent job creation and retention.

Project Activities

The Contractor shall provide to the Department documentation showing winning bid(s) for "minimum necessary" infrastructure activities that are needed to adequately serve only the Company. These bids also shall contain the alternate provisions for the winning bid(s) addressing oversizing, extra activities or improvements. Oversizing and/or extra activities are defined as activities exceeding the "minimum necessary" needed for this project and are ineligible for payment with contract funds. The Contractor is responsible for payment of all oversizing or extra activities and/or cost overruns and may be required to provide evidence of expenditure(s) prior to _____ drawing _____ contract _____ funds.

The "minimum necessary" activities are identified below and the Contractor shall expend a total of Two Hundred Ninety-nine Thousand Nine Hundred and No/100 Dollars (\$299,900.00) of contract funds on these activities.

Acquisition Activities of needed real property, easements and/or rights-of-way in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and HUD implementing regulations (49 C.F.R. Part 24).

Sewer Activities The "minimum necessary" activities are to consist of two thousand four hundred twenty linear feet (2,420 l.f.) of ten-inch (10") sewer line, nine hundred fifty linear feet (950 l.f.) of eight-inch (8") sewer line, two thousand four hundred forty linear feet (2,440 l.f.) of six-inch (6") force main, eight (8) manholes, one (1) lift station, one (1) tap with clean out, as well as additional activity to support the above mentioned improvements. These improvements shall be in the following locations:

¹ A fully executed Contractor/Company Agreement must be submitted to TDA within 6 months of the contract execution date of September 20, 2013

Location	From	To	Distance
Nile Valley Rd.	950 I.f. N of MLK Jr. Blvd.	MLK Jr. Blvd.	950 I.f.
MLK Jr. Blvd.	Nile Valley Rd.	Charles Haley Dr.	2,120 I.f.
Charles Haley Dr.	MLK Jr. Blvd.	200 I.f. N of MLK Jr. Blvd.	200 I.f.
Charles Haley Dr.	West Side of St.	Lift Station on East Side of St.	100 I.f.
Existing Easement	Lift Station on Haley Dr.	Drainage Ditch	1,400 I.f.
Drainage Ditch	Easement	2 nd St.	700 I.f.
2 nd St.	Drainage Ditch	Manhole	340 I.f.

In the Contractor's economic development application for this project, the Contractor provided documentation ensuring the Company has injected a minimum of One Hundred Fifty-Thousand and No/100 Dollars (\$150,000.00) for real estate equity for this project.

The Contractor shall ensure that the Company injects One Hundred Forty-nine Thousand Nine Hundred and No/100 Dollars (\$149,900.00) for this project for working capital.

Upon the Department's request, the Contractor shall provide evidence that contract funds were expended as specified in Exhibits A and B.

Project Objective

As a result of this project, the Contractor shall ensure that Company creates twenty (20) permanent jobs. Of these permanent jobs, fifty-one percent (51%) of the Company's jobs shall be held by LMI persons prior to Date of Termination. In the event more than the obligated permanent jobs are created, the Contractor shall ensure that at least fifty-one percent (51%) of all permanent jobs created, by the Company, during the contract period are held by LMI persons. All jobs to be created and/or retained shall be located at the Company's project site, as described in the Project Summary. Any employee transferring from another Company location or related business operation shall be identified and may not be considered as a created and/or retained permanent job.

In the Contractor's economic development application for this project, the Contractor has provided census data or information to document that the people employed by the Company may be presumed to be LMI persons since this project site where the Company shall be located meets the following criteria.

1. The Company shall be located within a census tract or block numbering area that has a poverty rate of at least 20 percent;
2. The jobs under consideration shall to be located within that census tract;
3. The tract does not include any portion of a central business district; and
4. The block group that the Company shall be located in evidences pervasive poverty and general distress because the specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent.

This information has been verified and shall require no further documentation during this contract's term. In the event more than twenty (20) permanent jobs are created or retained, all persons may also be presumed to be LMI person(s).

3. **JOB CREATION:** A condition requiring that the Company create twenty (20) permanent jobs. Fifty-one percent (51%) or eleven (11) of these permanent jobs shall be held by LMI persons prior to Date of Termination. In the event more than twenty (20) permanent jobs are created, the Contractor shall ensure that at least fifty-one percent (51%) of all permanent jobs created, during the contract period, are held by

LMI persons. All jobs are presumed to be LMI because of the high poverty rate obtained from census data;

- 4. PAYROLL REPORTS:** A condition requiring the Company submit to the Contractor a copy of the Company's starting payroll, which may be in electronic file format, verifying the number of persons employed at the Bay City, Texas, location as of Date of Execution to establish a starting benchmark. At a minimum, the payroll report shall provide the following employee information:

- a) the employee's full name;
- b) the last four digits of the employee's social security number;
- c) an indication of whether employee is full time or part time as defined in the current version of the TXCDBG Project Implementation Manual;
- d) Date Hired;
- e) Wages; and
- f) Hours Worked

Full Time:

- A position wherein gainful engagement (employment) in an occupation, business, trade, profession, etc., is performed for production of goods or services;
- A position that is a permanent job for which continuation of employment is not dependent on funds provided through the Texas Community Development Program;
- A position that provides employment for 1,820 hours or more per year and 35 hours or more per week.

Part Time:

- A position wherein gainful engagement (employment) in an occupation, business, trade, profession, etc., is performed for production of goods or services;
- A position that is a permanent job for which continuation of employment is not dependent on funds provided through the Texas Community Development Program
- A part-time job is generally defined as permanent employment for at least 1,040 hours per year and 20 hours or more per week per person on an annualized basis. Two part-time jobs equal one full-time job. Employees working less than 20 hours per week will not be considered as part of job creation.

In addition, an ending payroll report shall be submitted with the closeout documents, to document the number of permanent jobs created and identify the LMI persons.

5. EMPLOYEE CERTIFICATION REPORT: The Company shall submit to TCF Contractor the Employee Certification Report, the first page of the Texas Workforce Commission Report and if the Company has more than one (1) location in Texas, a Quarterly Payroll Report, no later than the fifth (5th) day of the second (2nd) month after the calendar quarter end

6. REPAYMENT OF GRANT FUNDS: The Company shall be liable to the TCF Contractor for an amount not to exceed the Department's maximum contractual obligation (\$299,900) in the event that Company fails to satisfy the terms of this Agreement such that any repayment of TCF Contract funds is required by the Department. Company agrees to pay directly to the TCF Contractor an amount equal to the repayment amount required by the Department. In addition, Company agrees to pay TCF Contractor for any outstanding expenditures for project engineering, administration, acquisition or construction activities for work performed, materials purchased, or other related costs incurred prior to the date that Company's failure to satisfy the terms of this Agreement becomes known to TCF Contractor. All payments shall be furnished by Company to TCF Contractor within thirty (30) days of request.

7. ASSET RESTRICTION: Assets are restricted from being transferred out of the Company without the Department's written consent except during the normal course of business (i.e. cash, fixed assets used in the production process and accounts receivable) during the contract period.

8. **TAXES:** The Company certifies that all federal taxes and taxes originating in Texas are currently paid or shall be paid within thirty (30) days of Date of Execution and all future taxes shall be paid when due. The Department or the Contractor may require at any time that the Company provide proof of payment of these taxes.

9. **QUARTERLY VISITS:** TCF Contractor and the Department shall be allowed to have access and make quarterly on-site visits to the Company to assess or monitor the progress toward job creation and requiring the Company to provide to local officials at the time of on-site visits information regarding job creation and any other information deemed necessary by the TCF Contractor and the Department to administer the TCF contract and the agreement between the Company and the TCF Contractor.

10. **RECORDS:** The Company shall maintain records and reports regarding the documentation of LMI job creation and LMI percentages, LMI benefit and beneficiaries by race, ethnicity, gender and disability status in the same manner and to the same extent as the Department requires of TCF Contractor.

11. **OWNERSHIP:** The Company's principals are restricted from reducing their proportionate Company ownership without prior written approval from the TCF Contractor and the Department during the contract period.

12. **PERMITS:** The Company shall obtain any and all applicable permits or approvals required by any federal, state or local entity or regulatory agency with jurisdiction.²

13. **UNDOCUMENTED WORKERS:** The Company certifies that it does not and will not knowingly employ any undocumented worker who is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in the United States. If, after receiving any public subsidy from Contractor, the Company is convicted of a violation under 8 U.S.C. 1324a(f), the Company shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Subtitle F, Title 10 of the Texas Government Code Sec. 2264.053, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the Company of the violation.

14. **SECURITY DOCUMENT:**³ The Contractor shall provide the Department a copy of a contract or performance bond, letter of credit or an irrevocable line of credit issued by a financial institution ("Security Document") in the minimum amount of Two Hundred Ninety-nine Thousand Nine Hundred and No/100 Dollars (\$299,900.00). The Contractor or the Company must obtain the security document to guarantee the contract. The security document must contain provisions that indicate, at a minimum:

- a. The manner in which Contractor may make a claim for failure to meet contract requirements, which includes failure to meet job creation requirements or termination of the Contract;
- b. Benefitting parties to the document;
- c. Specific reference to the contract and TDA;
- d. Notice to TDA in the event that the security document is terminated or the dollar value is reduced;
- e. The length of duration of the security document; and
- f. The dollar amount covered by the security document.

15. **CERTIFICATE OF FLOOD INSURANCE**⁴: In the same manner and to the same extent that the Department requires of TCF contractor, the Company shall provide the TCF Contractor with a copy of a certificate of insurance verifying flood insurance covering the Company's project site specified in Exhibit A or an original signed statement from the Contractor's authorized signatory that indicates such property does not require flood insurance.

16. **PROJECT SIGNAGE:** All construction projects, including, but not limited to, buildings, structures, water transmission lines, sewer collection lines, gas transmission lines, electric transmission lines, drainage,

² As per the Contract between TDA and the City of Bay City, TCF Grant construction funds cannot be drawn until documentation is provided to TDA.

³ As per the Contract between TDA and the City of Bay City, TCF Grant funds cannot be drawn until documentation is provided to TDA.

⁴ As per the Contract between TDA and the City of Bay City, TCF Grant construction funds cannot be drawn until documentation is provided to TDA.

roadways and railroad improvements utilizing TCF/CDBG funding shall have temporary signage erected in a prominent location at the construction project site or along a major thoroughfare close to the construction area. Such signage, which may be provided to Contractor by the Department, shall be erected when construction begins, be legible from a distance of at least three (3) feet, and remain in place until construction is complete.

All project signage required by this section shall contain the following wording: "Funding from the Texas Department of Agriculture, in cooperation with the United States Department of Housing and Urban Development, helped make this economic development project possible."

17. CONSTRUCTION COST OVERRUNS/OVERSIZING: Pursuant to the terms of the TCF Contract, TCF grant funds can only be used for the "minimum necessary" infrastructure activities that are needed to adequately serve only the Company and cannot be used for oversizing or extra activities and/or cost overruns. Therefore, under this agreement, the party responsible to pay for all costs related to oversizing or extra activities and/or all cost overruns is Bay City CPLiving 23, LP dba as Country Place Senior Living of Bay City

TCF Contractor and its agents shall use all reasonable efforts to ensure that plans and specifications for construction and acquisition activities are the "minimum necessary" infrastructure activities and are designed/constructed such that they may be completed within the available TCF Contract construction and acquisition budget of \$ 299,900. Upon receipt of the bid tabulation and/or the acquisition purchase documents, TCF Contractor shall notify the Company of potential cost overruns known to TCF Contractor. TCF Contractor shall not award a contract or execute an agreement that exceeds the TCF Contract funds available without prior written authorization by Company.

TCF Contractor shall not make or approve contract change orders that extend the scope of work beyond the "minimum necessary" activities required to satisfy the TCF Contract Performance Statement. In the event that a change order(s) that exceeds the available grant funds is required, TCF Contractor shall not execute the change order without prior written approval from the Company.

If Company fails to authorize cost overruns or change orders for any portion of the \$ 299,900 TCF Contract budget that are for activities required to complete the "minimum necessary" activities such that the TCF Contractor is unable to satisfy the terms and conditions of the TCF Contract and the Department demands repayment or reimbursement of sums previously approved and paid by the Department to TCF Contractor, the Company shall pay all such sums on demand by TCF Contractor. In addition, the Company shall pay any and all outstanding construction, acquisition, engineering, and administration costs incurred by TCF Contractor that have not yet been paid by the Department.

If cost overruns occur in any portion of the \$299,900.00 TCF Contract budget which were not anticipated by TCF Contractor and are not proximately caused by the sole negligence of TCF Contractor, Company shall be responsible for payment of all such costs upon demand by TCF Contractor.

18. UNIFORM RELOCATION ASSISTANCE AND/OR REAL PROPERTY ACQUISITION POLICIES ACT OF 1970:⁵ TCF Contractor shall ensure that all acquisition of real property, easements and/or rights-of-way, for this proposed project be in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.), HUD implementing regulations (49 C.F.R. Part 24) and submit a real property acquisition report. In the same manner and to the same extent that the Department requires of TCF Contractor, Company shall submit to TCF Contractor certification from the Company's authorized signatory or legal counsel that all warranty deeds, easements and/or rights-of-way have been recorded or real estate acquisition was not required for both private and public real property. Company shall grant by donation to TCF Contractor all necessary easements or rights-of-way pertaining to the Project Activities under the TCF Contract.

⁵ As per the Contract between TDA and the City of Bay City, TCF Grant construction or acquisition funds cannot be drawn until documentation is provided to TDA.

19. START OF BUILDING CONSTRUCTION⁶: In the same manner and to the same extent that the Department requires of TCF contractor, Company shall provide to the Contractor evidence of the start of building construction on the Company's project site as specified in Exhibit A.

20. MATCHING FUNDS⁷: In the same manner as the Department requires of the TCF Contractor, the Company shall submit to TCF Contractor a ledger with support documentation that includes copies of invoices and proof of payment (i.e. paid receipts, canceled checks, wire transfer receipt) documenting match expenditures in the minimum amount of \$149,900.00 from the Company for working capital within sixty (60) days of expenditure of funds, but no later than thirty (30) days prior to Date of Termination.

21. ENDING PAYROLL⁸: The Company shall submit to the Contractor an ending payroll at least 30 days prior to the contract expiration date, which may be in electronic file format, verifying the number of persons employed at the Bay City, Texas, location for the close out of this contract.

The Final Payroll Report for the Company must report all employees that were working for the business prior to the execution date of the Grant Recipient TCF contract AND all newly hired employees reported for job creation requirements. **For each employee the report must contain at a minimum:**

- a) the employee's full name;
- b) the last four digits of the employee's social security number;
- c) an indication of whether employee is full time or part time as defined in the current version of the TXCDBG Project Implementation Manual;
- d) Date Hired;
- e) Wages; and
- f) Hours Worked.

22. FINANCIAL STATEMENTS: During the contract period and when requested by the Department, the Company shall submit to TCF Contractor a copy of personal financial statements for all Companies principals or a copy of the Company's compiled Balance Sheet and Income Statement or an audited Balance Sheet and Income Statement in the time prescribed by the Department.

23. HAZARD AND LIABILITY INSURANCE⁹: The Contractor shall provide the Department with a copy of a certificate of hazard and liability insurance coverage for the Company's real estate improvements located on the project site within sixty (60) days of construction completion, but no later than thirty (30) days prior to contract's expiration date. This coverage shall be the greater of a minimum of Two Hundred Ninety-nine Thousand Nine Hundred and No/100 Dollars (\$299,900.00) or an amount equal to the building's replacement value and names the Contractor as a loss payee

24. VIOLATION OF LAW: Company shall not use the Project Activities constructed under the agreement between the Department and TCF Contractor in violation of any Texas laws or regulations.

25. REPRESENTATION: Company warrants and represents, which warranties and representations shall be continuing during the contract period that Company utilizes no trade names in the conduct of its business, except as disclosed above, has not changed names, or acquired any other business, other than indicated hereinabove.

26. NAME CHANGE: Company will notify Contractor in writing prior to any change in Company's name, or if an organization, any change in identity or structure.

