



CITY OF BAY CITY

MINUTES • APRIL 12, 2018

Council Chambers

Workshop – City Council

5:30 PM

1901 5TH STREET
BAY CITY, TX 77414

I. CALL TO ORDER

Attendee Name	Title	Status	Arrived
Mark A. Bricker	Mayor	Present	
William Cornman	Mayor Pro-Tem	Excused	
Becca Sitz	Councilwoman	Present	
Chrystal Folse	Councilwoman	Present	
Jason Childers	Councilman	Present	
Julie Estlinbaum	Councilwoman	Present	

II. APPROVAL OF AGENDA

III. FUTURE ACTION ITEMS

1. Presentation

~ DISCUSS AND CONSIDER FUTURE SANITATION PROVIDERS REQUEST FOR QUALIFICATIONS (RFQ) AND PROPOSALS.

Mayor, Mark A. Bricker

Finance Director, Scotty Jones presented a recap of the contract the City currently has with WCA. Visitor, Jay Howard with Texas Disposal spoke to Council regarding his company's services.

2. Policy

~ DISCUSS AND CONSIDER MOWING CODE VIOLATIONS WITHIN THE CITY AND LIENS REGARDING MOWING CODE VIOLATIONS.

Councilwoman, Becca Sitz

Councilwoman, Becca Sitz presented. She is concerned by the amount of properties that must be mowed monthly. She would like to know more about the process.

3. Ordinance

DISCUSS AND CONSIDER PROPOSED AMENDMENTS TO CHAPTER 22, ARTICLE IV - ELECTRICAL CODE, DIVISION 5 TECHNICAL STANDARDS

Marla Jasek, Asst. Dir Public Works

Assistant Public Works Director, Marla Jasek presented the electrical code amendments.

4. Budget

DISCUSS 2019 PROPOSED BUDGET CALENDAR

Scotty Jones

Finance Director, Scotty Jones presented the 2018-2019 Budget Calendar.

5. Budget

~ DISCUSS AN ORDINANCE ADOPTING BUDGET AMENDMENTS FOR THE QUARTER ENDING MARCH 31, 2018.

Scotty Jones, Director of Finance

Finance Director, Scotty Jones presented budget amendments.

6. Policy

~ RECEIVE AND DISCUSS AN UPDATE ON THE INTERNAL CHARTER INVESTIGATION REQUESTED BY COUNCIL.

City Secretary, David Holubec

City Secretary, David Holubec updated Council members on the ongoing internal Charter investigation.

7. Policy

~ RECEIVE PRESENTATION CONCERNING THE BAY CITY CHARTER.

Councilwoman, Chrystal Folse

Citizen, Jerry Evans spoke to Council regarding the Charter.

IV. ITEMS/COMMENTS FROM MAYOR AND COUNCIL MEMBERS

None

V. 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 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 was posted on the front window of the City Hall of the City of Bay City, Texas on Thursday, April 5, 2018 before 5:30 p.m. Any questions concerning the above items, please contact Mayor Mark A. Bricker at (979) 245-2137.

David Holubec
City Secretary



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 04/12/18 05:30 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 3064

DISCUSSION ITEM (ID # 3064)

**~ DISCUSS AND CONSIDER FUTURE SANITATION
PROVIDERS REQUEST FOR QUALIFICATIONS (RFQ) AND
PROPOSALS.**

COMMENTS - Current Meeting:

Finance Director, Scotty Jones presented a recap of the contract the City currently has with WCA. Visitor, Jay Howard with Texas Disposal spoke to Council regarding his company's services.



AGREEMENT BETWEEN THE CITY OF BAY CITY AND CONTRACTOR

Owner: City of Bay City

Address: 1901 5th Street, Bay City, TX 77414

Contractor: Waste Corporation of Texas, L.P.

Address: 8515 Highway 6 South, Houston, TX 77083

Project No: _____

Project Title: City Wide Clean Up

Project Date: October 19, 2013

Project Location: Bay City, TX 77414

THE OWNER AND THE CONTRACTOR AGREE AS SET FORTH BELOW:

ARTICLE 1 WORK OF THIS CONTRACT

The Contractor shall execute the Work in accordance with the provisions of the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as otherwise provided herein. Work shall be described in the Work Order. More than one Work Order may be issued at any time under the Contract or no Work Orders may be issued under the Contract.

ARTICLE 2 CONTRACT TERM AND CONTRACT TIME

- 2.1 This contract shall commence subsequent to award by the City Council. The contractor is obligated to commence work immediately after receiving notice to proceed, but not before, and will complete the work within one calendar day(s).
- 2.2 The Date of Commencement of the Work is the date from which the Contract Time is measured, which date is established by the notice to proceed.
- 2.3 The Contractor shall achieve substantial completion of the Work during the Contract Time, subject to adjustments as provided in Contract Documents.

Attachment: WCA (3064 : Sanitation RFQ)

ARTICLE 3 THE CONTRACT PRICE

3.1 The City's duty to pay money to the Contractor for any purpose under the Contract is limited in its entirety by this Article 3.

3.2 The contract amount shall not exceed \$20,000.00 (\$175.00 per hour per truck for (2) grapple brush trucks and (5) rear load trucks). Any other provision of this Contract to the contrary notwithstanding the City shall never be obligated to pay any money by, through, or under this Contract, which exceeds this amount, unless otherwise provided by act of City Council.

3.3 The Contract Price for those items of work listed in **Exhibit "A"**, herein, is subject to readjustment due to variations in quantities of units of work actually incorporated in the work to be completed as provided in the Contract Documents.

ARTICLE 4 PAYMENTS

4.1 The City's payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code.

4.2 As security for the faithful completion of the Improvements, Contractor and City agree that City shall retain ten percent of the total dollar amount of the contract price until after final approval or acceptance of the Improvements by City. City shall thereafter pay Contractor the retainage, only after Contractor has furnished to the City satisfactory evidence that all indebtedness connected with the work and all sums of money due for labor, materials, apparatus, fixtures or machinery furnished for and used in performance of the work have been paid or otherwise satisfied.

4.3 Contractor shall promptly pay all workmen and materialmen and shall not allow liens on any City Property. Contractor shall upon notice by City promptly cause such claim, lien, charge or encumbrance to be satisfied and released or promptly post a bond with City in the amount of such claim, lien, charge or encumbrance, in favor of the City, to insure payment of such claim, lien, charge or encumbrance.

4.4 Intentionally deleted.

Attachment: WCA (3064 : Sanitation RFQ)

ARTICLE 5 SCOPE OF SERVICES

5.1 The Contractor shall furnish all materials, labor, equipment, tools, supplies, and/or services to furnish the Work as described in Exhibit A, and shall carry out all obligations, duties, and responsibilities imposed on Contractor by the Agreement Documents. Contractor shall include everything requisite and necessary to complete the entire Work properly, notwithstanding that every item necessarily involved may not be specifically mentioned. Contractor shall not be relieved of any obligations or responsibilities with respect to the Work except by City's written consent. Contractor agrees to the following:

- (a) Provide (2) Grapple Brush Trucks with a 3 man crew;
- (b) Provide (5) Rear Load Trucks with a 3 man crew;
- (c) Each truck will be billed at an hourly rate, to include a 3 man crew. This hourly cost will begin when the drivers leave the Contractors facility and will end upon their arrival back at the Contractors facility;
- (d) Contractor shall pick up all brush and limited bulk waste;
- (e) A week prior to the clean-up, the Contractor will have a Supervisor scout the City to assess the amount of brush in different quadrants of the City to insure his crews are dispatched where needed ;
- (f) Contractor will quadrant off the City into 4 areas and disperse equipment and personnel as needed;
- (g) The Contractor will have Managers and Supervisors in the City on the day of the clean-up to assure that everything goes as planned;
- (h) Disposal of the items collected will be taken to the City's brush site, the transfer station and WCA's landfill in Needville, Texas.
- (i) The Contractor shall bill the City for any landfill disposal fees, with a copy of the invoice for disposal fees from the landfill.