27. DEFINITION OF TERMS: Unless the context otherwise indicates, all terms used herein which are defined in the Texas Uniform Commercial Code shall have the meaning therein stated.

⁶ As per the Contract between TDA and the City of Bay City, TCF Grant construction funds cannot be drawn until documentation is provided to TDA.

⁷ As per the Contract between TDA and the City of Bay City, TCF Grant contract cannot be closed out until documentation is provided to TDA.

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⁹ As per the Contract between TDA and the City of Bay City, TCF Grant contract cannot be closed out until documentation is provided to TDA.

28. SUCCESSORS: This agreement shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties.

29. IF UNENFORCEABLE: If any provision of this agreement proves unlawful or unenforceable by a court having jurisdiction over the parties or the subject matter, such provision shall be severable from the other provisions of this agreement, and all remaining provisions shall be fully enforceable.

30. MAIN CONTACT PERSONS: The main contact person for the Company is Andrea Huang, Financial Administrator for employee related issues, grant closeout, construction progress, and all other issues. The main contact person for TCF Contractor is Barry Calhoun, Public Works Director.

31. GOVERNING LAW AND VENUE: This agreement shall be governed by the laws of Texas, which State shall also be deemed the place where this agreement was entered into and the place of performance and transaction of business of the parties. In the event of litigation pertaining to the agreement, the exclusive forum, venue and place of jurisdiction shall also be Matagorda County, Texas, and the State of Texas unless otherwise designated in writing by TCF Contractor.

32. SPECIAL CONDITIONS: Any other relevant details or special conditions placed on this agreement as outlined in the agreement between TCF Contractor and the Department and the then current Texas CDBG Implementation Manual, policy issuances, or any other program requirements, to include all program related compliance responsibilities shall be incorporated into this agreement for all purposes as if they were written here.

33. AUTHORITY TO MAKE AND USE COPIES: Company authorizes TCF Contractor to make copies, photocopies, reproductions and other facsimiles (copies) of this original agreement for the purpose of filing and for any other purposes permitted as if such copies were the original.

34. TERM OF AGREEMENT: The term of this agreement shall commence upon its execution by the parties and shall be completed either by termination date of the TCF Contract between TCF Contractor and Department or upon completion and close out of the TCF Contract between TCF Contractor and the Department, whichever is later.

35. ADDITIONAL SERVICES: The Company shall pay all fees charged for additional engineering, and administrative services associated with the TCF Contract activities that are a result of any action or request by the Company. Additional service fees may only be incurred by the company for additional engineering, and administrative when services are requested by the company in writing and shall be determined by the rates and terms stated in the engineering and administrative services agreements executed by TCF Contractor and attached hereto and incorporated by reference herein.

36. ADDITIONAL ADMINISTRATIVE FEES FOR WORK BEYOND 36 MONTHS: Should the Company fail to meet its job creation and reporting obligations under this Agreement or the TCF State Contract during the original 36-month period, the Company shall be responsible for activities required to maintain the TCF Contractor's compliance with the terms of the State Contract. Fees are payable directly to the TCF Contractor's grant administrator: Extension Request Fee of \$500.00: Fee includes preparation and processing of amendment documents required to submit an Extension Request to TDA in order to allow additional time for the Company to fulfill its job creation and reporting requirements under this Agreement and/or the TCF Contract. Fee is due and payable directly to the grant administrator on the submission date of the Amendment Request to Extend the contract. Quarterly Reporting Fee of \$500.00 per Quarter: Fee includes preparing and processing of quarterly reports as outlined in Section 5 of this Agreement. Fee is due and payable directly to the grant administrator on the first business day of the quarter for all quarters that the project remains open after the original 36-month period.

37. ADMINISTRATIVE FEES FOR ADDITIONAL LABOR STANDARDS SERVICES: If TCF Contractor's grant administrator must furnish Additional Labor Standards services beyond its contracted scope of work, such services shall be paid for by the Company directly to the grant administrator at an hourly rate of Seventy-five and no/100 Dollars (\$75.00). Additional Labor Standards services shall be required when: 1) a prime

construction contractor utilizes more than three (3) sub-contractors; and/or 2) there are more than two (2) prime construction contracts.

38. HOLD HARMLESS AND INDEMNITY: In the event Company fails to perform its Contractual obligations under this agreement Company shall hold harmless and indemnify TCF Contractor from any and all claims, demands, causes of action, obligations and liabilities resulting from or caused or created by said failure of Company, including but not limited to and by way of illustration and not limitation, the following: a failure to pay change orders, a failure to pay cost overruns, a failure to perform its obligations regarding job creation, etc.

39. ATTORNEY'S FEES: The prevailing party in any dispute concerning the interpretation and enforcement of this agreement shall be entitled to its reasonable attorney's fees.

IN WITNESSETH HEREOF, the Company and Contractor have executed this Agreement as of the date indicated above.

CP LIVING 23 (Texas) LP

By: _____

GUY LAM, CP LIVING (TX) LLC, SOLE GENERAL PARTNER

CITY OF BAY CITY

By: _____

MARK BRICKER, MAYOR

ATTEST:

STATE OF TEXAS §
 KNOW ALL MEN BY THESE PRESENTS
 MATAGORDA COUNTY §

**CONTRACTOR/COMPANY AGREEMENT
 TEXAS CAPITAL FUND CONTRACT NO. 713102¹**

1. **DATES AND PARTIES:** The effective date of this Agreement is _____, 2014, and the parties are the following:

COMPANY NAME: CP Living 23, LP dba Country Place Senior Living of Bay City
3131 McKinney Avenue, suite 475
Dallas, TX 75204

TCF CONTRACTOR: City of Bay City
1901 Fifth Street
Bay City, TX 77414

2. **RESPONSIBILITIES:** The TCF Contractor and Company shall complete the activities specified Exhibits A, Performance Statement, and B, Budget, of Texas Department of Agriculture TCF Contract No. 713102 (TCF Contract) as follows:

Project Summary

Bay City The purpose of this Economic Development project is to provide infrastructure activities in the form of easement acquisition, and sewer improvements in support of the Company. The Company shall be constructing an assisted living facility located at Nile Valley Rd and MLK Jr. Blvd in Bay City, TX. The location of the building and land is defined as the Company's project site. The infrastructure activities shall allow the Company to begin its operations in the City of Bay City, Texas. The Company is a provider of assisted living care. National objective of this CDBG economic development program is to primarily benefit LMI persons through permanent job creation and retention.

Project Activities

The Contractor shall provide to the Department documentation showing winning bid(s) for "minimum necessary" infrastructure activities that are needed to adequately serve only the Company. These bids also shall contain the alternate provisions for the winning bid(s) addressing oversizing, extra activities or improvements. Oversizing and/or extra activities are defined as activities exceeding the "minimum necessary" needed for this project and are ineligible for payment with contract funds. The Contractor is responsible for payment of all oversizing or extra activities and/or cost overruns and may be required to provide evidence of expenditure(s) prior to drawing contract funds.

The "minimum necessary" activities are identified below and the Contractor shall expend a total of Two Hundred Ninety-nine Thousand Nine Hundred and No/100 Dollars (\$299,900.00) of contract funds on these activities.

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¹ A fully executed Contractor/Company Agreement must be submitted to TDA within 6 months of the contract execution date of September 20, 2013

Location	From	To	Distance
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MLK Jr. Blvd.	Nile Valley Rd.	Charles Haley Dr.	2,120 I.f.
Charles Haley Dr.	MLK Jr. Blvd.	200 I.f. N of MLK Jr. Blvd.	200 I.f.
Charles Haley Dr.	West Side of St.	Lift Station on East Side of St.	100 I.f.
Existing Easement	Lift Station on Haley Dr.	Drainage Ditch	1,400 I.f.
Drainage Ditch	Easement	2 nd St.	700 I.f.
2 nd St.	Drainage Ditch	Manhole	340 I.f.

In the Contractor's economic development application for this project, the Contractor provided documentation ensuring the Company has injected a minimum of One Hundred Fifty-Thousand and No/100 Dollars (\$150,000.00) for real estate equity for this project.

The Contractor shall ensure that the Company injects One Hundred Forty-nine Thousand Nine Hundred and No/100 Dollars (\$149,900.00) for this project for working capital.

Upon the Department's request, the Contractor shall provide evidence that contract funds were expended as specified in Exhibits A and B.

Project Objective

As a result of this project, the Contractor shall ensure that Company creates twenty (20) permanent jobs. Of these permanent jobs, fifty-one percent (51%) of the Company's jobs shall be held by LMI persons prior to Date of Termination. In the event more than the obligated permanent jobs are created, the Contractor shall ensure that at least fifty-one percent (51%) of all permanent jobs created, by the Company, during the contract period are held by LMI persons. All jobs to be created and/or retained shall be located at the Company's project site, as described in the Project Summary. Any employee transferring from another Company location or related business operation shall be identified and may not be considered as a created and/or retained permanent job.

In the Contractor's economic development application for this project, the Contractor has provided census data or information to document that the people employed by the Company may be presumed to be LMI persons since this project site where the Company shall be located meets the following criteria.

1. The Company shall be located within a census tract or block numbering area that has a poverty rate of at least 20 percent;
2. The jobs under consideration shall to be located within that census tract;
3. The tract does not include any portion of a central business district; and
4. The block group that the Company shall be located in evidences pervasive poverty and general distress because the specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent.

This information has been verified and shall require no further documentation during this contract's term. In the event more than twenty (20) permanent jobs are created or retained, all persons may also be presumed to be LMI person(s).

3. **JOB CREATION:** A condition requiring that the Company create twenty (20) permanent jobs. Fifty-one percent (51%) or eleven (11) of these permanent jobs shall be held by LMI persons prior to Date of Termination. In the event more than twenty (20) permanent jobs are created, the Contractor shall ensure that at least fifty-one percent (51%) of all permanent jobs created, during the contract period, are held by LMI persons. All jobs are presumed to be LMI because of the high poverty rate obtained from census data;

4. PAYROLL REPORTS: A condition requiring the Company submit to the Contractor a copy of the Company's starting payroll, which may be in electronic file format, verifying the number of persons employed at the Bay City, Texas, location as of Date of Execution to establish a starting benchmark. At a minimum, the payroll report shall provide the following employee information:

- a) the employee's full name;
- b) the last four digits of the employee's social security number;
- c) an indication of whether employee is full time or part time as defined in the current version of the TXCDBG Project Implementation Manual;
- d) Date Hired;
- e) Wages; and
- f) Hours Worked

Full Time:

- A position wherein gainful engagement (employment) in an occupation, business, trade, profession, etc., is performed for production of goods or services;
- A position that is a permanent job for which continuation of employment is not dependent on funds provided through the Texas Community Development Program;
- A position that provides employment for 1,820 hours or more per year and 35 hours or more per week.

Part Time:

- A position wherein gainful engagement (employment) in an occupation, business, trade, profession, etc., is performed for production of goods or services;
- A position that is a permanent job for which continuation of employment is not dependent on funds provided through the Texas Community Development Program
- A part-time job is generally defined as permanent employment for at least 1,040 hours per year and 20 hours or more per week per person on an annualized basis. Two part-time jobs equal one full-time job. Employees working less than 20 hours per week will not be considered as part of job creation.

In addition, an ending payroll report shall be submitted with the closeout documents, to document the number of permanent jobs created and identify the LMI persons.

5. EMPLOYEE CERTIFICATION REPORT: The Company shall submit to TCF Contractor the Employee Certification Report, the first page of the Texas Workforce Commission Report and if the Company has more than one (1) location in Texas, a Quarterly Payroll Report, no later than the fifth (5th) day of the second (2nd) month after the calendar quarter end

6. REPAYMENT OF GRANT FUNDS: The Company shall be liable to the TCF Contractor for an amount not to exceed the Department's maximum contractual obligation (\$299,900) in the event that Company fails to satisfy the terms of this Agreement such that any repayment of TCF Contract funds is required by the Department. Company agrees to pay directly to the TCF Contractor an amount equal to the repayment amount required by the Department. In addition, Company agrees to pay TCF Contractor for any outstanding expenditures for project engineering, administration, acquisition or construction activities for work performed, materials purchased, or other related costs incurred prior to the date that Company's failure to satisfy the terms of this Agreement becomes known to TCF Contractor. All payments shall be furnished by Company to TCF Contractor within thirty (30) days of request.

7. ASSET RESTRICTION: Assets are restricted from being transferred out of the Company without the Department's written consent except during the normal course of business (i.e. cash, fixed assets used in the production process and accounts receivable) during the contract period.

8. TAXES: The Company certifies that all federal taxes and taxes originating in Texas are currently paid or shall be paid within thirty (30) days of Date of Execution and all future taxes shall be paid when due. The Department or the Contractor may require at any time that the Company provide proof of payment of these taxes.

9. **QUARTERLY VISITS:** TCF Contractor and the Department shall be allowed to have access and make quarterly on-site visits to the Company to assess or monitor the progress toward job creation and requiring the Company to provide to local officials at the time of on-site visits information regarding job creation and any other information deemed necessary by the TCF Contractor and the Department to administer the TCF contract and the agreement between the Company and the TCF Contractor.

10. **RECORDS:** The Company shall maintain records and reports regarding the documentation of LMI job creation and LMI percentages, LMI benefit and beneficiaries by race, ethnicity, gender and disability status in the same manner and to the same extent as the Department requires of TCF Contractor.

11. **OWNERSHIP:** The Company's principals are restricted from reducing their proportionate Company ownership without prior written approval from the TCF Contractor and the Department during the contract period.

12. **PERMITS:** The Company shall obtain any and all applicable permits or approvals required by any federal, state or local entity or regulatory agency with jurisdiction.²

13. **UNDOCUMENTED WORKERS:** The Company certifies that it does not and will not knowingly employ any undocumented worker who is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in the United States. If, after receiving any public subsidy from Contractor, the Company is convicted of a violation under 8 U.S.C. 1324a(f), the Company shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Subtitle F, Title 10 of the Texas Government Code Sec. 2264.053, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the Company of the violation.

14. **SECURITY DOCUMENT:**³ The Contractor shall provide the Department a copy of a contract or performance bond, letter of credit or an irrevocable line of credit issued by a financial institution ("Security Document") in the minimum amount of Two Hundred Ninety-nine Thousand Nine Hundred and No/100 Dollars (\$299,900.00). The Contractor or the Company must obtain the security document to guarantee the contract. The security document must contain provisions that indicate, at a minimum:

- a. The manner in which Contractor may make a claim for failure to meet contract requirements, which includes failure to meet job creation requirements or termination of the Contract;
- b. Benefitting parties to the document;
- c. Specific reference to the contract and TDA;
- d. Notice to TDA in the event that the security document is terminated or the dollar value is reduced;
- e. The length of duration of the security document; and
- f. The dollar amount covered by the security document.

15. **CERTIFICATE OF FLOOD INSURANCE**⁴: In the same manner and to the same extent that the Department requires of TCF contractor, the Company shall provide the TCF Contractor with a copy of a certificate of insurance verifying flood insurance covering the Company's project site specified in Exhibit A or an original signed statement from the Contractor's authorized signatory that indicates such property does not require flood insurance.

16. **PROJECT SIGNAGE:** All construction projects, including, but not limited to, buildings, structures, water transmission lines, sewer collection lines, gas transmission lines, electric transmission lines, drainage, roadways and railroad improvements utilizing TCF/CDBG funding shall have temporary signage erected in a prominent location at the construction project site or along a major thoroughfare close to the construction area. Such signage, which may be provided to Contractor by the Department, shall be erected when construction begins, be legible from a distance of at least three (3) feet, and remain in place until construction is complete.

² As per the Contract between TDA and the City of Bay City, TCF Grant construction funds cannot be drawn until documentation is provided to TDA.

³ As per the Contract between TDA and the City of Bay City, TCF Grant funds cannot be drawn until documentation is provided to TDA.

⁴ As per the Contract between TDA and the City of Bay City, TCF Grant construction funds cannot be drawn until documentation is provided to TDA.

All project signage required by this section shall contain the following wording: "Funding from the Texas Department of Agriculture, in cooperation with the United States Department of Housing and Urban Development, helped make this economic development project possible."