5.2 The Contractor shall have the sole responsibility to satisfy itself concerning the nature and location of the Work, the Site, and the general and local conditions, including but not limited to, the following:

- (a) Transportation, access, disposal, handling and storage of materials;
- (b) Availability and quality of labor, water, electric power and road conditions;
- (c) Climatic conditions and seasons;
- (d) Physical conditions that may be encountered in performance of the scope of services; and
- (f) Equipment and facilities needed preliminary to and during the performance of Contractor's Work.

5.2.1 The failure of Contractor to acquaint itself with any applicable conditions will not relieve Contractor of the responsibility for properly estimating the difficulties or for the cost of successfully performing Contractor's obligations in the time and manner provided under the Agreement Documents.

5.3 Intentionally deleted.

5.4 Unless otherwise stated, all specifications listed are minimum requirements; respondents are requested to submit corrective action alternatives to any and all other deficiencies not included within this basic scope of services.

5.5 The Contractor, its officers, agents, employees, contractors and subcontractors shall abide by and comply with all laws (certifications), federal, state, and local. It is agreed and understood that, if the City calls attention of the Contractor to any such violations on the part of the Contractor, its officers, agents, employees, contractors and subcontractors, and then the Contractor shall immediately cease from and correct such violation.

ARTICLE 6 INSURANCE

6.1 All bonds, if any, and insurance required by the Contract Documents shall be obtained from solvent surety or insurance companies that are duly licensed by the State of Texas and authorized to issue bonds or insurance policies for the limits and coverages required by the Contract Documents.

6.2 Contractor shall provide for insurance and workers compensation coverage in accordance with the requirements applicable to contractors as provided for in **Exhibit "B"**, the provisions of which are expressly incorporated herein by reference.

ARTICLE 7 INDEMNIFICATION

CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS THE CITY, IT OFFICERS, EMPLOYEES, AND REPRESENTATIVES, FROM AND AGAINST ALL LIABILITY FOR ANY AND ALL CLAIMS, SUITS, DEMANDS, OR ACTIONS ARISING FROM OR BASED UPON ANY ACTS ON THE PART OF CONTRACTOR, ITS AGENTS, REPRESENTATIVES, OR EMPLOYEES WHICH MAY ARISE OUT OF OR RESULT FROM CONTRACTOR'S OPERATIONS UNDER THIS CONTRACT, REGARDLESS OF WHETHER SUCH INJURIES DEATH OR DAMAGES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THE IS CONTRACT IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY OWN NEGLIGENCE, WHETHER THE NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE.

THIS INDEMNITY PROVISION EXTENDS TO ANY AND ALL SUCH CLAIMS, SUITS, DAMAGES OR ACTIONS REGARDLESS OF THE TYPE OF RELIEF SOUGHT THEREBY AND WHETHER SUCH RELIEF IS IN THE FORM OF DAMAGES, JUDGMENTS, COSTS, REASONABLE ATTORNEY FEES AND EXPENSES. THIS INDEMNITY PROVISION SHALL APPLY REGARDLESS OF THE NATURE OF THE INJURY OR HARM ALLEGED AND WHETHER SUCH CLAIMS ARE ALLEGED AT COMMON LAW, STATUTORY OR CONSTITUTIONAL. THIS INDEMNITY PROVISION, SHALL APPLY WHETHER THE BASIS FOR THE CLAIM, SUIT OR DEMAND BE ATTRIBUTABLE IN WHOLE OR IN PART TO THE CONTRACTOR, OR ANY OF ITS AGENTS, REPRESENTATIVES OR EMPLOYEES.

ARTICLE 8

Intentionally deleted.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

Attachment: WCA (3064 : Sanitation RFQ)

9.1 The basis for this Agreement is this executed Document-Agreement between the City of Bay City and Contractor. Other Contract Documents, except for Work Orders and Modifications issued after execution of this Agreement, are enumerated under this Article and incorporated by reference as follows:

9.1.1 Request for Competitive Proposals for City Wide Clean Up, Bay City, Texas

9.1.2 Contractors Proposal for City Wide Clean Up, Bay City, Texas including:

9.1.3 (Contractor's Qualification Statement)

9.1.4 (Contractor's statement of Technical Ability)

9.2 In the event of a conflict between this Agreement and the "Request for Competitive Proposals for City Wide Clean Up, Bay City, Texas", this Agreement shall prevail.

9.3 In the event of a conflict between the "Request for Competitive Proposals for City Wide Clean Up, Bay City, Texas", and "Contractors Proposal for City Wide Clean Up, Bay City, Texas", including subparts the "Request for Competitive Proposals for City Wide Clean Up, Bay City, Texas", shall prevail.

ARTICLE 10 SAFETY

10.1 Contractor shall perform the Work at all times in a safe and prudent manner, and shall seek to avoid bodily injury as well as loss or damage to property, by taking reasonable steps to protect the property of Bay City and the propperty of its citizens in the fullfillment of Contractor's obligations under this contract and shall comply with all Laws and safety requirements outlined by the Occupational Safety & Health Administration (OSHA).

ARTICLE 11 SUCCESSORS AND ASSIGNS

This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, Contractor may not assign this CONTRACT without CITY's prior written consent.

ARTICLE 12 MISCELLANEOUS PROVISIONS

12.1 SUBCONTRACTING. No part of the work performed under the contract will be subcontracted or assigned to another firm without prior written consent by the City. The Contractor must furnish the names, qualifications, and experience of the proposed subcontractor(s). The primary contractor will remain completely responsible for all services performed and shall assure compliance with all requirements of the contract.

12.2 TAXES: The City of Bay City is exempt from Texas State sales tax and Federal excise taxes and will issue exemption certificates upon request.

12.3 TERM OF CONTRACT: This contract shall commence subsequent to award by the City Council. The contractor is obligated to commence work immediately after receiving notice to proceed and will complete the work within one calendar day(s).

12.4 TERMINATION OF CONTRACT: The contract may be canceled by the City of Bay City by written notice thirty (30) days prior to termination.

12.5 PROFESSIONAL LIABILITY: In connection with the provisions of the Contractor's obligation, the Contractor shall indemnify and hold the City of Bay City and its employees harmless for any and all claims, lawsuits, legal expenses, and any other costs related to the performance or non-performance of this Agreement, in accordance to Article VII., herein.

12.6 VENUE AND GOVERNING LAW: Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Matagorda County, Texas. This CONTRACT is made and is to be performed in Matagorda County, Texas, and is governed by the laws of the State of Texas.

ARTICLE 13 ENTIRE AGREEMENT

13.1 This CONTRACT embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this CONTRACT, and except as otherwise provided herein, cannot be modified without written agreement of the parties to be attached to and made a part of this CONTRACT.

13.2 This Agreement is effective as of the date of signature by the City's Mayor and is executed in two original copies of which one is to be retained by the City Administrator and one to be delivered to the Contractor.

Effective on the last date executed below:

CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____

CITY OF BAY CITY, TEXAS

By: _____
Mark A. Bricker, Mayor

Date: _____

ATTEST:

Rhonda , City Secretary

APPROVED AS TO FORM:

George Hyde, City Attorney

END OF DOCUMENT

Attachment: WCA (3064 : Sanitation RFQ)

EXHIBIT "A"**SCOPE OF WORK**

In accordance with Article 5, the detailed description of the Work, the specifications for the work and the schedule for the performance of the work are as set forth below.