17. CONSTRUCTION COST OVERRUNS/OVERSIZING: Pursuant to the terms of the TCF Contract, TCF grant funds can only be used for the "minimum necessary" infrastructure activities that are needed to adequately serve only the Company and cannot be used for oversizing or extra activities and/or cost overruns. Therefore, under this agreement, the party responsible to pay for all costs related to oversizing or extra activities and/or all cost overruns is Bay City CPLiving 23, LP dba as Country Place Senior Living of Bay City

TCF Contractor and its agents shall use all reasonable efforts to ensure that plans and specifications for construction and acquisition activities are the "minimum necessary" infrastructure activities and are designed/constructed such that they may be completed within the available TCF Contract construction and acquisition budget of \$ 299,900. Upon receipt of the bid tabulation and/or the acquisition purchase documents, TCF Contractor shall notify the Company of potential cost overruns known to TCF Contractor. TCF Contractor shall not award a contract or execute an agreement that exceeds the TCF Contract funds available without prior written authorization by Company.

TCF Contractor shall not make or approve contract change orders that extend the scope of work beyond the "minimum necessary" activities required to satisfy the TCF Contract Performance Statement. In the event that a change order(s) that exceeds the available grant funds is required, TCF Contractor shall not execute the change order without prior written approval from the Company.

If Company fails to authorize cost overruns or change orders for any portion of the \$ 299,900 TCF Contract budget that are for activities required to complete the "minimum necessary" activities such that the TCF Contractor is unable to satisfy the terms and conditions of the TCF Contract and the Department demands repayment or reimbursement of sums previously approved and paid by the Department to TCF Contractor, the Company shall pay all such sums on demand by TCF Contractor. In addition, the Company shall pay any and all outstanding construction, acquisition, engineering, and administration costs incurred by TCF Contractor that have not yet been paid by the Department.

If cost overruns occur in any portion of the \$299,900.00 TCF Contract budget which were not anticipated by TCF Contractor and are not proximately caused by the sole negligence of TCF Contractor, Company shall be responsible for payment of all such costs upon demand by TCF Contractor.

18. UNIFORM RELOCATION ASSISTANCE AND/OR REAL PROPERTY ACQUISITION POLICIES ACT OF 1970:⁵ TCF Contractor shall ensure that all acquisition of real property, easements and/or rights-of-way, for this proposed project be in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.), HUD implementing regulations (49 C.F.R. Part 24) and submit a real property acquisition report. In the same manner and to the same extent that the Department requires of TCF Contractor, Company shall submit to TCF Contractor certification from the Company's authorized signatory or legal counsel that all warranty deeds, easements and/or rights-of-way have been recorded or real estate acquisition was not required for both private and public real property. Company shall grant by donation to TCF Contractor all necessary easements or rights-of-way pertaining to the Project Activities under the TCF Contract.

19. START OF BUILDING CONSTRUCTION⁶: In the same manner and to the same extent that the Department requires of TCF contractor, Company shall provide to the Contractor evidence of the start of building construction on the Company's project site as specified in Exhibit A.

⁵ As per the Contract between TDA and the City of Bay City, TCF Grant construction or acquisition funds cannot be drawn until documentation is provided to TDA.

⁶ As per the Contract between TDA and the City of Bay City, TCF Grant construction funds cannot be drawn until documentation is provided to TDA.

20. MATCHING FUNDS⁷: In the same manner as the Department requires of the TCF Contractor, the Company shall submit to TCF Contractor a ledger with support documentation that includes copies of invoices and proof of payment (i.e. paid receipts, canceled checks, wire transfer receipt) documenting match expenditures in the minimum amount of \$149,900.00 from the Company for working capital within sixty (60) days of expenditure of funds, but no later than thirty (30) days prior to Date of Termination.

21. ENDING PAYROLL⁸: The Company shall submit to the Contractor an ending payroll at least 30 days prior to the contract expiration date, which may be in electronic file format, verifying the number of persons employed at the Bay City, Texas, location for the close out of this contract.

The Final Payroll Report for the Company must report all employees that were working for the business prior to the execution date of the Grant Recipient TCF contract AND all newly hired employees reported for job creation requirements. **For each employee the report must contain at a minimum:**

- a) the employee's full name;
- b) the last four digits of the employee's social security number;
- c) an indication of whether employee is full time or part time as defined in the current version of the TXCDBG Project Implementation Manual;
- d) Date Hired;
- e) Wages; and
- f) Hours Worked.

22. FINANCIAL STATEMENTS: During the contract period and when requested by the Department, the Company shall submit to TCF Contractor a copy of personal financial statements for all Companies principals or a copy of the Company's compiled Balance Sheet and Income Statement or an audited Balance Sheet and Income Statement in the time prescribed by the Department.

23. HAZARD AND LIABILITY INSURANCE⁹: The Contractor shall provide the Department with a copy of a certificate of hazard and liability insurance coverage for the Company's real estate improvements located on the project site within sixty (60) days of construction completion, but no later than thirty (30) days prior to contract's expiration date. This coverage shall be the greater of a minimum of Two Hundred Ninety-nine Thousand Nine Hundred and No/100 Dollars (\$299,900.00) or an amount equal to the building's replacement value and names the Contractor as a loss payee

24. VIOLATION OF LAW: Company shall not use the Project Activities constructed under the agreement between the Department and TCF Contractor in violation of any Texas laws or regulations.

25. REPRESENTATION: Company warrants and represents, which warranties and representations shall be continuing during the contract period that Company utilizes no trade names in the conduct of its business, except as disclosed above, has not changed names, or acquired any other business, other than indicated hereinabove.

26. NAME CHANGE: Company will notify Contractor in writing prior to any change in Company's name, or if an organization, any change in identity or structure.

27. DEFINITION OF TERMS: Unless the context otherwise indicates, all terms used herein which are defined in the Texas Uniform Commercial Code shall have the meaning therein stated.

28. SUCCESSORS: This agreement shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties.

29. IF UNENFORCEABLE: If any provision of this agreement proves unlawful or unenforceable by a court having jurisdiction over the parties or the subject matter, such provision shall be severable from the other provisions of this agreement, and all remaining provisions shall be fully enforceable.

⁷ As per the Contract between TDA and the City of Bay City, TCF Grant contract cannot be closed out until documentation is provided to TDA.

⁸ As per the Contract between TDA and the City of Bay City, TCF Grant contract cannot be closed out until documentation is provided to TDA.

⁹ As per the Contract between TDA and the City of Bay City, TCF Grant contract cannot be closed out until documentation is provided to TDA.

30. MAIN CONTACT PERSONS: The main contact person for the Company is Andrea Huang, Financial Administrator for employee related issues, grant closeout, construction progress, and all other issues. The main contact person for TCF Contractor is Barry Calhoun, Public Works Director.

31. GOVERNING LAW AND VENUE: This agreement shall be governed by the laws of Texas, which State shall also be deemed the place where this agreement was entered into and the place of performance and transaction of business of the parties. In the event of litigation pertaining to the agreement, the exclusive forum, venue and place of jurisdiction shall also be Matagorda County, Texas, and the State of Texas unless otherwise designated in writing by TCF Contractor.

32. SPECIAL CONDITIONS: Any other relevant details or special conditions placed on this agreement as outlined in the agreement between TCF Contractor and the Department and the then current Texas CDBG Implementation Manual, policy issuances, or any other program requirements, to include all program related compliance responsibilities shall be incorporated into this agreement for all purposes as if they were written here.

33. AUTHORITY TO MAKE AND USE COPIES: Company authorizes TCF Contractor to make copies, photocopies, reproductions and other facsimiles (copies) of this original agreement for the purpose of filing and for any other purposes permitted as if such copies were the original.

34. TERM OF AGREEMENT: The term of this agreement shall commence upon its execution by the parties and shall be completed either by termination date of the TCF Contract between TCF Contractor and Department or upon completion and close out of the TCF Contract between TCF Contractor and the Department, whichever is later.

35. ADDITIONAL SERVICES: The Company shall pay all fees charged for additional engineering, and administrative services associated with the TCF Contract activities that are a result of any action or request by the Company. Additional service fees may only be incurred by the company for additional engineering, and administrative when services are requested by the company in writing and shall be determined by the rates and terms stated in the engineering and administrative services agreements executed by TCF Contractor and attached hereto and incorporated by reference herein.

36. ADDITIONAL ADMINISTRATIVE FEES FOR WORK BEYOND 36 MONTHS: Should the Company fail to meet its job creation and reporting obligations under this Agreement or the TCF State Contract during the original 36-month period, the Company shall be responsible for activities required to maintain the TCF Contractor's compliance with the terms of the State Contract. Fees are payable directly to the TCF Contractor's grant administrator: Extension Request Fee of \$500.00: Fee includes preparation and processing of amendment documents required to submit an Extension Request to TDA in order to allow additional time for the Company to fulfill its job creation and reporting requirements under this Agreement and/or the TCF Contract. Fee is due and payable directly to the grant administrator on the submission date of the Amendment Request to Extend the contract. Quarterly Reporting Fee of \$500.00 per Quarter: Fee includes preparing and processing of quarterly reports as outlined in Section 5 of this Agreement. Fee is due and payable directly to the grant administrator on the first business day of the quarter for all quarters that the project remains open after the original 36-month period.

37. ADMINISTRATIVE FEES FOR ADDITIONAL LABOR STANDARDS SERVICES: If TCF Contractor's grant administrator must furnish Additional Labor Standards services beyond its contracted scope of work, such services shall be paid for by the Company directly to the grant administrator at an hourly rate of Seventy-five and no/100 Dollars (\$75.00). Additional Labor Standards services shall be required when: 1) a prime construction contractor utilizes more than three (3) sub-contractors; and/or 2) there are more than two (2) prime construction contracts.

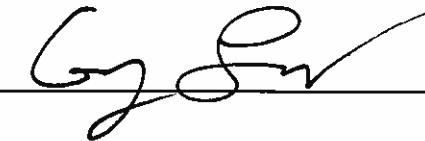
38. HOLD HARMLESS AND INDEMNITY: In the event Company fails to perform its Contractual obligations under this agreement Company shall hold harmless and indemnify TCF Contractor from any and all claims, demands, causes of action, obligations and liabilities resulting from or caused or created by said failure of

Company, including but not limited to and by way of illustration and not limitation, the following: a failure to pay change orders, a failure to pay cost overruns, a failure to perform its obligations regarding job creation, etc.

39. ATTORNEY'S FEES: The prevailing party in any dispute concerning the interpretation and enforcement of this agreement shall be entitled to its reasonable attorney's fees.

IN WITNESSETH HEREOF, the Company and Contractor have executed this Agreement as of the date indicated above.

CP LIVING 23 (Texas) LP

By: _____

GUY LAM, CP LIVING (TX) LLC, SOLE GENERAL PARTNER

CITY OF BAY CITY

By: _____

MARK BRICKER, MAYOR

ATTEST:



City Council
1901 5Th Street
Bay City, TX 77414

Meeting: 03/13/14 07:00 PM
Department: Community Development
Category: Agreement
Prepared By: D C Dunham
Initiator: D C Dunham
Sponsors:

ADOPTED

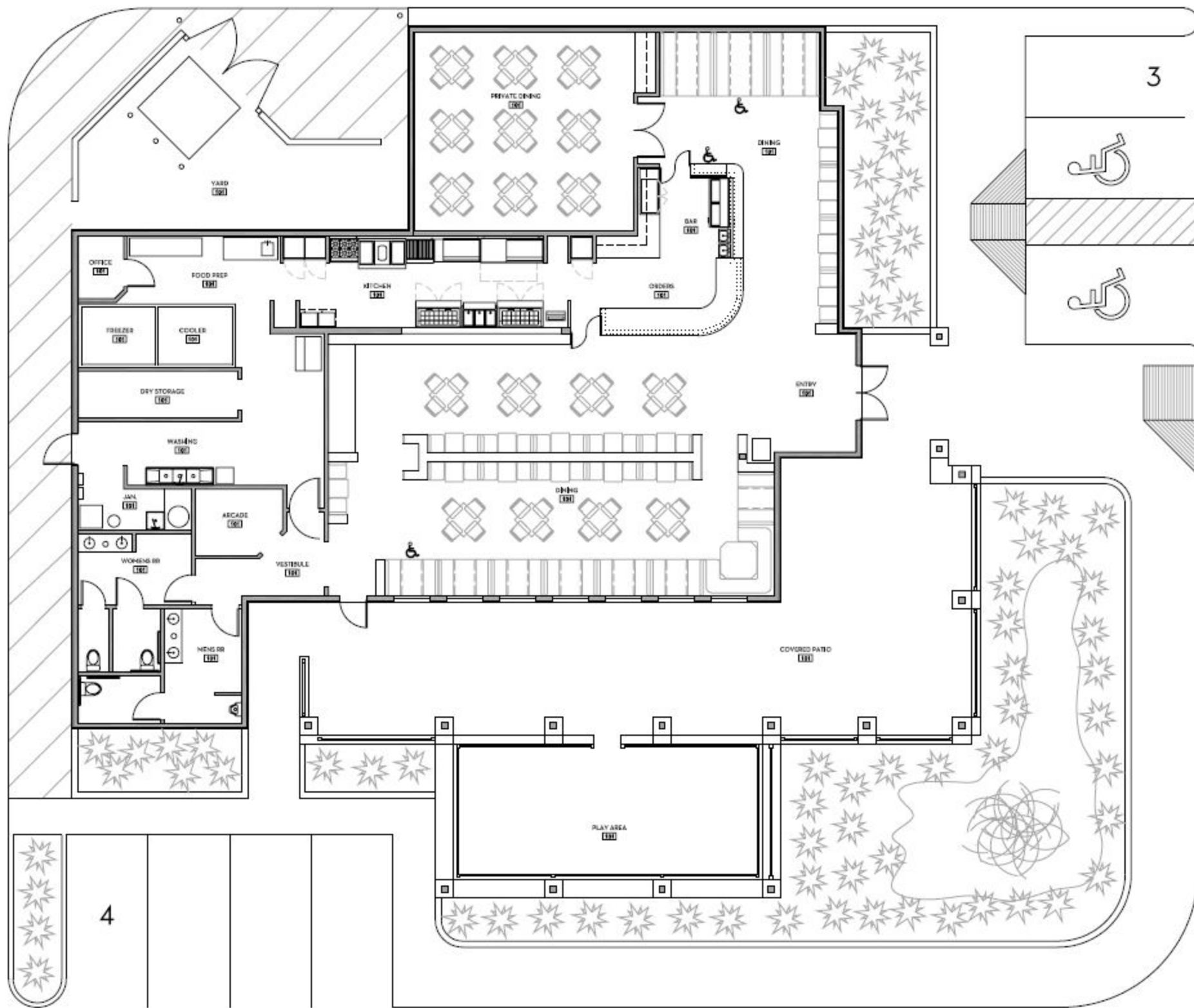
AGENDA ITEM (ID # 1372)

DOC ID: 1372

CONSIDER AND/OR APPROVE TAKING ACTION ON A TEXAS LOCAL GOVERNMENT CODE CHAPTER 380 INCENTIVE AGREEMENT AND TAX ABATEMENT AGREEMENT TO INCENTIVIZE THE CONSECUTION OF A NEW "9er's GRILL" RESTAURANT

9er's Grill will be building a new restaurant estimated to cost \$1,100,000 and employ 16 to 20 employees with a minimum annual payroll of \$200,000. Projected sales of \$1.3 to \$1.5 million.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Steven Johnson, Councilman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman



Attachment: 9ers2 (1372 : 9er's Grill)

**Bay City Community Development Corporation
Incentive Application**
1900 Fifth Street
Bay City, Texas 77414
979-245-8081 979-323-1642 fax
dcdunham@cityofbaycity.org

9er's Grill @ Bay City LLC N/A
Company Name Parent Company

1916 Avenue F, Bay City Restaurant
Project Physical Address (attach legal description for Tax Abatement) Product/Type of Business

9er's Grill
Name of Project

In City Limits:

☒ Yes

☐ No

NAISC / SIC Code

Federal Tax ID _____ Unemployment Ins. # _____

Short Description of Project: About 4000 sqft. Rest.
with about 1200 sqft. patio serving
a classic American menu.