Item	Description	Quantity	UOM	Unit Price	Amount
01	(2) Grapple Brush Trucks w/ 3 man crew	24	Hours	\$175.00	\$4,200.00
02	(5) Rear Loader Trucks w/ 3 man crew	60	Hours	\$175.00	\$10,500.00
Total:					\$14,700.00

NOTES: Based on a 12 hour day per truck, not to exceed \$20,000.00.

Additional Notes:

The City reserves the right to withhold and/or increase the amount of retainage withheld should Contractor fail to satisfactorily remedy work progress within five (5) days receipt of written notice of unacceptable performance. Contractor agrees to provide a recovery plan upon request.

Contractor is responsible for reporting all injuries and accidents incurred in the performance of work under this Agreement.

Attachment: WCA (3064 : Sanitation RFQ)

EXHIBIT "B"**INSURANCE**

1. The Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, volunteers, employees or subcontractors. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be considered in excess of the Contractor's insurance and shall not contribute to it. Further, the Contractor shall include the City as an additional insured under its. All coverages for subcontractors shall be subject to all of the requirements stated herein. Certificates of Insurance and endorsements shall be furnished to the City and approved by the City before work commences.
2. Standard Insurance Policies Required:
 - (a) Commercial General Liability Policy
 - (b) Automobile Liability Policy
 - (c) Workers' Compensation Policy
3. General Requirements Applicable to All Policies:
 - (a) General Liability and Automobile Liability insurance shall be written by a carrier with a A:VIII or better rating in accordance with the current Best Key Rating Guide.
 - (b) Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
 - (c) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
 - (d) "Claims Made" policies will not be accepted.
 - (e) The City of Bay City, its officials, employees and volunteers, are to be added as "Additional Insured" to the General Liability policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
 - (f) A Waiver of Subrogation in favor of the City with respect to Workers' Compensation Insurance must be included.
 - (g) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Bay City.
 - (h) Upon request, certified copies of all insurance policies shall be furnished to the City of Bay City.

4. Commercial General liability
 - (a) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
 - (b) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
5. Automobile Liability
 - (a) Minimum Combined Single limit of \$500,000.00 per occurrence for bodily injury and property damage.
6. Worker's Compensation
 - (a) Employer's Liability limits as required by State Law.
7. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:
 - (a) The company is licensed and admitted to do business in the State of Texas.
 - (b) The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
 - (c) All endorsements and insurance coverage according to requirements and instructions contained herein.
 - (d) The form of the notice of cancellation, termination, or change in coverage provisions to the City of Bay City.
 - (e) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

**AMENDMENT TO CONTRACT
FOR SOLID WASTE COLLECTION BETWEEN CITY OF BAY CITY, TEXAS AND
WASTE CORPORATION OF TEXAS, L.P.**

This Amendment to that certain Contract for Solid Waste Collection Between City of Bay City, Texas and Waste Corporation of Texas, L.P. (the or this "Amendment"), is made and entered into this _____ day of May, 2017, by and between the City of Bay City, Texas, a Municipal Corporation of Matagorda County, Texas (hereinafter called the "City") and Waste Corporation of Texas, L. P., a Delaware limited partnership authorized to transact business in the State of Texas (hereinafter called the "Contractor").

RECITALS:

WHEREAS, the City and the Contractor previously entered into that certain Contract for Solid Waste Collection Between City of Bay City, Texas and Waste Corporation of Texas, L.P., effective as of November 1, 2013 (the "Contract"); and

WHEREAS, the City and the Contractor desire to amend one of the provisions of the Contract as set forth in this Amendment; and

NOW THEREFORE, in consideration of the foregoing, the Contract is hereby amended as follows:

1. The 11th paragraph of Section 8(o) of the Contract, which follows the definition of "CPI/2," is hereby amended and restated to read in its entirety as follows:

The Contractor shall attend the June City Council meeting each year to update the City Council on garbage collection issues and present CPI data explaining the calculation of the fee increase to be effective in October (the 4th quarter) of that year. Contractor shall place advance notice of the 4th quarter billing increase in the 3rd quarter bills.

2. Except as expressly modified herein, the Contract remains in full force and effect and shall not be deemed to have been modified or amended by this Amendment.
3. This Amendment shall take effect on the date the last party executes this document.
4. If there is any conflict between this Amendment and the Contract, the terms and provisions in this Amendment shall be determinative and prevail.

IN WITNESS WHEREOF, this Amendment has been approved by the governing bodies of the City and the Contractor and is hereby entered into and executed by the duly authorized representatives and agents of the City and the Contractor, respectively, as of the date first above written.

CITY OF BAY CITY, TEXAS

Mark A. Bricker, Mayor
Date: _____

ATTEST:

Rhonda Clegg, City Secretary

CONTRACTOR:

**WASTE CORPORATION OF TEXAS,
L.P.**

Matt Graham, Regional Vice President
Date: _____

ATTEST:

Melvin Moore, Municipal Account Executive

Attachment: WCA (3064 : Sanitation RFQ)

CITY OF BAY CITY, TEXAS CONTRACT RIDER

WASTE CORPORATION OF TEXAS, L.P. ("WCA") agrees that the terms and conditions of this Rider shall govern, apply to, is part of, and takes precedence over any conflicting provision in or attachment to the Contract entitled, "*A Contract for Solid Waste Collection between City of Bay City and Waste Corporation of Texas, L.P.*" (Contract) a copy of which is attached hereto as **Exhibit "A"**. The terms and conditions of this Rider have been bargained for by the **CITY OF BAY CITY** ("City") and are an essential part of the consideration received by the City for entering into the Contract and are **BINDING** and **SUPERSEDE** any and all other terms and/or conditions whether oral or written of the Contract.

1. Payment Provisions. The City's payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code. City reserves the right to modify any amount due to contractor presented by invoice to the city if necessary to conform the amount to the terms of the contract.

2. Multiyear Contracts. If the City's city council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution). It is understood and agreed the City shall have the right to terminate the agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to continue the contract, as determined by the City's budget for the fiscal year in question. The City may execute such termination by giving contractor a written notice of termination at the end of its then current fiscal year.

3. Abandonment or Default. In the even that WCA abandons or defaults the work on the contract and causes the City to purchase the services elsewhere WCA may be charged for any increased cost of goods, materials and/or services related thereto and shall not be considered disqualified in any re-advertisement of the service and may not be considered in future bids for the same scope of work, goods or services for a period of three years.

4. Disclosure of Litigation. WCA shall include in its proposal a complete disclosure of any civil or criminal litigation or investigation pending which involves the respondent or which has occurred in the past in which the respondent has been judged guilty or liable by a competent court regardless of whether the Court Order or Judgment is final or on appeal.

5. Cancellation. The City reserves the right to cancel the contract without penalty by providing 30 days prior written notice to the contracting party. Termination under this paragraph shall not relieve WCA of any obligation or liability that has occurred prior to cancellation. **NOTE: This contract is subject to cancellation, without penalty, at any time the City deems the vendor to be non-compliant with contractual obligations.**

6. Annual Vendor Performance Review. The City reserves the right to review WCA's performance at the end of each twelve month contract period and to cancel all or part of the agreement (without penalty) or continue the contract through the next period.

7. Compliance with other laws and certification of eligibility to contract. Any offer to contract with the City shall be considered an executed certification that WCA will shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, (as amended during the contracting period) and any orders and decrees of any court or administrative bodies or tribunals in any

matter affecting the performance of the resulting agreement, including without limitation, immigration laws, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When requested, WCA shall furnish the City with satisfactory proof of its compliance within 10 days or any contract with the City is void.

8. Liability and Indemnity of City. Any provision of the Contract is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives or limits either party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision. (Section 5, Article XI, Texas Constitution)

9. Indemnity and Independent Contractor Status of Contractor. WCA shall indemnify, save harmless and defend the City, its officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees and any and all other costs or fees (whether grounded in Constitutional law, Tort, Contract, or Property Law, or raised pursuant to local, state or federal statutory provision), arising out of the performance of the resulting agreement and/or arising out of a willful or negligent act or omission of the contractor, its officers, agents, and employees. It is understood and agreed that WCA and any employee or sub-contractor of contractor shall not be considered an employee of the City. WCA shall not be within protection or coverage of the City's workers' compensation insurance, health insurance, liability insurance or any other insurance that the City from time to time may have in force and effect. City specifically reserves the right to reject any and all WCA's employees, representatives or sub-contractors and/or their employees for any cause, should the presence of any such person on City property or their interaction with City employees be found not in the best interest of the City, harassing, or is found to interfere with the effective and efficient operation of the City's workplace.

10. Liens. WCA agrees to and shall indemnify and save harmless the City against any and all liens and encumbrances for all labor, goods and services which may be provided under the resulting agreement. At the City's request WCA or its subcontractors shall provide a proper release of all liens, or satisfactory evidence of freedom from liens shall be delivered to the City.

11. Confidentiality. Any provision in the Contract that attempts to prevent the City's disclosure of information that is subject to public disclosure under federal or Texas law or regulation, or court or administrative decision or ruling, is invalid. (Chapter 552, Texas Government Code)

12. Tax Exemption. The City is not liable to WCA for any federal, state, or local taxes for which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any item. Texas limited sales tax exemption certificates will be furnished upon request. WCA shall not charge for said taxes. If billed, the City will remit payment less sales tax.

13. Contractual Limitations Period. Any provision of the Contract that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)

14. Non Severability. The Contract is not severable from this Rider in whole or part.

15. Sovereign Immunity. Any provision of the Contract that seeks to waive the City's immunity from suit and/or immunity from liability is void unless agreed to by specific acknowledgement of the provision within the contract.

16. Governing Law and Venue. Texas law governs this Contract and any lawsuit on this Contract must be filed in a court that has jurisdiction in Matagorda County, Texas.

The Parties represent and warrant that the execution of this Agreement is within their authority, and that the signatories, hereto, are duly authorized and empowered to enter into this Agreement, to be effective as of the latter date executed below:

CITY OF BAY CITY, TEXAS

By: _____
Mark A. Bricker, Mayor

Date: _____

WASTE CORPORATION OF TEXAS, L.P.

By: _____

Printed Name: _____

Title: _____

Date: _____

Attachment: WCA (3064 : Sanitation RFQ)

EXHIBIT "A"

**Contract for Solid Waste Collection between CITY OF BAY CITY and WASTE CORPORATION
OF TEXAS, L.P.**

Attachment: WCA (3064 : Sanitation RFQ)

**A CONTRACT FOR SOLID WASTE COLLECTION BETWEEN
CITY OF BAY CITY, TEXAS AND WASTE CORPORATION OF TEXAS, L.P.**

THE CONTRACT

1. **Parties:** The parties to this Contract are the **CITY OF BAY CITY, MATAGORDA COUNTY, TEXAS** (hereinafter called "City") and **WASTE CORPORATION OF TEXAS, L.P.** (hereinafter called "Contractor").
2. **Term of Contract:** This Contract shall become effective and be in force as of the 1st day of November, 2013 and terminating on September 30, 2018; provided, however, this Contract shall be extended for an additional five (5) year period, unless written notice of termination is given by either party to the other, at least ninety (90) days prior to the end of term, or unless this Contract is terminated sooner as provided herein.
3. **Grant of Authority:** There is hereby granted by City to Contractor the exclusive right and privilege to operate and maintain within the City of Bay City a service for the collection and removal of garbage, trash, brush and other items intended to be discarded, including household appliances, (hereinafter called "solid waste"). The right and privilege granted in this Contract for the purpose set forth above shall be exclusive and no other Contractor, person, or corporation shall be permitted to engage in garbage collection from residential, commercial or industrial generators, to include use of roll-off containers, within the City during the term of this franchise.
4. **Compliance with Laws and Ordinances:** Contractor shall, at all times during the terms of this Contract, be subject to all such reasonable regulations as the City may hereafter provide. In addition, Contractor shall observe all state and federal laws, rules and regulations relevant to collection, removal and disposal of solid waste. Contractor's failure to comply with ordinances and regulations of other municipal jurisdictions, which affect Contractor's ability to fulfill the terms of this Contract, shall be grounds for termination.
5. **Definitions:** The following definitions shall apply with respect to this ordinance and franchise Contract:
 - a. **Automated Collection:** Special trucks, equipped with a mechanical/robotic arm that lifts and empties collection carts.
 - b. **Bags:** Plastic sacks designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by top. Total weight of a bag shall not exceed thirty five (35) pounds.
 - c. **Brush and Tree Limbs:** Brush and tree limbs that are less than five (5) feet in length and are with weights or volumes potentially greater than those allowed for bagged yard waste of fifty (50) pounds.
 - d. **Bulky Waste:** Stoves, refrigerators, plumbing fixtures, water tanks, washing machines, furniture and other waste materials other than construction debris, dead animals, brush, yard waste, hazardous waste or stable matter with weights or volumes greater than those allowed for containers. Limited to ten (10) cubic yards per scheduled pickup.
 - e. **Bundle:** Tree, shrub and brush trimmings securely tied together forming an easily handled package not exceeding five (5) feet in length, eighteen (18) inches in diameter, and fifty (50) pounds in weight.

- f. City: **CITY OF BAY CITY, MATAGORDA COUNTY, TEXAS**
- g. Commercial and Industrial Container: Metal receptacle designed to be lifted and emptied mechanically for use at commercial and industrial units.
- h. Commercial and Industrial Refuse: All bulky waste, construction debris, garbage, rubbish and stable matter generated by a customer at a commercial and industrial unit.
- i. Commercial and Industrial Unit: All premises, locations or entities, public or private, requiring refuse collection within the corporate limits of the City, or currently being serviced whether inside or outside the City limits, not a residential unit.
- j. Construction Debris: Waste building materials resulting from construction, remodeling, repair or demolition operations including carpet, tile and other flooring materials.
- k. Container (Toter): A receptacle with a capacity of ninety six (96) gallons constructed of plastic, metal or fiberglass, having handles of adequate strength for mechanical lifting and having a tight fitting lid capable of preventing entrance into the containers by vectors. The mouth of a container shall have a diameter greater than or equal to that of the base. The weight of a container and its contents shall not exceed three hundred thirty five 335 pounds.
- l. Contractor: **WASTE CORPORATION OF TEXAS, L.P. (WCA)**
- m. Cost of Living Adjustment: Shall be the adjustment in fees as described in Section 8(o) of this Agreement.
- n. Customer and Producer: Such person or persons, owner, manager or lessee of premises receiving solid waste collection service from the City.
- o. Dead Animals: Animals or portions thereof equal to or greater than twenty (20) pounds in weight that have expired from any cause, except those slaughtered or killed for human use.
- p. Disposal Site: A refuse depository including but not limited to sanitary landfills, transfer stations, incinerators and waste processing/separation centers licensed, permitted or approved to receive for processing or final disposal of refuse and dead animals by all government bodies and agencies having jurisdiction and requiring such licenses, permits or approvals.
- q. Event Boxes: A container provided by the Contractor for the collection of trash at festivals, fairs, concerts, and any public event sponsored by the City. The containers include dumpsters of any size, trash event boxes constructed of cardboard or stronger material with side print approved by the City, and Port-O-Lets.
- r. Garbage: Any and all dead animals of less than twenty (20) pounds in weight except those slaughtered for human consumption; every accumulation of waste (animal, vegetable, household and/or other matter) that results from packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not by way of limitation, used tin cans and other food containers; and all easily decomposable waste, animal or vegetable matter

which is likely to attract flies or rodents); except (in all cases) any matter included in the definition of bulky waste, construction debris, dead animals, hazardous waste, rubbish or stable matter.