**INCENTIVE
PROGRAM(S)
APPLIED FOR**

- ☐ Property Tax Abatement
☐ Quality Job Incentive
☐ Training
☐ Other

Beginning date: 8/20/2013 Ending date of
construction 12/31/2013

Project Contact:

Name Ali S. QATTOM Title OWNER

9er's Grill

Company 1800 Fm 359 #110 Richmond Tx 77406

Mailing Address 281-232-0202 281-232-6182 AQATTOM@yahoo.com
Phone Number Fax Number Email Address

Ali S. QATTOM Ali S. QATTOM
Company Official Signature Print Official Name and Title OWNER

ESTIMATES			
INVESTMENT		# JOBS	ANNUAL PAYROLL
Building	\$ <u>1,100,000.-</u>	Existing	<u>0</u>
Equipment	\$ <u>200,000.-</u>	New Permanent	<u>16-20</u>
Labor, Engr	\$ <u>100,000.-</u>	Perm. Contract	<u>200-250K.</u>
Other	\$ <u>100,000.-</u>	Construction	<u>2</u>
Total	\$ <u>1,500,000.-</u>		<u>100K.</u>
			<u>500,000.-</u>

Received By: _____ Date Received by BCCDC _____



City Council
1901 5Th Street
Bay City, TX 77414

Meeting: 03/13/14 07:00 PM
Department: BCCDC
Category: Budget
Prepared By: D C Dunham
Initiator: D C Dunham
Sponsors:
DOC ID: 1371

ADOPTED

AGENDA ITEM (ID # 1371)

**CONSIDER AND/OR APPROVE TAKING ACTION ON A
REQUEST TO AMEND THE BAY CITY COMMUNITY
DEVELOPMENT CORPORATION'S BUDGET FOR ITS
MARKETING CAMPAIGN.**

On October 28, 2013 the BCCDC approved \$29,920 for promoting and educating prospective residence and current population, retail businesses and light industry of the current and future opportunities of Bay City. Move funds from Current Fund Balance to 22-420-4460 Advertising.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	William Cornman, Councilman
SECONDER:	Carolyn Thames, Mayor Pro-Tem
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Amendment
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1361

AGENDA ITEM (ID # 1361)

**CONSIDER AND/OR APPROVE TAKING ACTION ON
SETTING INDUSTRIAL WATER AND SEWER UTILITY RATES.**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Carolyn Thames, Mayor Pro-Tem
SECONDER:	William Cornman, Councilman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

Industrial Rates		
	Price discount	Rate/ 1000 gal
Usage of 0 to 900,000 gal	0%	\$ 4.08
From 900,001 to 4,500,000 gal	10%	\$ 3.67
Everything over 4,500,000 gal	20%	\$ 3.26



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

Meeting: 03/13/14 07:00 PM
Department: Public Works
Category: Agreement
Prepared By: Barry Calhoun
Initiator: Barry Calhoun
Sponsors:
DOC ID: 1365

AGENDA ITEM (ID # 1365)

**CONSIDER AND/OR APPROVAL AN AGREEMENT BETWEEN
THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE
CITY OF BAY CITY, TEXAS, FOR THE MAINTENANCE OF
HIGHWAYS WITHIN THE CITY'S CORPORATE LIMITS.**

CONSIDER AND/OR APPROVAL AN AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF
TRANSPORTATION AND THE CITY OF BAY CITY, TEXAS, FOR THE MAINTENANCE OF
HIGHWAYS WITHIN THE CITY'S CORPORATE LIMITS.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Julie Estlinbaum, Councilwoman
SECONDER:	Chrystal Folse, Councilwoman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman



125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8580 | WWW.TXDOT.GOV

January 29, 2014

Honorable Mark Bricker
Mayor of Bay City
1901 Fifth St.
Bay City, TX 77414

Ref: Municipal Maintenance Agreement

Dear Mayor:

It has been several years since Municipal Maintenance Agreements were executed between the cities in the Yoakum District and the Texas Department of Transportation. Due to several changes over the past couple of years, this office is attempting to update all these agreements within our District.

Enclosed is a CD which contains the proposed Resolution, Ordinance and Agreement which outlines the responsibilities of both the State and City in their mutual efforts to maintain a safe and satisfactory highway system within corporate limits of the City. These are for you and the City Council to review discuss and execute. Should any questions arise concerning the agreement, we would be pleased to meet with you and discuss them. There is also one attachment which depicts the non-controlled access roadways, Exhibit A, as described in the agreement.

This is a revision of the previous Agreement executed by the City and State and will replace that Agreement.

After enactment by the City, please return both copies of each to this office for further handling and execution on behalf of the State. A completed copy of each will be furnished to the City.

If you need additional information you may contact me at 361/293-4356.

Sincerely,

Rodney P. Svec, P.E.
District Maintenance Engineer

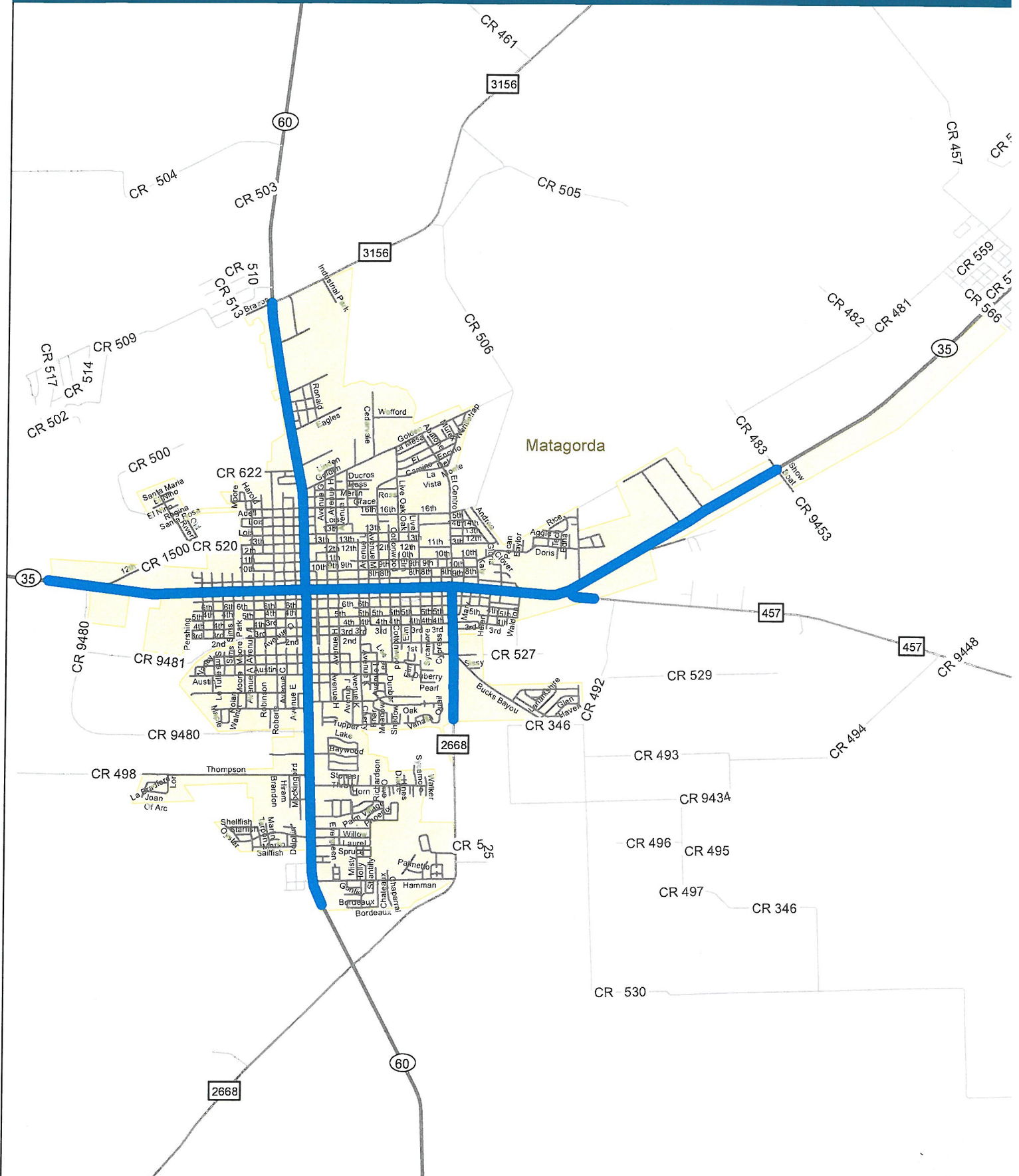
RPS:jm
Attachment
cc: Area Engineers
Maintenance Supervisors



Attachment: 2014-01-29 TxDOT Municipal Maintenance Agreement Renewal Letter (1365 : TxDOT Municipal Maintenance Agreement)

Exhibit "A" Non-Controlled Access Highways

City of Bay City



Attachment: 2014-01-29 TxDOT Municipal Maintenance Agreement Renewal Letter (1365 : TxDOT Municipal Maintenance Agreement)



0 0.55 1.1
Miles

Texas Department of Transportation
YKM District
Thursday, January 16, 2014

Copyright 2013
Texas Department of Transportation
Notice
This map was produced for internal use
with the Texas Department of Transportation
Accuracy is limited to the validity of available
data as of December 31, 2013

Packet Pg. 111



MUNICIPAL MAINTENANCE AGREEMENT

5.12.b

Form 1038
(Rev. 03/12)
Page 1 of 6

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT made this _____ day of _____, 20____, by and between the State of Texas, hereinafter referred to as the "State," party of the first part, and the City of _____ (population _____, 2010, latest Federal Census) acting by and through its duly authorized officers, hereinafter called the "City," party of the second part.

W I T N E S S E T H

WHEREAS, Chapter 311 of the Transportation Code gives the City exclusive dominion, control, and jurisdiction over and under the public streets within its corporate limits and authorizes the City to enter agreements with the State to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through its corporate limits; and

WHEREAS, Section 221.002 of the Transportation Code authorizes the State, at its discretion, to enter agreements with cities to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through the corporate limits of such cities; and

WHEREAS, the Executive Director, acting for and in behalf of the Texas Transportation Commission, has made it known to the City that the State will assist the City in the maintenance and operation of State highways within such City, conditioned that the City will enter into agreements with the State for the purpose of determining the responsibilities of the parties thereto; and

WHEREAS, the City has requested the State to assist in the maintenance and operation of State highways within such City:

A G R E E M E N T

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, it is agreed as follows:

For this agreement, the use of the words "State Highway" shall be construed to mean all numbered highways that are part of the State's Highway System.

Attachment: MMA Template (1365 : TxDOT Municipal Maintenance Agreement)

COVERAGE

1. This agreement is intended to cover and provide for State participation in the maintenance and operation of the following classifications of State Highways within the City:
 - A. Non-Controlled Access highways or portions thereof which are described and/or graphically shown as "State Maintained and Operated" highways in Exhibit "A," which is attached hereto and made a part hereof.
 - B. All State highways or portions thereof which have been designated by the Texas Transportation Commission or maintained and operated as Controlled Access Highways and which are described and/or graphically shown in Exhibit "B," which is attached hereto and made a part hereof.
2. In the event that the present system of State highways within the City is changed by cancellation, modified routing, or new routes, the State will terminate maintenance and operation and this agreement will become null and void on those portions of the highways which are no longer on the State Highway System; and the full effect and all conditions of this agreement will apply to the changed highways or new highways on the State Highway System within the City; and they shall be classified as "State Maintained and Operated" under paragraph 1 above, unless the execution of a new agreement on the changed or new portions of the highways is requested by either the City or the State.
3. Exhibits that are a part of this agreement may be changed with both parties' written concurrence. Additional exhibits may also be added with both parties' written concurrence.

GENERAL CONDITIONS

1. The City authorizes the State to maintain and operate the State highways covered by this agreement in the manner set out herein.
2. This agreement is between the State and the City only. No person or entity may claim third party beneficiary status under this contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this contract.
3. This agreement is for the purpose of defining the authority and responsibility of both parties for maintenance and operation of State highways through the City. This agreement shall supplement any special agreements between the State and the City for the maintenance, operation, and/or construction of the State highways covered herein, and this agreement shall supersede any existing Municipal Maintenance Agreements.
4. Traffic regulations, including speed limits, will be established only after traffic and engineering studies have been completed by the State and/or City and approved by the State.
5. The State will erect and maintain all traffic signs and associated pavement markings necessary to regulate, warn, and guide traffic on State highways within the State right-of-way except as mentioned in this paragraph and elsewhere in this agreement. At the intersections of off-system approaches to State highways, the City shall install and maintain all stop signs, yield signs, and one-way signs and any necessary stop or yield bars and pedestrian crosswalks outside the main lanes or outside the frontage roads, if such exist. The City shall install and maintain all street name signs except for those mounted on State maintained traffic signal poles or arms or special advance street name signs on State right-of-way. All new signs installed by the City on State right-of-way shall meet or exceed the latest State breakaway standards and be in accordance with the *Texas Manual on Uniform Traffic Control Devices*, latest edition and revision. All existing signs shall be upgraded on a maintenance replacement basis to meet these requirements.
6. Subject to approval by the State, any State highway lighting system may be installed by the City provided the City shall pay or otherwise provide for all cost of installation, maintenance, and operation except in those installations specifically covered by separate agreements between the City and State.

7. The City shall enforce the State laws governing the movement of loads which exceed the legal limits for weight, length, height, or width as prescribed by Chapters 621, 622, and 623 of the Transportation Code for public highways outside corporate limits of cities. The City shall also, by ordinance/resolution and enforcement, prescribe and enforce lower weight limits when mutually agreed by the City and the State that such restrictions are needed to avoid damage to the highway and/or for traffic safety.
8. The City shall prevent future encroachments within the right-of-way of the State highways and assist in removal of any present encroachments when requested by the State except where specifically authorized by separate agreement; and prohibit the planting of trees or shrubbery or the creation or construction of any other obstruction within the right-of-way without prior approval in writing from the State.
9. Traffic control devices such as signs, traffic signals, and pavement markings, with respect to type of device, points of installation and necessity, will be determined by traffic and engineering studies. The City shall not install, maintain, or permit the installation of any type of traffic control device which will affect or influence the use of State highways unless approved in writing by the State. Traffic control devices installed prior to the date of this agreement are hereby made subject to the terms of this agreement and the City agrees to the removal of such devices which affect or influence the use of State highways unless their continued use is approved in writing by the State. It is understood that basic approval for future installations of traffic control signals by the State or as a joint project with the City, will be indicated by the proper City official's signature on the title sheet of the plans. Both parties should retain a copy of the signed title sheet or a letter signed by both parties acknowledging which signalized intersections are covered by this agreement. Any special requirements not covered within this agreement will be covered under a separate agreement.
10. New construction of sidewalks, ramps or other accessibility related items shall comply with current ADA standards. The city is responsible for the maintenance of these items.
11. If the City has a driveway permit process that has been submitted to and approved by the State, the City will issue permits for access driveways on State highway routes and will assure the grantee's conformance, for proper installation and maintenance of access driveway facilities, with either a Local Access Management Plan that the City has adopted by ordinance and submitted to the State or, if the City has not adopted by ordinance and submitted to the State a Local Access Management Plan, the State's "Regulations for Access Driveways to State Highways" and the State's Access Management Manual. If the City does not have an approved city-wide driveway permit process, the State will issue access driveway permits on State highway routes in accordance with the City's Local Access Management Plan, adopted by city ordinance and submitted to the State or, if the City has not adopted by ordinance and submitted a Local Access Management Plan, the State's "Regulations for Access Driveways to State Highways" and the State's Access Management Manual.
12. The use of unused right-of-way and areas beneath structures will be determined by a separate agreement

NON-CONTROLLED ACCESS HIGHWAYS

The following specific conditions and responsibilities shall be applicable to non-controlled access State highways in addition to the "General Conditions" contained herein above. Non-controlled access State highways or portions thereof covered by this section are those listed and/or graphically shown in Exhibit "A."