- s. Green Waste: Brush and Tree Limbs or Yard Waste as those terms are defined in this section.
- t. Hazardous Waste: Any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or appropriate agency of the state to be "hazardous" as that term is defined by or pursuant to federal or state law.
- u. Producer: An occupant of a residential unit who generates refuse.
- v. Refuse: This term shall refer to residential refuse and bulky waste, construction debris and stable matter generated at a residential unit unless the context otherwise requires.
- w. Residential Refuse: All garbage and rubbish generated by a producer at a residential unit.
- x. Residential Unit: A dwelling within the corporate limits of the City, or a dwelling currently being served by the City's solid waste collection service whether inside or outside the City limits, occupied by a person or group of persons comprising not more than four families. A residential unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether single or multi-level construction, consisting of four or less contiguous or separate single-family dwelling units, shall be treated as a residential unit, except that each single-family dwelling within any such residential unit shall be billed separately as a residential unit.
- y. Roll-Off: A twenty (20), thirty (30), or forty (40) cubic yard container for accumulating and hauling large volumes of solid waste from one generating location.
- z. Rubbish: All waste wood, wood products, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees, or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packaging or wrapping crockery and glass, ashes, cinders, floor sweepings, glass, mineral or metallic substances, and any and all other waste materials not included in the definitions of bulky waste, construction debris, dead animals, garbage, hazardous waste or stable matter.
- aa. Special Waste: Special waste is non-hazardous solid waste that may be subject to additional governmental regulations or special handling requirements in collection, transportation, processing or disposal as a result of the characteristics or processes which generate such waste.
- bb. Stable Matter: All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry or livestock.
- cc. Small Business or Professional Shop Service (Commercial Small Volume Unit): A retail or light commercial type business similar to a residential customer which generates no

more than one (1) cubic yard of refuse per week. Service provided by automated collection or using hand-loading equipment.

dd. Unusual Accumulated:

- a. For residences, each regular collection more than six (6) containers of garbage, or the equivalent.
- b. For commercial establishments accumulations that would not occur in the ordinary course of business.
- c. Large, heavy, or bulky objects such as furniture or appliances
- d. Materials judged by the Contractor to be hazardous such as oil, acid, or caustic materials.

ee. Yard Waste (Green Waste): All items from a yard that can be bagged such as bagged brush or tree limbs, bagged grass clippings and bagged plants, weeds, leaves or branches weighing less than fifty (50) pounds.

6. **Scope of Work:** The work under this Contract shall consist of the items contained in the proposal, including all the supervision, materials, equipment, labor, insurance, bonds, licenses, and all other items necessary to complete said work in accordance with the Contract documents.

7. **Responsibilities of Contract:**

- a. **Indemnity:** The Contractor will indemnify, save harmless, and exempt the City, its officers, agents, servants and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees incident to any work done in the performance of this Contract to the extent caused by a willful or negligent act of omission of the Contractor, its officers, agents, servants and employees; provided, however, that the Contractor shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees arising out of a willful or negligent act or omission of the City, its officers, agents, servants and employees.
- b. **Personnel:** All Contractor personnel having potential contact with the citizens of Bay City must have passed a comprehensive background check as approved by the Mayor.
- c. **Insurance:** The Contractor shall at all times during the Contract maintain in full force and effect Employer's Liability, Worker's Compensation, Public Liability and Property Damage Insurance as provided for herein. All insurance shall be by insurers and for policy limits reasonably acceptable to the City and before commencement of work hereunder the Contractor agrees to furnish the City certificates of insurance satisfactory to the City to the effect that such insurance has been procured and is in force. The City shall be shown as additional insured during the initial term and any renewals. Proof of insurance shall be included in the Contract documents identified as **Exhibit "C"**. The certificates shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for which this certificate is executed and are in force at this time. In the event of cancellation of a coverage required below affecting the certificate holder, thirty (30) days prior written notice will be given to the certificate holder and the City."

For this purpose of the Contract, the Contractor shall carry the following types of insurance in at least the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00
Bodily Injury Liability	\$1,000,000.00 each occurrence
Except Automobile	\$1,000,000.00 aggregate
Property Damage Liability	\$1,000,000.00 each occurrence
Except Automobile	\$1,000,000.00 aggregate
Automobile Bodily Injury	\$1,000,000.00 each person
Liability	\$1,000,000.00 each occurrence
Automobile Property Damage	\$500,000.00 each occurrence
Liability	
Excess Umbrella Liability	\$5,000,000.00 each occurrence

The coverages above will be provided by Contractor or acknowledged subcontractor.

d. Performance Bond:

1. The Contractor shall maintain and specifically agrees that it will maintain, throughout the term of the Contract, a performance bond with a corporate surety approved by the City. The performance bond shall be included in the Contract documents identified as **Exhibit "D1"**.
2. The performance bond shall be in the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) conditioned that the Contractor shall well and truly observe, fulfill, and perform each term and condition of this Contract and that in each case of any breach of condition of the bond, the amount thereof shall be recoverable from the principal (Contractor) and surety thereof by the City for all damages resulting from the failure of the Contractor to well and faithfully observe and perform any provision of this Contract.
3. The surety on the bond shall be a duly authorized corporate surety authorized to do business in the State of Texas. Said performance bond obtained by the Contractor in compliance with this section shall be filed, updated and maintained with the City Secretary of the City during the term of this Contract.
4. Premium for the bond shall be paid by the Contractor. A certificate from the surety company, showing that the bond premiums are paid in full, shall accompany the bond.
5. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under any other law.

e. Payment Bond:

1. The Contractor shall maintain and specifically agrees that it will maintain, throughout the term of the Contract, a payment bond with a corporate surety approved by the City. The payment bond shall be included in the Contract documents identified as **Exhibit "D2"**.

2. The payment bond shall be in the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) conditioned that the Contractor shall well and truly make payment to all persons, firms, subcontractors and suppliers furnishing equipment, materials or performing labor in the prosecution of the work and any authorized extensions or modifications thereof, to include bond and insurance premiums, licenses, registrations and landfill disposal fees. The amount of properly perfected claims by third parties shall be recoverable from the principal (Contractor) and/or surety for all damages resulting from the failure of the Contractor to well and faithfully promptly pay amounts lawfully owed to third parties pursuant to this Contract.
 3. The surety on the bond shall be a duly authorized corporate surety authorized to do business in the State of Texas. Said payment bond obtained by the Contractor in compliance with this section shall be filed, updated and maintained with the City Secretary of the City during the term of this Contract.
 4. Premium for the bond shall be paid by the Contractor. A certificate from the surety company, showing that the bond premiums are paid in full, shall accompany the bond.
 5. The rights reserved by the City with respect to the bond are in addition to all other rights the City may have under any other law.
- f. Power of Attorney: Attorneys-in-fact who sign payment and performance bonds must file with each bond a certified and effectively dated copy of their power of attorney.
- g. Remedy:
1. Subject to applicable laws, in the event the City determines that the Contractor has materially breached this Contract or has failed to perform resulting in a Contractor default, the City may:
 - a. Seek specific performance from the surety of any provision, which reasonably lend itself to such remedy, as an alternative to damages, or
 - b. Charge to and collect from the Contractor, and/or surety, liquidated damages pursuant to Section 8(g) of this Contract, or
 - c. Commence an action at law for monetary damages against Contractor and/or surety, or seek other equitable relief, or
 - d. Seek recovery from the corporate surety for all damages up to the penal sum of the bond resulting from the failure of the Contractor to observe and perform any material provision of the Contract resulting in City declaration of default.
 2. The Contractor shall not be relieved of any obligations to comply promptly with any provision of the contract by reason of any failure or waiver of the City to enforce prompt compliance.
- h. Licenses: The Contractor shall obtain all licenses and permits (other than the license and permit granted by the Contract) from all and every governmental entities necessary to

perform the services required of Contractor by this ordinance. Failure to obtain or to keep current the licenses and permits necessary shall be grounds for termination.