State's Responsibilities (Non-Controlled Access)

1. Maintain the traveled surface and foundation beneath such traveled surface necessary for the proper support of same under vehicular loads encountered and maintain the shoulders.
2. Assist in mowing and litter pickup to supplement City resources when requested by the City and if State resources are available.
3. Assist in sweeping and otherwise cleaning the pavement to supplement City resources when requested by the City and if State resources are available.

4. Assist in snow and ice control to supplement City resources when requested by the City and if State resources are available.
5. Maintain drainage facilities within the limits of the right-of-way and State drainage easements. This does not relieve the City of its responsibility for drainage of the State highway facility within its corporate limits.
6. Install, maintain, and operate, when required, normal regulatory, warning and guide signs and normal markings (except as provided under "General Conditions" in paragraph 5). In cities with less than 50,000 population, this also includes school safety devices, school crosswalks, and crosswalks installed in conjunction with pedestrian signal heads. This does not include other pedestrian crosswalks. Any other traffic striping desired by the City may be placed and maintained by the City subject to written State approval.
7. Install, operate, and maintain traffic signals in cities with less than 50,000 population.
8. In cities equal to or greater than 50,000 population, the State may provide for installation of traffic signals when the installation is financed in whole or in part with federal-aid funds if the City agrees to enter into an agreement setting forth the responsibilities of each party.

City's Responsibilities (Non-Controlled Access)

1. Prohibit angle parking, except upon written approval by the State after traffic and engineering studies have been conducted to determine if the State highway is of sufficient width to permit angle parking without interfering with the free and safe movement of traffic.
2. Install and maintain all parking restriction signs, pedestrian crosswalks [except as provided in paragraph 6 under "State's Responsibilities (Non-Controlled Access)"], parking stripes and special guide signs when agreed to in writing by the State. Cities greater than or equal to 50,000 population will also install, operate, and maintain all school safety devices and school crosswalks.
3. Signing and marking of intersecting city streets with State highways will be the full responsibility of the City (except as provided under "General Conditions" in paragraph 5).
4. Require installations, repairs, removals or adjustments of publicly or privately owned utilities or services to be performed in accordance with Texas Department of Transportation specifications and subject to approval of the State in writing.
5. Retain all functions and responsibilities for maintenance and operations which are not specifically described as the responsibility of the State. The assistance by the State in maintenance of drainage facilities does not relieve the City of its responsibility for drainage of the State highway facility within its corporate limits except where participation by the State is specifically covered in a separate agreement between the City and the State.
6. Install, maintain, and operate all traffic signals in cities equal to or greater than 50,000 population. Any variations will be handled by a separate agreement.
7. Perform mowing and litter pickup.
8. Sweep and otherwise clean the pavement.
9. Perform snow and ice control.

CONTROLLED ACCESS HIGHWAYS

The following specific conditions and responsibilities shall be applicable to controlled access highways in addition to the "General Conditions" contained herein above. Controlled access State highways or portions thereof covered by this section are those listed and/or graphically shown in Exhibit "B."

State's Responsibilities (Controlled Access)

1. Maintain the traveled surface of the through lanes, ramps, and frontage roads and foundations beneath such traveled surface necessary for the proper support of same under vehicular loads encountered.
2. Mow and clean up litter within the outermost curbs of the frontage roads or the entire right-of-way width where no frontage roads exist and assist in performing these operations between the right-of-way line and the outermost curb or crown line of the frontage roads in undeveloped areas.
3. Sweep and otherwise clean the through lanes, ramps, separation structures or roadways and frontage roads.
4. Remove snow and control ice on the through lanes and ramps and assist in these operations as the availability of equipment and labor will allow on the frontage roads and grade separation structures or roadways.
5. Except as provided under "General Conditions" in paragraph 5, the State will install and maintain all normal markings and signs, including sign operation if applicable, on the main lanes and frontage roads. This includes school safety devices, school crosswalks and crosswalks installed on frontage roads in conjunction with pedestrian signal heads. It does not include other pedestrian crosswalks.
6. Install, operate and maintain traffic signals at ramps and frontage road intersections unless covered by a separate agreement.
7. Maintain all drainage facilities within the limits of the right-of-way and State drainage easements. This does not relieve the City of its responsibility for drainage of the highway facility within its corporate limits.

City's Responsibilities (Controlled Access)

1. Prohibit, by ordinance or resolution and through enforcement, all parking on frontage roads except when parallel parking on one side is approved by the State in writing. Prohibit all parking on main lanes and ramps and at such other places where such restriction is necessary for satisfactory operation of traffic, by passing and enforcing ordinances/resolutions and taking other appropriate action in addition to full compliance with current laws on parking.
2. When considered necessary and desirable by both the City and the State, the City shall pass and enforce an ordinance/resolution providing for one-way traffic on the frontage roads except as may be otherwise agreed to by separate agreements with the State.
3. Secure or cause to be secured the approval of the State before any utility installation, repair, removal or adjustment is undertaken, crossing over or under the highway facility or entering the right-of-way. In the event of an emergency, it being evident that immediate action is necessary for protection of the public and to minimize property damage and loss of investment, the City, without the necessity of approval by the State, may at its own responsibility and risk make necessary emergency utility repairs, notifying the State of this action as soon as practical.
4. Pass necessary ordinances/resolutions and retain its responsibility for enforcing the control of access to the expressway/freeway facility.
5. Install and maintain all parking restriction signs, pedestrian crosswalks (except as mentioned above in paragraph 5 under "State's Responsibilities") and parking stripes when agreed to by the State in writing. Signing and marking of intersecting city streets to State highways shall be the full responsibility of the City (except as discussed under "General Conditions" in paragraph 5).

TERMINATION

All obligations of the State created herein to maintain and operate the State highways covered by this agreement shall terminate if and when such highways cease to be officially on the State highway system; and further, should either party fail to properly fulfill its obligations as herein outlined, the other party may terminate this agreement upon 30 days written notice. Upon termination, all maintenance and operation duties on non-controlled access State highways shall revert to City responsibilities, in accordance with Chapter 311 of the Texas Transportation Code. The State shall retain all maintenance responsibilities on controlled access State highways in accordance with the provisions of Chapter 203 of the Texas Transportation Code and 23 United States Code Section 116.

Said State assumption of maintenance and operations shall be effective the date of execution of this agreement by the Texas Department of Transportation.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures, the City of _____

on the _____ day of _____, 20____, and the Texas Department of Transportation, on the _____ day of _____, 20____.

ATTEST:

CITY OF _____

BY _____

(Title of Signing Official)

THE STATE OF TEXAS

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, and established policies or work programs heretofore approved and authorized by the Texas Transportation Commission

BY _____

(District Engineer)

Yoakum District - YKM - 13 District

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under Sections 552.021 and 552.023 of the Government Code, you also are entitled to receive and review this information. Under Section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect. For more information, call 512/416-3048.

NOTE: To be executed in duplicate and supported by Municipal Maintenance Ordinance/Resolution and City Secretary Certificate.

Attachment: MMA Template (1365 : TxDOT Municipal Maintenance Agreement)

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE AGREEMENT DATED _____
 BETWEEN THE STATE OF TEXAS AND THE CITY OF _____ FOR THE
 MAINTENANCE, CONTROL, SUPERVISION AND REGULATION OF CERTAIN STATE HIGHWAYS AND/OR
 PORTIONS OF STATE HIGHWAYS IN THE CITY OF _____ AND
 PROVIDING FOR THE EXECUTION OF SAID AGREEMENT; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF : _____

SECTION 1.

That the certain agreement dated _____, between the State of Texas and the City
 of _____ for the maintenance, control, supervision and regulation
 of certain State Highways and/or portions of State Highways in the City of _____
 and the same is, hereby approved; and that _____ is hereby
 authorized to execute said agreement on behalf of the City of _____
 and to transmit the same to the State of Texas for appropriate action.

SECTION 2.

The fact that the work contemplated under the above mentioned agreement is needed, creates an emergency which
 for the immediate preservation of the public peace, health, safety and general welfare requires that this Ordinance
 take effect immediately from and after its passage and it is accordingly so ordained.

PASSED: _____

ATTEST:

Secretary

APPROVED: _____

City of _____
Clerk_____
Mayor

APPROVED AS TO FORM:

City Attorney

Attachment: MMA Template (1365 : TxDOT Municipal Maintenance Agreement)

RESOLUTION NO. _____

A RESOLUTION APPROVING THE AGREEMENT DATED _____, BETWEEN THE
STATE OF TEXAS AND THE CITY OF _____, FOR
THE MAINTENANCE, CONTROL, SUPERVISION AND REGULATION OF CERTAIN STATE HIGHWAYS AND/OR
PORTIONS OF STATE HIGHWAYS IN THE CITY OF _____;
AND PROVIDING FOR THE EXECUTION OF SAID AGREEMENT; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF _____ :

SECTION 1. That the certain agreement dated _____, between the State of Texas and the
City of _____ for the maintenance, control, supervision and regulation of
certain State Highways and/or portions of State Highways in the City of _____
be and the same is, hereby approved; and that _____ is hereby
authorized to execute said agreement on behalf of the City of _____ and to
transmit the same to the State of Texas for appropriate action.

PASSED: _____

APPROVED: _____

Mayor

ATTEST:

Secretary

City of _____
Clerk

APPROVED AS TO FORM:

City Attorney

Attachment: MMA Template (1365 : TxDOT Municipal Maintenance Agreement)

MUNICIPAL MAINTENANCE ORDINANCE

AN ORDINANCE PROVIDING FOR THE MAINTENANCE OF CERTAIN STATE HIGHWAYS AND/OR PORTIONS OF STATE HIGHWAYS IN THE CITY OF _____, COUNTY OF _____, TEXAS, HEREBY REFERRED TO AS MUNICIPAL MAINTENANCE PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OR OTHER AUTHORIZED CITY OFFICIAL, TO EXECUTE AND AFFIX THE CORPORATE SEAL AND ATTEST SAME. A CERTAIN AGREEMENT BETWEEN THE CITY AND THE STATE OF TEXAS, PROVIDING FOR THE MAINTENANCE AND USE OF THE SAID MAINTENANCE PROJECT; AND DECLARING AN EMERGENCY AND PROVIDING THAT THIS ORDINANCE SHOULD BE EFFECTIVE FROM AND AFTER ITS PASSAGE.

WHEREAS, the Public convenience, safety and necessity of the City and the people of the City require that State Highway routes within the City be adequately maintained; and

WHEREAS, the City has requested that the State of Texas enter upon and contribute financially to the maintenance of said project; and

WHEREAS, the State of Texas has made it known to the City that it will, with its own forces and equipment and at its sole cost and expense enter upon and maintain said project, conditioned upon the provisions concerning liabilities and responsibilities for maintenance, control, supervision and regulation which are set out in the form attached hereto, made a part thereof and marked MUNICIPAL MAINTENANCE AGREEMENT; and

WHEREAS, said project consists of those State Highways and/or portions thereof which are described and included in the form attached hereto and marked MUNICIPAL MAINTENANCE AGREEMENT.

NOW, THEREFORE, BE IT ORDAINED by the _____

SECTION 1. That the public convenience, safety and necessity of the City and the people of the City require said project be adequately maintained.

SECTION 2. That the State of Texas be and is hereby authorized to enter upon and maintain said maintenance projects.

SECTION 3. That the Mayor, or proper City official, of the City, be and is hereby authorized to execute for and on behalf of the City an Agreement with the State of Texas, in accordance with and for the purpose of carrying out the terms and provisions of this order, in the form attached hereto, made a part hereto, and marked MUNICIPAL MAINTENANCE AGREEMENT. The City Secretary is hereby directed to attest the agreement and to affix the proper seal of the City thereto.

SECTION 4. The Mayor of the City, having requested in writing that this ordinance take effect forthwith and there being in fact an emergency and imperative necessity that the work herein provided for be begun and carried out promptly and with expedition and that the agreement aforesaid shall be immediately made, executed and delivered to the end that such work herein provided for may be begun and carried out promptly and with expedition. The reading of the ordinance on three several days is hereby dispensed with and the same shall be in full force and effect from and after its passage.

STATE OF TEXAS §

COUNTY OF TRAVIS §

I, _____, the duly appointed, qualified and acting
city secretary of the City of _____, Texas, hereby certify that the
foregoing pages constitute a true and correct copy of an ordinance duly passed by the City Council at a meeting held
on _____, A.D., 20____, at _____ o'clock ☐ a.m. ☐ p.m. .

To certify which, witness my hand and seal of the City of _____,
Texas, this due _____ day of _____, 20____, at _____, Texas.

City Secretary of the City of

_____, Texas

Attachment: MMA Template (1365 : TxDOT Municipal Maintenance Agreement)

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

**AMENDMENT TO
MUNICIPAL MAINTENANCE AGREEMENT
FOR THE FURNISHING, INSTALLING,
OPERATION AND MAINTENANCE OF CAMERAS ON STATE HIGHWAY
RIGHTS-OF-WAY TO MONITOR COMPLIANCE WITH TRAFFIC-CONTROL SIGNALS**

THIS AMENDMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, hereinafter called the "State" and the City of _____, hereinafter called the "City", acting by and through its duly authorized officers.

W I T N E S S E T H

WHEREAS, the State owns and maintains a system of highways and roadways in the City of _____ pursuant to Transportation Code, Section 201.103; and

WHEREAS, the State and the City executed a Municipal Maintenance Agreement on _____; and

WHEREAS, the City has requested permission to install cameras on state highway rights-of-way to monitor compliance with traffic-control signals, hereinafter referred to as "camera monitoring equipment", at the locations listed on Exhibit A attached hereto and made a part of hereof; and

WHEREAS, the State has determined that when the City's installation of camera monitoring equipment will not damage the highway facility, impair safety, impede maintenance or in any way restrict the operation of the highway, the proposed camera monitoring equipment may be installed by the City or its contractor;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

A M E N D M E N T

ARTICLE 1. CONTRACT PERIOD

This amendment becomes effective on final execution by the State and shall remain in effect as long as said camera monitoring equipment is in operation at the described locations.

ARTICLE 2. TERMINATION

This amendment may be terminated by one of the following conditions:

- 1) By mutual agreement of both parties;
- 2) By the State giving written notice to the City as consequence of failure by the City or its contractor to satisfactorily perform the services and obligations set forth in this amendment, with proper allowances being made for circumstances beyond the control of the City or its contractor. The State's written notice to the City shall describe the default and the proposed termination date. If the City cures the default before the proposed termination date, the proposed termination is ineffective; or
- 3) By either party upon thirty (30) days written notice to the other.

Termination of this amendment shall not serve to terminate the underlying Municipal Maintenance Agreement between the State and the City.

Attachment: MMA Template (1365 : TxDOT Municipal Maintenance Agreement)

ARTICLE 3. COMPENSATION

No compensation shall be paid for this amendment.

ARTICLE 4. PERSONNEL, EQUIPMENT, AND MATERIAL

- A. The City will use labor and supervisory personnel employed directly by the City or its contractor and use City owned or contractor owned machinery, equipment, and vehicles necessary for the work. In the event that the City or its contractor does not have the machinery, equipment and vehicles necessary to perform the work, the machinery, equipment, and vehicles may be rented or leased as necessary.
- B. No reimbursement shall be paid for any materials supplied by the City or its contractor.
- C. Any adjustment, replacement or reinstallation of the camera monitoring equipment due to reconstruction or alteration of the intersection shall be performed by the City at the City's expense. The State will work with the City to provide adequate notice of any planned work to allow for the necessary modification or removal.
- D. All installation or maintenance work performed by the City or its contractor requiring traffic control shall be performed in accordance with the *Texas Manual on Uniform Traffic Control Devices*.

ARTICLE 5. INSPECTION OF WORK

- A. The City or its contractor will furnish the State a complete set of design drawings and installation plans for review. The installation plans shall include all electrical, electronics, signing, civil and mechanical work pertaining to the camera monitoring equipment.
- B. The State reserves the right to inspect and request modification of any camera monitoring equipment under this agreement both prior to and after installation. No installation may occur until the State has approved the proposed installation.
- C. The State reserves the right to inspect and approve the completed installation.
- D. The State will promptly notify the City or its contractor of any failure of materials, equipment or installation methods and the City or its contractor will take such measures necessary to obtain acceptable systems components and installation procedures without delay.

ARTICLE 6. RESPONSIBILITIES OF THE PARTIES

The parties agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives and agents. The State shall not be held responsible for the operation (or non-operation) of the camera monitoring equipment or for any effect it may have.

The City is responsible for any damage that may occur to state equipment during the installation, maintenance or operation of the camera monitoring equipment. The City is responsible for maintaining the camera monitoring equipment and related signing in good working order and keeping such equipment free from graffiti.

ARTICLE 7. DE-ACTIVATION OF CAMERA MONITORING EQUIPMENT

The State reserves the right to disconnect and remove camera monitoring equipment from the traffic signals should any problem arise affecting the State. The State will notify the appropriate City office of the de-activation of the camera monitoring equipment. Upon correction of the problem, the City may reconnect the camera monitoring equipment.

ARTICLE 8. INSTALLATION REQUIREMENTS

The City or its contractor shall furnish and install all equipment related to the camera monitoring equipment installation. This includes, but is not limited to, camera equipment, camera housing and supporting structure, intersection lighting, vehicle detection system, communications equipment, electrical service and connections, roadway signing and any interconnection with the signal. The City or its contractor will be responsible for all power costs associated with the operation of the camera monitoring equipment.

Electrical connections made to the State's signal equipment shall be optically or otherwise isolated as approved by the State and shall not affect the operation of any component of the traffic signal system including both the signal controller and the conflict monitor/malfunction management unit.

ARTICLE 9. REPORTS

Upon written request, the City will be required to supply the State with data related to the operation of the camera monitoring equipment.

ARTICLE 10. REMEDIES

Violation or breach of contract terms by the City shall be grounds for termination of the amendment, and any increased cost arising from the City default, breach of contract or violation of terms shall be paid for by the City. This amendment shall not be considered as specifying the exclusive remedy for default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 11. INSURANCE

Before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately.

ARTICLE 12. SUCCESSORS AND ASSIGNS

The City shall not assign or otherwise transfer its rights or obligations under this amendment except with the prior written consent of the State.

ARTICLE 13. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this amendment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 14. NOTICES

All notices to either party by the other required under this amendment shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

City: _____	State: _____
City: _____	State: _____
City: _____	State: _____
City: _____	State: _____
City: _____	State: _____

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

ARTICLE 15. GOVERNING LAWS AND VENUE

This amendment shall be construed under and in accordance with the laws of the State of Texas. Any legal actions regarding the parties' obligations under this agreement must be filed in Travis County, Texas.

ARTICLE 16. PRIOR AGREEMENTS SUPERSEDED

This amendment constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting within the subject matter.

ARTICLE 17. REVISIONS TO EXHIBIT A

Revision to the locations listed in Exhibit A may be made if submitted in writing by the City and initialed by both parties.

IN WITNESS WHEREOF, the State and the City have signed duplicate counterparts of this agreement.

The CITY OF _____

Executed on behalf of the City by:

By _____ Date _____

Typed or Printed Name and Title _____

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
District Engineer

July 7, 1997

Honorable Charles Martinez, Jr.
Mayor of Bay City
1901 Fifth Street
Bay City, TX 77414

Dear Mayor Martinez:

Attached for your files is the fully executed Municipal Maintenance Agreement between your city and the State of Texas.

If you desire additional information, you may contact Carl L. O'Neill of this office at 512/293-5284.

Sincerely,



Michael W. Behrens, P.E.
District Engineer

\pk
Attachment

DISTRICT 13 YOAKUM	HANDLE	INFO	DISCUSS	DATE
DIST ENGR				
ADMIN				
PLAN & DEV				
OPERATIONS				
PUBL AFF				
INT REV				
Mawt	✓			✓

MUNICIPAL MAINTENANCE AGREEMENT**STATE OF TEXAS *****COUNTY OF TRAVIS ***

THIS AGREEMENT made this 26th day of June, 1997, by and between the State of Texas, hereinafter referred to as the "State", party of the first part, and the City of Bay City, Matagorda County, Texas (population 18,170, 1990, latest Federal Census) acting by and through its duly authorized officers, hereinafter called the "City", party of the second part.

WITNESSETH

WHEREAS, Chapter 311 of the Transportation Code gives the City exclusive dominion, control, and jurisdiction over and under the public streets within its corporate limits and authorizes the City to enter agreements with the State to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through its corporate limits; and

WHEREAS, Section 221.002 of the Transportation Code authorizes the State, at its discretion, to enter agreements with cities to fix responsibilities for maintenance, control, supervision, and regulation of State highways within and through the corporate limits of such cities; and

WHEREAS, the Executive Director, acting for and in behalf of the Texas Transportation Commission, has made it known to the City that the State will assist the City in the maintenance and operation of State highways within such City, conditioned that the City will enter into agreements with the State for the purpose of determining the responsibilities of the parties thereto; and

WHEREAS, the City has requested the State to assist in the maintenance and operation of State highways within such City:

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, it is agreed as follows:

For this agreement the use of the words "State Highway" shall be construed to mean all numbered highways that are part of the State's Highway System.

COVERAGE

- I. This agreement is intended to cover and provide for State participation in the maintenance and operation of the following classifications of State highways within the City:

- A. Non-Controlled Access highways or portions thereof which are described and/or graphically shown as "State Maintained and Operated" highways in Exhibit "A", which is attached hereto and made a part hereof.
 - B. All State highways or portions thereof which have been designated by the Texas Transportation Commission or maintained and operated as Controlled Access Highways and which are described and graphically shown in Exhibit "B", which is attached hereto and made a part hereof.
2. In the event that the present system of State highways within the City is changed by cancellation, modified routing, or new routes, the State will terminate maintenance and operation and this agreement will become null and void on those portions of the highways which are no longer on the State Highway System; and the full effect and all conditions of this agreement will apply to the changed highways or new highways on the State Highway System within the City; and they shall be classified as "State Maintained and Operated" under paragraph 1 above, unless the execution of a new agreement on the changed or new portions of the highways is requested by either the City or the State.
 3. Exhibits that are a part of this agreement may be exchanged with both parties written concurrence. Additional exhibits may also be added with both parties written concurrence.

GENERAL CONDITIONS

1. The City authorizes the State to maintain and operate the State highways covered by this agreement in the manner set out herein.
2. This agreement is for the purpose of defining the authority and responsibility of both parties for maintenance and operation of State highways through the City. This agreement shall supplement any special agreements between the State and the City for the maintenance, operation and or construction of the State highways covered herein, and this agreement shall supersede any existing Municipal Maintenance Agreements.
3. Traffic regulations, including speed limits, will be established only after traffic and engineering studies have been completed by the State and or City and approved by the State.
4. The State will erect and maintain all traffic signs and associated pavement markings necessary to regulate, warn, and guide traffic on State highways within the State right-of-way except as mentioned in this paragraph and elsewhere in this agreement. At the intersections of off-system approaches to State highways, the City shall install and maintain all stop signs, yield signs and one-way signs and any necessary stop or yield bars and pedestrian crosswalks outside the main lanes or outside the frontage roads if such exist. The City shall install and maintain all street name signs except for those mounted on State maintained traffic signal poles or arms or special advance street name signs on State right-of-way. All new signs installed by the City on State right-of-way shall meet or exceed the latest State breakaway standards and be in accordance with the Texas Manual on Uniform Traffic Control Devices, latest edition and revision. All existing signs shall be upgraded on a maintenance replacement basis to meet these requirements.
5. Subject to approval by the State, any State highway lighting system may be installed by the City provided the City shall pay or otherwise provide for all cost of installation, maintenance, and operation except in those installations specifically covered by separate agreements between the City and State.

6. The City shall enforce the State laws governing the movement of loads which exceed the legal limits of weight, length, height, or width as prescribed by Chapters 621, 622 and 623 of the Transportation Code for public highways outside corporate limits of cities. The City shall also, by ordinance/resolution and enforcement, prescribe and enforce lower weight limits when mutually agreed by the City and the State that such restrictions are needed to avoid damage to the highway and or for traffic safety.
7. The City shall prevent future encroachments within the right-of-way of the State highways and assist in removal of any present encroachments when requested by the State except where specifically authorized by separate agreement; and prohibit the planting of trees or shrubbery or the creation or construction of any other obstruction within the right-of-way without prior approval in writing from the State.
8. Traffic control devices, such as signs, traffic signals, and pavement markings, with respect to type of device, points of installation and necessity, will be determined by traffic and engineering studies. The City shall not install, maintain, or permit the installation of any type of traffic control device which will affect or influence the use of State highways unless approved in writing by the State. Traffic control devices installed prior to the date of this agreement are hereby made subject to the terms of this agreement and the City agrees to the removal of such devices which affect or influence the use of State highways unless their continued use is approved in writing by the State. It is understood that basic approval for future installations of traffic control signals by the State or as a joint project with the City, will be indicated by the proper City official's signature on the title sheet of the plans. Both parties should retain a copy of the signed title sheet or a letter signed by both parties acknowledging which signalized intersections are covered by this agreement. Any special requirements not covered within this agreement will be covered under a separate agreement.
9. Should the City have a city-wide driveway permit process, the City will issue permits for access driveways and will assure the grantee's conformance, for proper installation and maintenance of access driveway facilities in accordance with "Regulations for Access Driveways to State Highways" adopted by the Texas Department of Transportation or with other standards and specifications for the design, construction, and maintenance details subject to approval in writing by the State. Should the City not have a city-wide driveway permit process, the State may issue access driveway permits on State highway routes in accordance with its "Regulations for Access Driveways to State Highways".
10. The use of unused right-of-way and areas beneath structures will be determined by a separate agreement

NON-CONTROLLED ACCESS HIGHWAYS

The following specific conditions and responsibilities shall be applicable to non-controlled access State highways in addition to the "General Conditions" contained herein above. Non-controlled access State highways or portions thereof covered by this section are those listed and/or graphically shown in Exhibit "A".

State's Responsibilities (Non-Controlled Access)

1. Maintain the traveled surface and foundation beneath such traveled surface necessary for the proper support of same under vehicular loads encountered and maintain the shoulders.
2. Assist in mowing and litter pickup to supplement City resources when requested by the City and if State resources are available.
3. Assist in sweeping and otherwise clearing the pavement to supplement City resources when requested by the City and if State resources are available.

4. Assist in snow and ice control to supplement City resources when requested by the City and if State resources are available.
5. Maintain drainage facilities within the limits of the right-of-way and State drainage easements. This does not relieve the City of its responsibility for drainage of the State highway facility within its corporate limits.
6. Install, maintain and operate, when required, normal regulatory, warning and guide signs and normal markings (except as provided under "General Conditions" in paragraph number 4). In cities with less than 50,000 population, this also includes school safety devices, school crosswalks, and crosswalks installed in conjunction with pedestrian signal heads. This does not include other pedestrian crosswalks. Any other traffic striping desired by the City may be placed and maintained by the City subject to written State approval.
7. Install, operate and maintain traffic signals in cities with less than 50,000 population.
8. In cities equal to or greater than 50,000 population, the State may provide for installation of traffic signals when the installation is financed in whole or in part with federal-aid funds if the City agrees to enter into an agreement setting forth the responsibilities of each party.

City's Responsibilities (Non-Controlled Access)

1. Prohibit angle parking, except upon written approval by the State after traffic and engineering studies have been conducted to determine if the State highway is of sufficient width to permit angle parking without interfering with the free and safe movement of traffic.
2. Install and maintain all parking restriction signs, pedestrian crosswalks (except as provided in paragraph number 6 above), parking stripes, and special guide signs when agreed to in writing by the State. Cities greater than or equal to 50,000 population will also install, operate and maintain all school safety devices and school crosswalks.
3. Signing and marking of intersecting city streets with State highways will be the full responsibility of the City (except as provided under "General Conditions" in paragraph number 4).
4. Require installations, repairs, removals or adjustments of publicly or privately owned utilities or services to be performed in accordance with Texas Department of Transportation specifications and subject to approval of the State in writing.
5. Retain all functions and responsibilities for maintenance and operations which are not specifically described as the responsibility of the State. The assistance by the State in maintenance of drainage facilities does not relieve the City of its responsibility for drainage of the State highway facility within its corporate limits except where participation by the State is specifically covered in a separate agreement between the City and the State.
6. Install, maintain and operate all traffic signals in cities equal to or greater than 50,000 population. Any variations will be handled by a separate agreement.
7. Perform mowing and litter pickup.
8. Sweep and otherwise clean the pavement.
9. Perform snow and ice control.

The following specific conditions and responsibilities shall be applicable to controlled access highways in addition to "General Conditions" contained herein above. Controlled access State highways or portions thereof covered by this section are those listed and/or graphically shown in Exhibit "B".

State's Responsibilities (Controlled Access)

1. Maintain the traveled surface of the through lanes, ramps, and frontage roads and foundations beneath such traveled surface necessary for the proper support of same under vehicular loads encountered.
2. Mow and clean up litter within the outermost curbs of the frontage roads or the entire right-of-way width where no frontage roads exist, and assist in performing these operations between the right-of-way line and the outermost curb or crown line of the frontage roads in undeveloped areas.
3. Sweep and otherwise clean the through lanes, ramps, separation structures or roadways and frontage roads.
4. Remove snow and control ice on the through lanes and ramps and assist in these operations as the availability of equipment and labor will allow on the frontage roads and grade separation structures or roadways.
5. Except as provided under "General Conditions" in paragraph number 4, the State will install and maintain all normal markings and signs, including sign operation if applicable, on the main lanes and frontage roads. This includes school safety devices, school crosswalks, and crosswalks installed on frontage roads in conjunction with pedestrian signal heads. It does not include other pedestrian crosswalks.
6. Install, operate, and maintain traffic signals at ramps and frontage road intersections unless covered by a separate agreement.
7. Maintain all drainage facilities within the limits of the right-of-way and State drainage easements. This does not relieve the City of its responsibility for drainage of the highway facility within its corporate limits.

City's Responsibilities (Controlled Access)

1. Prohibit, by ordinance or resolution and through enforcement, all parking on frontage roads except when parallel parking on one side is approved by the State in writing. Prohibit all parking on main lanes and ramps and at such other places where such restriction is necessary for satisfactory operation of traffic, by passing and enforcing ordinances/resolutions and taking other appropriate action in addition to full compliance with current laws on parking.
2. When considered necessary and desirable by both the City and the State, the City shall pass and enforce an ordinance/resolution providing for one-way traffic on the frontage roads except as may be otherwise agreed to by separate agreements with the State.
3. Secure or cause to be secured the approval of the State before any utility installation, repair, removal or adjustment is undertaken, crossing over or under the highway facility or entering the right-of-way. In the event of an emergency, it being evident that immediate action is necessary for protection of the public and to minimize property damage and loss of investment, the City, without the necessity of approval by the State, may at its own responsibility and risk make necessary emergency utility repairs, notifying the State of this action as soon as practical.

4. Pass necessary ordinances/resolutions and retain its responsibility for enforcing the control of access to expressway/freeway facility.
5. Install and maintain all parking restriction signs, pedestrian crosswalks (except as mentioned above paragraph number 5 under "State's Responsibilities"), and parking stripes when agreed to by the State in writing. Signing and marking of intersecting city streets to State highways shall be the full responsibility of the City (except as discussed under "General Conditions" in paragraph number 4).

TERMINATION

All obligations of the State created herein to maintain and operate the State highways covered by this agreement shall terminate if and when such highways cease to be officially on the State highway system; and further, should either party fail to properly fulfill its obligations as herein outlined, the other party may terminate this agreement upon 30 days written notice. Upon termination, all maintenance and operations duties on non-controlled access State highways shall revert to City responsibilities, in accordance with Chapter 311 of the Texas Transportation Code. The State shall retain all maintenance responsibilities on controlled access State highways in accordance with the provisions of Chapter 203 of the Texas Transportation Code, 23 United States Code § 116 and the State's Interstate Maintenance Guidelines as approved by the Federal Highway Administration in accordance with 23 CFR § 635 Subpart E.