- i. Equipment: The Contractor shall maintain and operate its collection system and equipment in order to render competent and efficient service subject to the terms of this Contract. All equipment, including motor vehicles and trucks necessary for the performance of this franchise shall, at the beginning of and throughout the term of the Contract, be in good condition and repair, ordinary wear and tear excepted. The trucks used in collection of garbage shall be all metal, with completely enclosed "packer" type bodies that are designed and manufactured for the collection of garbage and rubbish. Said collection vehicles shall be painted and numbered and shall have Contractor's name and telephone number painted in letters of a contrasting color on each side of the vehicle in a size and type so as to be easily readable from a distance of 150 feet. All vehicles shall be kept in a clean and sanitary condition and shall be cleaned inside and outside at least once each week. Contractor shall furnish the City with a list of the type, model and age of the equipment to be utilized for servicing Bay City. This list shall be included in this Contract identified as **Exhibit "F"**.

Any equipment Contractor furnishes shall remain Contractor's property. City shall indemnify, defend and hold Contractor harmless for any and all claims resulting from personal injuries or death, or the loss of or damage to property (including the equipment) arising out of a Customer's, Producer's, agent's, other supplier's or guest's use, operation or possession of the equipment. Customers and Producers shall provide safe, unobstructed access to the equipment on the scheduled collection day. Contractor may charge an additional fee for any additional collection service required by Customer's or Producer's overloading or failure to provide such access.

- j. Damage to Pavement: City and/or Contractor shall not be responsible for any damages to pavement located on private property located adjacent to the collection receptacles.
- k. Title: Contractor shall acquire title to waste materials when they are located onto Contractor's truck. Title to and liability for any hazardous waste and special waste shall remain with customer and shall at no time pass to City or Contractor except as may be specifically provided for in a separate written agreement.

- 8. Service Required of Contractor: The Contractor shall provide, as a minimum, the following services within the corporate limits of the City of Bay City, Texas.

- a. Residential Service:

- (1) Residential Collection: Contractor shall provide curbside garbage collection at each residence twice each week for the term of this Contract not to exceed the limits as outlined in **Exhibit "B"**. Contractor shall provide a ninety-six (96) gallon cart to each household. The preferred color is grey. Specifications and warranty policy for carts shall be included in this Contract identified as **Exhibit "E"**. Contractor shall provide City a copy of maps indicating the routes used in the collection of waste from all residential customers. The City has the right to reject and request modification of routes and updates on routes of Contractor.
- (2) Hours of Operations: Such collection services must be provided between the hours of 7:00 a.m. and 7:00 p.m. No collection shall be made on Sunday.

- (3) Hours of Disposal: Contractor shall dispose of waste within the operating hours of disposal site.
- (4) Green Waste: Contractor agrees to collect such waste as described in definitions as Green Waste as follows:
 - a. Yard Waste: Contractor shall provide curbside service for Yard Waste at each residence once each week for the term of this Contract.
 - b. Brush and Tree Limbs: Contractor shall provide a special collection service for brush and tree limbs to all residential customers as set out in section 8(a)(5) immediately below (Bulky Waste).
 - c. Disposal of Green Waste: Contractor agrees to collect and deliver only quantities of waste as described in definitions for brush and tree limbs, bundles, and yard waste to the City's brush yard for City chipping and shredding services. Contractor is not responsible for shredding as this is to remain a City function through a third party Contractor.
- (5) Bulky Waste: Contractor shall provide a special collection service for brush and bulky wastes and/or bundles to all residential customers. Contractor agrees to collect such large objects and quantities of waste as described in definitions for brush and tree limbs, bulky waste, bundles, and yard waste. Contractor shall provide curbside service for such large objects and quantities of waste at each residence once each week for the term of this Contract.
- b. Small Business or Professional Shop Service: Service to small businesses or professional shops and not exceeding limitations as outlined in **Exhibit "B"** shall be serviced by the Contractor twice weekly. Contractor shall provide one ninety six (96) gallon cart to each such small business or shop. Businesses exceeding such limitations shall be provided commercial container service as for Commercial and Industrial accounts as provided in Section 8(c) below.
- c. Commercial and Industrial Service: Service to Commercial and Industrial Units whose needs exceed Small Business or Professional Shop Service shall be provided service on the following basis.
 - (1) Commercial and Industrial Units shall be serviced up to six days weekly and customers may select from the container services as specified on **Exhibit "B"**. Commercial and Industrial Units may select any of the containerized pickups so long as it adequately services their needs.
 - (2) Collection containers shall be provided by Contractor to Commercial and Industrial Units and/or multiple family dwellings requesting such containers. Contractor shall repair or replaced damaged containers as needed. The customer is responsible for cleanliness of the containers.
- d. Unusual Accumulation Service: The Contractor may from time to time provide for the special collection of dead animals (exceeding 20 lbs. in weight), tires and construction debris at its sole discretion and upon such terms as Contractor shall specify. In the event that residents may desire pick up of excessive or unusual items, or service not contemplated by the Contract, such residents may make independent arrangements with

the Contractor. Contractor shall have no obligation whatsoever to collect hazardous waste, infectious waste or special waste hereafter referred to as "excluded waste".

Debris from lot clearing and construction operations, rock, brush, tree limbs, waste, scrap, building materials or other trash resulting from construction or major remodeling, resulting from a general cleanup or vacant or improved property just prior to its occupancy, or resulting from sizeable amounts of trees, brush and debris cleared from property in preparation for construction, will not be removed by the Contractor as a part of regular service but may be done for the owner on payment of an extra charge as agreed to between the owner and the Contractor with such payments being made directly to the Contractor.

- e. Holidays: The following holidays may be observed by the Contractor and services need not be furnished on these days:

New Year's Day
 Memorial Day
 Independence Day
 Labor Day
 Thanksgiving Day
 Christmas Day

Contractor may decide to observe any or all of the above mentioned holidays by suspension of collection service on the holiday, but the Contractor must meet his obligation as required. If the determined service is bi-weekly trash service, there will be no make-up day for residential routes that occur on the specified holiday. There will be no make-up day for yard waste pick up. If the determined service is weekly trash service, the Contractor will be responsible for providing make-up collection for residential routes that occur on specified holidays.