Said State assumption of maintenance and operations shall be effective the date of execution of this agreement by the Texas Department of Transportation.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures, the City of Bay City on the 27th day of June, 19 97, and the Texas Department of Transportation, on the 7th day of July, 19 97.

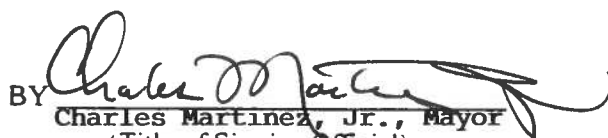
ATTEST:


Tammy Evans, City Secretary

CITY OF Bay City

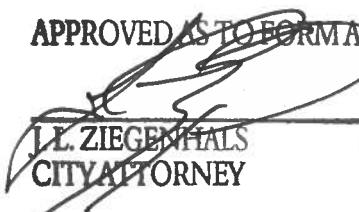
THE STATE OF TEXAS

Certified as being executed for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the Texas Transportation Commission under the authority of Minute Order No. 100002.

BY 
Charles Martinez, Jr., Mayor
(Title of Signing Official)

BY 
District Engineer

APPROVED AS TO FORM AND SUBSTANCE

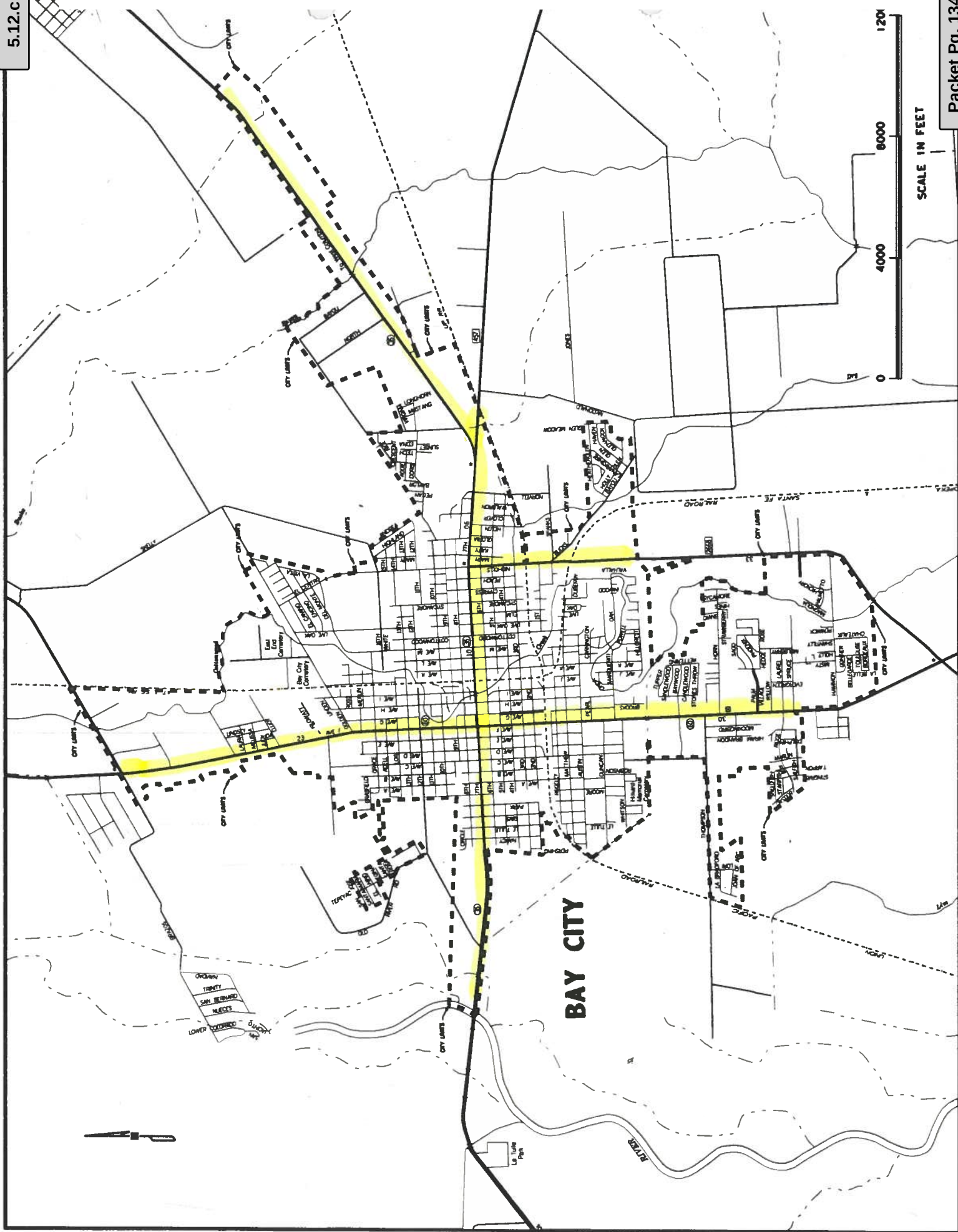

J.L. ZIEGENFALS
CITY ATTORNEY

DATE 7/1/97

Yoakum District

NOTE: To be executed in duplicate and supported by Municipal Maintenance Ordinance/Resolution and City Secretary Certificate.

EXHIBIT "A"



SCALE IN FEET

COPY

RESOLUTION NO. R-97-05

A RESOLUTION APPROVING THE AGREEMENT DATED JUNE 26, 1997, BETWEEN THE STATE OF TEXAS AND THE CITY OF BAY CITY, FOR THE MAINTENANCE, CONTROL, SUPERVISION, AND REGULATION OF CERTAIN STATE HIGHWAYS AND/OR PORTIONS OF STATE HIGHWAYS IN THE CITY OF BAY CITY; AND PROVIDING FOR THE EXECUTION OF SAID AGREEMENT

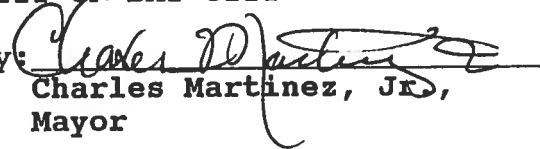
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAY CITY:

SECTION 1: That the certain agreement dated June 26, 1997, between the State of Texas and the City of Bay City for the maintenance, control, supervision, and regulation of certain State Highways and/or portions of State Highways in the City of Bay City be, and the same is, hereby approved; and that Mayor Charles Martinez, Jr., is hereby authorized to execute said agreement on behalf of the City of Bay City and to transmit the same to the State of Texas for appropriate action.

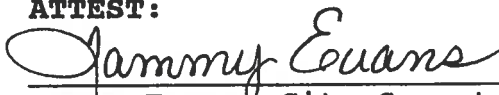
PASSED: June 26, 1997

APPROVED: June 26, 1997

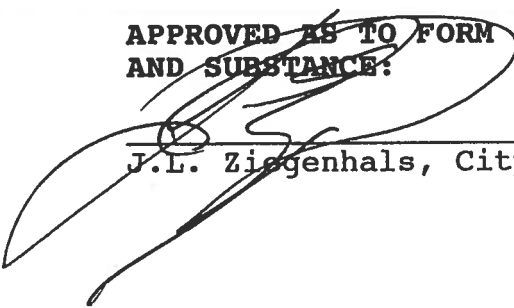
CITY OF BAY CITY

By: 
Charles Martinez, Jr.,
Mayor

ATTEST:


Tammy Evans, City Secretary

APPROVED AS TO FORM
AND SUBSTANCE:

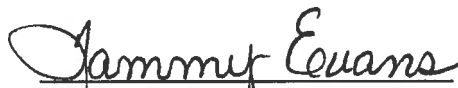

J.L. Ziegenhals, City Attorney

CERTIFICATION**THE STATE OF TEXAS §****COUNTY OF MATAGORDA §**

I, Tammy Evans, City Secretary of the City of Bay City, Texas, Matagorda County, Texas do hereby certify that the foregoing instrument is a true and correct copy of Resolution R-97-05 approved by the City Council of the City of Bay City, Texas, in the Regular Council Meeting of June 26, 1997 and as recorded in the official records of the City of Bay City, Texas.

WITNESS MY HAND and SEAL of the City of Bay City this 27th day of June, 1997.




Tammy Evans, City Secretary
City of Bay City, Texas

YOR
 Charles Martinez, Jr.
 CITY COUNCIL
 Michael Kennedy, Mayor Pro Tem
 Verna R. Henderson
 C. Glen Walker
 Booker T. Holbert
 Pasqual "Packy" Martinez

City of Bay City

City Secretary's Office

Tammy Evans, City Secretary

Bay City, Texas 77414 • 1901 Fifth Street
 (409) 245-5311 • Fax (409) 245-0756

DEPUTY CITY SECRETARY
 Amy L. Jones

CITY ATTORNEY
 TEXAS DEPT. OF TRANSPORTATION
 RECEIVED

JUL - 7 1997

YOAKUM DISTRICT

July 2, 1997

Mr. Carl L. O'Neill, P.E.
 District Maintenance Engineer
 Texas Department of Transportation
 P. O. Box 757
 Yoakum, TX 77995-0757

Re: Municipal Maintenance Agreement & Resolution

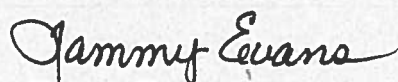
Dear Mr. O'Neill:

This letter is to inform you that on June 26, 1997, at the Regular Meeting of the City Council, a resolution was passed which approved the agreement between the State of Texas and the City of Bay City, for the maintenance, control, supervision, and regulation of certain state highways and/or portions of state highways in the City of Bay City; and providing for the execution of said agreement. Enclosed, you will find a certified copy of the resolution (R-97-05).

Additionally enclosed, you will find the aforementioned agreement, in duplicate, to be executed according to your instructions. Please retain duplicate original for your files and return original to me upon execution.

If I may be of further assistance in this endeavor, please do not hesitate to call.

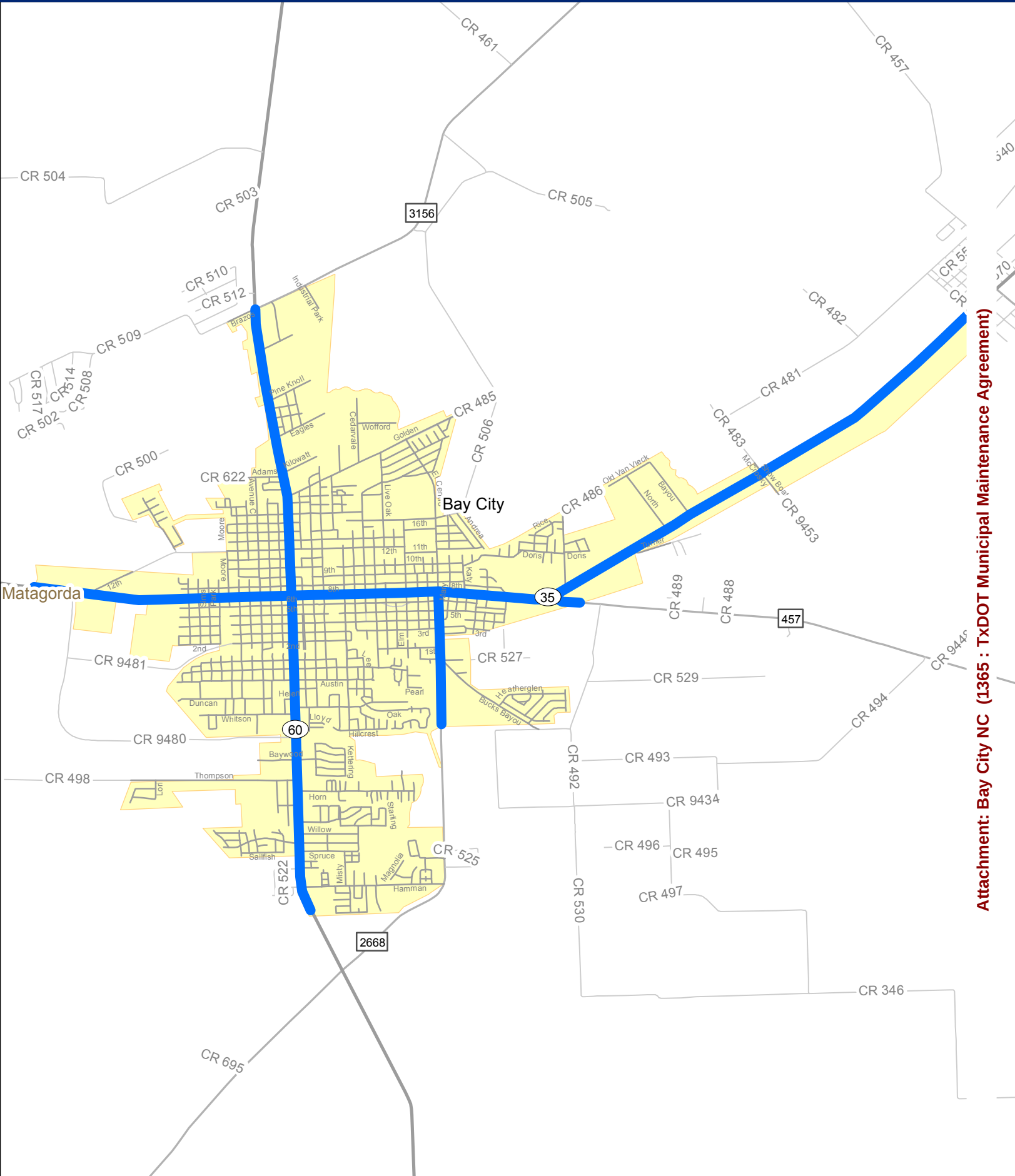
Sincerely,



Tammy Evans
 City Secretary

TE/alj
 enclosure

cc: Mayor Charles Martinez, Jr.
 Jon E. Abshier, Director of Public Works



Attachment: Bay City NC (1365 : TxDOT Municipal Maintenance Agreement)



0 0.5 1 Miles



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 1308)

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Property
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1308 A

CONSIDER AND/OR APPROVE AN ORDINANCE SETTING DATES, TIMES AND PLACE FOR PUBLIC HEARINGS ON THE PROPOSED ANNEXATION OF APPROXIMATELY 12 PLATTED LOTS WITHIN THE MOORE ESTATES SUBDIVISION GENERALLY LOCATED SOUTH OF 2nd STRET AND WEST OF MONROE AVENUE BY THE CITY OF BAY CITY; AUTHORIZING AND DIRECTING THE PUBLICATION OF THE NOTICE OF SUCH PUBLIC HEARINGS; AUTHORIZING AND DIRECTING THE PUBLIC WORKS DIRECTOR TO PREPARE A SERVICE PLAN.

HISTORY:

02/13/14	City Council	TABLED	Next: 02/27/14
02/27/14	City Council	TABLED	Next: 03/13/14

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Steven Johnson, Councilman
SECONDER:	Chrystal Folse, Councilwoman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

**CITY OF Bay City
June 12, 2014 INVOLUNTARY ANNEXATION TIME LINE
Moore Addition**

First action: March 13, 2014

City Council adoption of an ordinance directing staff to annex property

Any time after ordinance is passed but before the publication of the notice for the first public hearing:

Direct planning department or other appropriate municipal department to prepare a service plan that provides for the extension of full municipal services to the area to be annexed. The municipality shall provide the services by any of the methods by which it extends the services to any other area of the municipality. TLGC 43.065

Before the 30th day before the date of the first public hearing:

Provide written notice to each property owner; public entity; school district and railroad in the annexation area. TLGC 43.062 (b)

On or after the 20th day but before the 10th day before the date of the first public hearing

City Secretary publishes Notice of First Public Hearing in a newspaper of general circulation and on the City's webpage TLGC 43.063(c)

On or after the 20th day but before the 10th day before the date of the second public hearing

City Secretary publishes Notice of Second Public Hearing in a newspaper of general circulation and on the City's webpage TLGC 43.063(c)

After the 40th day but before the 20th day before the date of the institution of proceedings:

First Public Hearing April 24, 2014

Second Public Hearing May 8, 2014

Conduct the 1st Public Hearing and conduct the 2nd Public Hearing TLGC 43.063(a)

20 days prior to annexation but before instituting annexation proceedings

Direct City Engineer to prepare an Annexation Map, Annexation Field Notes and new City Limits–ETJ Map.