- f. Customers: The number of residential and commercial customers to be served by the Contractor may be increased or decreased by the City at any time.
- g. Complaints: At a minimum, customer complaint procedure shall provide that the customer complaint shall be addressed within 24 hours or receipt of such complaint and shall be promptly resolved. The Contractor shall be responsible for maintaining a log of complaints, and provide the City on a weekly basis, with copies of all complaints indicating the date and hour of the complaint, nature of the complaint, address of complaint, name of customer, and the manner and timing of its resolution. Any missed pickups or residential refuse will be collected the same business day if notification to the Contractor is provided by 2 p.m. If notification is provided to the Contractor after 2 p.m., the Contractor shall collect the missed refuse by 12 p.m. the next business day. The Contractor will provide and maintain one point of contact (central call center) with the City for all Bay City customers.

In the event the Contractor for any reason after being notified by phone shall fail to make any garbage pickup or collection required to be made hereunder within twenty-four (24) hours (during normal business days) of such notification by the City or the customer, then the City without further notice may cause the same to be picked up and disposed of and shall deduct or bill to the Contractor the charges and any expenses incurred by the City for said collection.

When the Contractor observes a customer violation of the solid waste ordinance in the public right-of-way, Contractor agrees to record by picture or video and transmit evidence of same to the City including address, for City code enforcement actions.

- h. Lease Container (Compactors): The Contractor may lease containers for waste storage to the owner or occupant of the City's commercial, institutional, and industrial customers. In the event any such lease agreement is entered into, the Contractor shall lease the container at a rate approved by the City of Bay City. Such containers shall be equipped with suitable covers to prevent blowing or scattering of waste and shall be maintained in a sanitary and safe condition. Such containers shall be clearly marked with the Contractor's name and telephone number in letters not less than two inches (2") in height. Such containers shall be maintained in the City-approved single color or color scheme. The City currently has no compactors.
- i. Non-Routine Collection: The Contractor shall be required to provide annual Christmas tree collection for recycling purposes. The Contractor shall provide thirty (30) hauls at no charge, per Contract year. Contractor shall furnish, at no charge, 3,000 educational fliers per year. Said fliers shall include information about the Contractor's services in the City of Bay City, pick-up schedule for recyclables, and bulky items, and Contractor's contact information. The City reserves the right to review and approve the information printed on the flier.
- j. Spillage: The Contractor shall not be responsible for scattered refuse unless the same has been caused by its acts or those of any of its employees, in which case all scattered refuse shall be picked up immediately by the Contractor. Contractor will not be required to clean up or collect loose refuse or spillage not caused by the acts of its employees, but shall report the location of such conditions to the Contractor's point of contact with the City so that proper notice can be given to the customer at the premises to properly contain refuse. Commercial refuse spillage or excess refuse shall be picked up by the Contractor after the customer reloads the container. In the case of commercial customers, Contractor shall then be entitled to an extra collection charge for each reloading of a commercial container requiring extra collection. Should such commercial spillage continue to occur, the City shall require the commercial customer and Contractor to increase the frequency of collection of the commercial customer's refuse or require the customer to utilize a commercial container with a larger capacity, and the Contractor shall be compensated for such additional services.
- k. Hazardous Waste: Contractor shall not be obligated to pick up hazardous waste, including refrigeration appliances that have not had CFC's removed by a certified technician, tires, automobile/vehicle batteries, petroleum products, paints and other chemicals and solvents identified as hazardous by the U.S. Environmental Protection Agency.
- l. Protection From Scattering: Each vehicle shall be equipped with a cover which may be net with mesh not greater than one and one-half (1 ½) inches, or tarpaulin, or fully enclosed metal top to prevent leakage, blowing or scattering of refuse onto public or private property. Such cover shall be kept in good order and used to cover the load going to and from the landfill, during loading operations, or when parked if contents are likely to be scattered. Vehicles shall not be overloaded so as to scatter refuse; however, if refuse is scattered from Contractor's vehicle for any reason, it shall be picked up immediately. Each vehicle shall be equipped with a fork, broom and shovel for this purpose.

m. Additional Services:

- (1) Contractor shall collect and dispose of refuse at all City facilities as requested by the City, but not less than twice per week. A list of City facilities that the Contractor must provide free service to as specified in the Contract documents is attached as **Exhibit "G"**.
- (2) Special Event Collection and Services – Contractor shall collect and dispose of refuse resulting from special events and shall provide to City one hundred (100) free event boxes per year. These events are civic oriented and maybe held at various locations and various times during the year. These events include, but are not limited to dumpsters, trash boxes and Port-O-Lets for Independence Day events, concert in the park events, Rally on the River, and Christmas in the park.
- (3) Disaster Recovery Services – Contractor shall provide debris collection and disposal services which may be required due to damage or destruction from flood, tornado, hurricane, windstorm or any other local disaster. Disaster recovery rates are as follows:
 - a. \$125.00 per operating hour (manpower only).
 - b. \$275.00 per hour for related equipment.
 - c. Disposal is the posted county gate rate at the Matagorda Transfer Station/direct haul to WCA facility.
 - d. Third Party services billed to the City as charged by Third Party with 15% mark-up.
- (4) Regularly scheduled garbage collection sufficient to avoid unhealthy or unsightly accumulation shall be provided to City facilities free of charge. Contractor will provide a roll-off container (30 cubic yard) with up to twelve (12) hauls free per year for residential brush.

n. Schedule of Fees: The rate schedule for residential and commercial customers is attached as **Exhibit "B"**. Said amount is inclusive of the franchise fee. Contractor shall be responsible for billing and collection of all roll-off customers on a monthly basis, in advance for service to be rendered and shall pay the City 5% of its total collection thereof, to be remitted to the City each quarter as a gross receipts franchise fee. Contractor shall collect and remit all sales tax in accordance with applicable state law.

o. Remuneration: The City shall bill the residential units, and shall pay the Contractor on a monthly basis; such remittance to be received by Contractor by the 15th of the month following service was rendered. Contractor shall be entitled to payment for all services rendered in accordance with the Contract, without default.

The City shall bill the commercial units, and shall pay the Contractor on a monthly basis; such remittance to be received by Contractor by the 15th of the month following service was rendered. Contractor shall be entitled to payment for all services rendered in accordance with the Contract, without default.

Base rate adjustments will be considered by the City no more than once per year during the life of the Contract. The base rate charged by the Contractor for the second and each subsequent years of the term hereof may be adjusted upward to reflect changes in the cost

of living and operation, as reflected by fluctuations in the Consumer Price Index (CPI) for All Urban Customers, All U.S. City Average, All Items, as published by the U.S. Department of Labor, Bureau of Labor Statistics. The monthly customer service charge shall be subject to an annual adjustment after the first year proportionate to any increases in the "CPI" (as defined below). Said annual increase including CPI adjustments shall not exceed 5% total and must be approved by City Council prior to implementation. Should the increase in CPI be less than 1% in any given service year, the City may elect to delay the increase for one year until the following increase is due. The annual cost of living increase may also be applied to commercial and industrial accounts in addition to any other City Council authorized increases.

The adjusted monthly customer service charge shall be obtained by multiplying the "base service charge" (as defined below) by a number equal to one (1) plus the result product of the following formula:

$$\frac{(CPI/2 - CPI/1) \times 100\%}{CPI/1}$$

In applying the above formula for monthly customer service charge adjustment, the following definitions shall be used:

Service Year: Any period of one year commencing the beginning day of the Contract or any anniversary of such date.

Base Service Charge: The monthly residential customer service charge assessed during the service year immediately preceding the service year for which adjustment is being computed.

CPI: The monthly indexes of the Consumer Price Index issued by the U.S. Department of Labor, Bureau of Labor Statistics or any successor agency of the United States that shall issue such indexes or data.

CPI/1: The average of the monthly CPI for the twelve consecutive calendar months ending sixty (60) days before the commencement of the service year immediately preceding the service year for which the adjustment of charges is being computed.