Receive Annexation Map, Annexation Field Notes & City Limits/ETJ Map from City Engineer.

Complete all required ordinances, resolutions, maps and reports for the City Council meeting.

Provide City Secretary with all required ordinances, resolutions, maps and reports for the June 12, 2011 City Council meeting.

Institute Annexation Proceedings: June 12, 2014

Institute Annexation Proceedings: City Council meeting to Read and Approve the Annexation Ordinance, Service Plan and all related ordinances and resolutions.

After annexation is approved

Post Annexation Notice & Mapping

US Department of Justice
Texas Secretary of State
Texas Comptroller
County Clerk
Certified Telecom Providers
Electric
Cable
Gas/Water
Update City Maps
File Updated Map with City Secretary

ORDINANCE NO. _____

AN ORDINANCE SETTING DATES, TIMES AND PLACE FOR PUBLIC HEARINGS ON THE PROPOSED ANNEXATION OF APPROXIMATELY 12 PLATTED LOTS WITHIN THE MOORE ESTATES SUBDIVISION GENERALLY LOCATED SOUTH OF 2nd STREET AND WEST OF MONROE AVENUE BY THE CITY OF BAY CITY; AUTHORIZING AND DIRECTING THE PUBLICATION OF THE NOTICE OF SUCH PUBLIC HEARINGS; AUTHORIZING AND DIRECTING THE PUBLIC WORKS DIRECTOR TO PREPARE A SERVICE PLAN.

WHEREAS, Texas Local Government Code Section 43.021 authorized the City of Bay City, as a home-rule municipality, to extend its City Limit boundaries through the annexation of area adjacent to those boundaries; and

WHEREAS, Section 1.04 of the City Charter of the City of Bay City provides that the City Council has authority by ordinance to fix the City Limit boundaries, provided for the alteration and extension of said boundaries, and annex additional territory lying adjacent to said boundaries in any manner provided by law; and

WHEREAS, Texas Local Government Code Section 43.052(h) provides that an area proposed for annexation containing fewer than one hundred (100) separate tracts of land of which one or more residential dwellings are located on each tract is exempted from the state law requirement that an area proposed for annexation first be identified in an annexation plan and not be annexed before the third anniversary of the date that the annexation plan is adopted; and

WHEREAS, the areas described herein that are proposed for annexation contain fewer than one hundred (100) separate tracts of land on which one or more residential dwellings are located on each tract and are, therefore, exempted from the above-described annexation plan requirement; and

WHEREAS, the area subject to this annexation is completely surrounded by incorporated territory of the City of Bay City; and

WHEREAS, the City Council of the City of Bay City believes that it is in the best interest of the City of Bay City to institute annexation proceedings for the areas described herein.

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

Section 1: On Thursday, the TWENTY-FOURTH day of APRIL, 2014 at 7:00 p.m. and Thursday, the EIGHTH day of MAY, 2014, at 7:00 p.m., in the City Council Chambers of the City of Bay City, the City Council of the City of Bay City will hold Public Hearings giving all interested persons the right to appear and be heard on the proposed annexation by the City of Bay City, of the following described properties, to wit:

Those Platted Lots located in the Moore Estates, Matagorda County, Texas, that are more particularly described as follows:

Lot 1, Block 1, Moore Estates, Matagorda County, Texas
 Lot 2, Block 1, Moore Estates, Matagorda County, Texas

Lot 3, Block 1, Moore Estates, Matagorda County, Texas
 Lot 4, Block 1, Moore Estates, Matagorda County, Texas
 Lot 5, Block 1, Moore Estates, Matagorda County, Texas
 Lot 6, Block 1, Moore Estates, Matagorda County, Texas
 Lot 7, Block 1, Moore Estates, Matagorda County, Texas
 Lot 27, Block 1, Moore Estates, Matagorda County, Texas
 Lot 28, Block 1, Moore Estates, Matagorda County, Texas
 Lot 29, Block 1, Moore Estates, Matagorda County, Texas
 Lot 30, Block 1, Moore Estates, Matagorda County, Texas
 Lot 31, Block 1, Moore Estates, Matagorda County, Texas

Section 2: The City Secretary of the City of Bay City is hereby authorized and directed to cause notice of such Public Hearings to be published once in a newspaper having general circulation in the City of Bay City not more than twenty (20) days, nor less than ten (10) days, prior to the date of such Public Hearings, in accordance with Texas Local Government Code Section 43.063(c), as amended.

Section 3: The Director of Public Works of the City of Bay City is hereby authorized and directed to prepare a service plan that provides for the extension of full municipal services to the area to be annexed pursuant to Texas Local Government Code Section 43.065(a).

PASSED AND APPROVED this, the thirteenth day of March 2014.

Mark A. Bricker
Mayor, City of Bay City

ATTEST:

Rhonda Clegg
City Secretary, City of Bay City

APPROVED AS TO FORM:

George Hyde, City Attorney
City of Bay City
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, Mayor Pro Tem	_____	_____	_____

Mark A. Bricker, Mayor,
City of Bay City

ATTEST:

Rhonda Clegg, City Secretary

APPROVED AS TO FORM:

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



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Report
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1362

DISCUSSION ITEM (ID # 1362)

**DISCUSS THE STATUS AND CONDITION OF THE BAY CITY
VOLUNTEER FIRE DEPARTMENT'S FIRE RESCUE
EQUIPMENT.**

Discuss the Fire Department's aging Water Truck and Pumper Truck.



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 1373)

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Amendment
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1373

**CONSIDER AND/OR APPROVE AN ORDINANCE CANCELING
THE GENERAL ELECTION SCHEDULED TO BE HELD ON
MAY 10, 2014.**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Julie Estlinbaum, Councilwoman
SECONDER:	Chrystal Folse, Councilwoman
AYES:	Folse, Johnson, Thames, Estlinbaum, Cornman

**CERTIFICATION OF UNOPPOSED CANDIDATES FOR
 OTHER POLITICAL SUBDIVISIONS (NOT COUNTY)
 CERTIFICACIÓN DE CANDIDATOS ÚNICOS
 PARA OTRAS SUBDIVISIONES POLITICAS (NO EL CONDADO)**

To: Presiding Officer of Governing Body
Al: Presidente de la entidad gobernante

As the authority responsible for having the official ballot prepared, I hereby certify that the following candidates are unopposed for election to office for the election scheduled to be held on _____

Como autoridad a cargo de la preparación de la boleta de votación oficial, por la presente certifico que los siguientes candidatos son candidatos únicos para elección para un cargo en la elección que se llevará a cabo el _____

List offices and names of candidates:
Lista de cargos y nombres de los candidatos:

Office(s) Cargo(s)

Candidate(s) Candidato(s)

Signature (Firma)

Printed name (Nombre en letra de molde)

Title (Puesto)

Date of signing (Fecha de firma)

(Seal) (sello)

See reverse side for instructions
(Instrucciones en el reverso)

Instructions for certification of unopposed candidates:

The authority responsible for preparing the ballot must certify the unopposed status to the authority responsible for ordering the election. This document is filed with the presiding officer of the political subdivision. The governing body must meet, accept this certification, and issue an order or ordinance declaring the election cancelled and the unopposed candidates elected. To complete the cancellation process, a copy of the order or ordinance canceling the election must be posted on Election Day at each polling place that would have been used in the election. See sample Order of Cancellation and outlines for additional instructions.

An election* may be cancelled if:

- 1) The election is one in which a declaration of write-in candidacy is required; and
- 2) No opposed at-large race is on the ballot* within that election;*and
- 3) Each candidate whose name is to appear on the ballot* is unopposed, with some exceptions;
This means:
 - In an all at-large election* (with no single-member districts), if there is one or more opposed at-large races, then all the races go on the ballot within that election.*
 - In an election* in which any members of the governing body are elected from single-member districts, an election in a particular district may be cancelled if the candidate is unopposed and the election otherwise meets the above requirements (i.e., there is no at-large opposed race on the ballot).

Note: A general election (for full terms) or a special election (to fill a vacancy in an unexpired term) is considered a *separate election* with a *separate ballot* for purposes of these tests, even if held on the same election date. See our online Cancellation guide for details.

Instrucciones para la certificación de una elección con candidatos únicos:

La autoridad a cargo de preparar la boleta de votación debe certificar los candidatos únicos sin oposición a la autoridad encargada de ordenar la elección. Este documento se debe presentar al presidente de la subdivisión política. La entidad gobernante debe reunirse, aceptar esta certificación y emitir una orden o una ordenanza en la que declara la cancelación de la elección y la elección de los candidatos únicos sin oposición. Para completar el proceso de cancelación, se debe exhibir el Día de la Elección una copia de la orden u ordenanza de cancelación de la elección en todos los sitios de votación que se hubieran utilizado en la elección. Vea el ejemplo Orden de Cancelación y el resumen para más instrucciones.

Una elección* puede ser cancelada si:

- 1) *la elección es una en la que se requiere una declaración de candidatos por escrito en la boleta de votación; y,*
- 2) *no hay oposición para la carrera por acumulación en la boleta* de votación dentro de esa elección* y*
- 3) *Todos los candidatos cuyos nombres deben aparecer en la boleta* de votación no tienen oposición, con unas excepciones;*
Esto significa:
 - *En una elección* por acumulación (sin ningún distrito con miembro único), si se encuentra una o más de una carrera por acumulación con oposición, entonces todas las carreras estarán en la boleta dentro de esa elección*.*
 - *En una elección* en la que cualquiera de los miembros de la entidad gobernante se eligen de distritos con un solo miembro, se puede cancelar una elección en un distrito específico si hay oposición para el candidato y la elección cumple con los requisitos que anteceden (ej. no hay oposición para la carrera por acumulación en la boleta).*

Nota: Una elección general (con términos completos) o una elección especial (para llenar una vacante de un término no vencido) es considerada como una elección distinta con una boleta distinta con los propósitos de estas pruebas, aunque se lleven a cabo en la misma fecha electoral. Vea nuestra guía de cancelación en línea para más detalles.

ORDER OF CANCELLATION
ORDEN DE CANCELACIÓN

The City of Bay City hereby cancels the election scheduled to be held on May 10, 2014 in accordance with Section 2.053(a) of the Texas Election Code. The following candidates have been certified as unopposed and are hereby elected as follows:

El Cuidad de Bay City por la presente cancela la elección que, de lo contrario, se hubiera celebrado el 10 de Mayo de conformidad, con la Sección 2.053(a) del Código de Elecciones de Texas. Los siguientes candidatos han sido certificados como candidatos únicos y por la presente quedan elegidos como se haya indicado a continuación:

<u>Candidate(Candidato)</u>	<u>Office Sought(Cargo al que presenta candidatura)</u>
Julie L. Estlinbaum	Council Position 1
Bill Cornman	Council Position 2

A copy of this order will be posted on Election Day at each polling place that would have been used in the election.

El Día de las Elecciones se exhibirá una copia de esta orden en todas las mesas electorales que se hubieran utilizado en la elección.

President (*Presidente*)

Secretary(*Secretario*)

(seal) (*sello*)

Date of adoption(*Fecha de adopción*)

ORDINANCE NO. _____

AN ORDINANCE DECLARING UNOPPOSED CANDIDATES IN THE CITY OF BAY CITY MAY 10, 2014 GENERAL CITY OFFICERS' ELECTION ELECTED TO OFFICE; PROVIDING FOR CANCELLATION OF THE ELECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the general city officers' election for the City of Bay City was called for May 10, 2014 for the purpose of electing two (2) Councilmembers for two (2) year terms to the City Council; and

WHEREAS, the City Secretary has certified in writing that there is no proposition on the ballot, that no write-in candidate's name is to be placed on a list of write-in candidates for an office, and that each candidate on the ballot is unopposed for election to office; and

WHEREAS, Subchapter C of Chapter 2 of the Texas Election Code authorizes the City Council to declare the candidates elected to office and cancel the election under such circumstances.

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

SECTION 1. The following unopposed candidates in the May 10, 2014 general city officers' election for the City of Bay City are hereby declared elected to office, subject to the taking of their oaths as provided by the laws of the State of Texas. Each candidate shall be issued a certificate of election in the same manner as provided for a candidate elected at an election:

Julie Estlinbaum, Council Member Position #1

William "Bill" Cornman, Council Member Position #2

SECTION 2. The May 10, 2014 general city officers' election for the City of Bay City is hereby canceled in accordance with Subchapter C, Section 2.053 of the Texas Election Code. The City Secretary is directed to cause

a copy of this ordinance to be posted on Election Day at each polling place that would have been used in the election.

SECTION 3. This Ordinance shall take effect immediately upon passage.

PASSED AND APPROVED, this, the ____ day of March, 2014.

Mark A. Bricker, Mayor
City of Bay City, Texas

ATTEST:

Rhonda Jones, 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. - Cancellation of Election (1373 : Cancellation of Election)

<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, Mayor Pro Tem	_____	_____	_____

Mark A. Bricker, Mayor,
City of Bay City

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. - Cancellation of Election (1373 : Cancellation of Election)



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Personnel
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1374

DISCUSSION ITEM (ID # 1374)

**DISCUSS, CONSIDER AND/OR APPROVE AMENDING THE
SALARY RANGE FOR THE POSITION OF FINANCE
DIRECTOR.**



City Council
1901 5Th Street
Bay City, TX 77414

TABLED

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Amendment
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1341

AGENDA ITEM (ID # 1341)

**CONSIDER AND/OR APPROVE TAKING ACTION ON AN
ORDINANCE AMENDING THE CITY OF BAY CITY'S CODE OF
ORDINANCES CHAPTER 118 (ENTITLED "VEHICLE FOR
HIRE") .**



City Council
1901 5Th Street
Bay City, TX 77414

WITHDRAWN

Meeting: 03/13/14 07:00 PM
Department: Community Services
Category: Report
Prepared By: John Garr
Initiator: John Garr
Sponsors:
DOC ID: 1358

AGENDA ITEM (ID # 1358)

**COMMUNITY SERVICES DIRECTOR JOHN GARR SHALL
PROVIDE COUNCIL WITH A REPORT ON THE STATUS OF
THE USO BUILDING PHASE II PROJECT.**

RESULT:	WITHDRAWN
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City Council
1901 5Th Street
Bay City, TX 77414

WITHDRAWN

Meeting: 03/13/14 07:00 PM
Department: Community Services
Category: Report
Prepared By: John Garr
Initiator: John Garr
Sponsors:
DOC ID: 1236

AGENDA ITEM (ID # 1236)

**COMMUNITY SERVICES DIRECTOR JOHN GARR SHALL
PRESENT A REPORT ON THE STATUS OF THE BAY CITY
MUNICIPAL AIRPORT.**

RESULT:	WITHDRAWN
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City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Report
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1376

DISCUSSION ITEM (ID # 1376)

CITY COUNCIL SHALL CONVENE IN CLOSED SESSION TO CONSULT WITH THE CITY ATTORNEY REGARDING A LEGAL ISSUES AND TO DELIBERATE REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS WITH TENARIS/MAVERICK TUBE CORPORATION PURSUANT TO TEXAS GOVERNMENT CODE §551.071 AND §551.087.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 03/13/14 07:00 PM
Department: City Secretary
Category: Report
Prepared By: Rhonda Clegg
Initiator: Rhonda Clegg
Sponsors:
DOC ID: 1378

DISCUSSION ITEM (ID # 1378)

**CITY COUNCIL MAY RECONVENE IN OPEN SESSION AND
CONSIDER AND/OR TAKE ACTION ON ANY ITEM LISTED
ABOVE FOR CONSIDERATION/DISCUSSION IN EXECUTIVE
SESSION (IF NECESSARY).**