CPI/2: The average of the monthly CPI for the twelve consecutive calendar months ending sixty (60) days before the commencement of the service year for which the adjustment of charges is being computed.

The Contractor shall attend the March City Council meeting each year to update the City Council on garbage collection issues and present CPI data explaining the calculation of the fee increase to be effective in October(4th quarter) that year. The Contractor will place advance notice of the 4th quarter billing increase in the 3rd quarter bills.

The Contractor may adjust the charges any time after sixty (60) days written notice to the City and approval by the City Council on the basis of unusual charges in the cost of operations, such as revised laws or regulations outside the control of Contractor and City.

Contractor shall be entitled to "pass through" any taxes, fees, or other impositions of any governmental or regulatory entity placed upon or charged against the business or activity of collection and disposal of municipal solid waste by billing customers directly for such

costs to the extent Contractor is affected or liable for them. City may cancel same by giving ten (10) days advance notice in writing if the Contractor should increase rates as outlined above which are considered by the City to be unreasonable.

- p. Contractor shall discontinue garbage collection service at any Unit or account upon written notice from City. Upon further notification by the City, Contractor shall resume collection on the next regularly scheduled collection day. City shall indemnify and hold Contractor harmless from all claims, suits, damages, liabilities or expenses (including but not limited to the expense of investigation and attorney's fee) resulting from Contractor's discontinuance of service at any location at the direction of the City.
- q. Late Payments:
 - 1. Contractor may charge a late fee for any late payments as approved by City Council and listed in the attached **Exhibit "B"**.
 - 2. Contractor may discontinue service to any customer's location which fails to make timely payments for Contractor's services hereunder, and assumes all liability for doing so and shall indemnify the City from any suit resulting from Contractor's sole decision to discontinue service because of non-payment. The Contractor shall provide the City with written notification of any account terminations.
 - 3. Contractor may charge an account reinstatement or service interrupt fee as approved by City Council and listed in the attached **Exhibit "B"** if service is terminated for failure to pay.
- r. Collection Routes: Contractor shall submit to the Mayor for approval and presentation to the City Council at the next regularly scheduled meeting for any adjustments, the proposed pick-up routes and schedules within ten (10) days from the effective date of this Contract. In the event the Contractor desires to change any pick-up routes or schedules, he shall obtain City approval and give thirty (30) days written notice to the City and to the residents affected by such changes. Commercial and industrial unit collection routes shall be established by the Contractor.
- s. Office: Contractor shall maintain an office or such other facilities through which it may be contacted. It shall be equipped with sufficient telephones and shall have a responsible person in charge from 8:00 a.m. to 5:00 p.m. on regular collection days. The Contractor shall contact the City office once before leaving the City on each collections day to receive any complaints which may have been filed with the City.
- t. Service Calls:
 - 1. The Contractor shall contact the customer by the next business day, after a request by the Customer, to schedule the replacement/repair of a broken or cracked garbage container as requested by Customers.
 - 2. There shall be no charge for a request by a citizen or commercial user for replacement of the garbage wheel totes and 10 additional wheel totes shall be always be available at City Hall for citizens to replace damaged or broken wheel totes.

3. Contractor shall notify the City of any commercial site or residential construction site that is not using Contractor for roll-off services. Contractor will supply the City with the name and address of said locations.
9. **Roll-off Containers:** Contractor shall supply roll-off containers within two business days after requested by an established customer with approved payment arrangements. New customer will be required to establish payment arrangements prior to delivery of roll-off container. New customers will be contacted by the next business day following a request for arrangements and delivery of a roll-off container and shall be provided within three business days after payment arrangements are approved. Should any of these requirements fail to be met by Contractor the City shall have authority to allow a customer to utilize another roll-off vendor at its discretion. City shall provide Contractor with notification of any such approval.
10. **Disposal of Garbage and Refuse:** Contractor shall have the responsibility of the disposal of all refuse, garbage and rubbish collected under this agreement and all of said materials shall be disposed of in compliance with the laws of the Federal Government and State of Texas and/or the rules, regulations and standards established or to be established by the Federal Government and the Texas Environmental Quality Commission.
11. **Landfill Use:** The Contractor shall be responsible for providing a properly permitted landfill at a site selected by the Contractor and Contractor shall pay all landfill fees for solid waste hauled by the Contractor. Contractor may pass through all or part of the tipping or disposal fees paid to landfills for the disposal of wastes from industrial accounts by specifically identifying the pass through amount on the respective industrial customer's statement in addition to the rate fee. Such pass through, however, shall be subject to the prohibition on unreasonable rates contained in Section 8(o) above.
12. **Responsibilities of City:** City shall have the following responsibilities under this franchise Contract:
 - a. To advise Contractor monthly of any additions or deletions to the list of residential units, shops and professional units (of any category) and commercial accounts from whom collections are made or to be made.
 - b. To notify Contractor of any complaints respecting Contractor's failure to collect waste or other problems.
13. **Responsibilities of Customer:**
 - a. **Location of Containers, Bags and Bundles for Collection:** Each container, bag and bundle must be placed at curbside locations for collection. Curbside refers to that portion of right-of-way adjacent to paved or traveled City roadways. Containers, bags and bundles shall be placed as close to the roadway as practicable without interfering with or endangering the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, containers, bags and bundles shall be placed as close as practicable to an access point for the collection vehicle. Contractor may decline to collect any container, bag and bundle not so placed or any residential garbage not in a bag, bundle or container.
 - b. **Excluded Waste:** Customer shall not place any "excluded waste" in any receptacles for pickup by Contractor and shall be required to dispose of all such "excluded waste" in accordance with all local, state and federal regulations.

- Page 19 of 30

18. **Damage to City Streets:** Any damage to City Streets resulting from the Contractor's vehicles shall be the responsibility of the Contractor. The City shall notify the Contractor in writing of the damages to streets, sidewalks, street signs and other public roads or structures. The Contractor shall have a reasonable period, dependent on the nature of damage, from the date of the notice to replace and repair the damage to the satisfaction of the City. Failure for the Contractor to perform this duty shall serve as authorization for the City to repair the damage and bill the Contractor. Contractor shall retain the right to defend against the claim of any such damage if Contractor is not the source or cause of the damage. Contractor shall not be held responsible for ordinary wear and tear to pavement and infrastructure caused by the normal and customary garbage collection services provided by Contractor.
19. **Dead Animal Ownership:** Title to refuse and dead animals shall pass to the Contractor when placed in the Contractor's collection vehicle or upon removal by the Contractor from the customer's premises, whichever occurs first. The Contractor shall be required to respond to a request for pickup of a dead animal by the later of (i) twenty-four (24) hours from receiving the call, or (ii) the next business day (excluding Saturdays, Sundays, and holidays). Contractor shall have the right to charge a reasonable additional fee for the service of pick up and disposing of a dead animal to the party, excluding the City, requesting such service.
20. **Legal Provisions:**
- a. **Interruption in Service:** In the event the collection and disposal of garbage shall be interrupted for any reason for more than forty-eight (48) hours as a sole result of a willful or negligent act of Contractor, the City shall have the right to make temporary independent arrangements for the purpose of continuing this necessary service to its citizens in order to provide and protect the public health and safety. The Contractor shall pay the City a reasonable fee and any expenses incurred by the City, for each day or part of a day that the service is interrupted for more than forty-eight (48) hours. An exception for not providing regularly scheduled service to certain location(s) would be hazardous conditions in which case a report will be made to the City and service shall resume when the hazardous condition is rectified. Customer and Contractor agree that Contractor shall not be responsible or liable in any way for damages caused by fire, flood, earthquake or act of God.
 - b. **Excessive Interruption of Service:** If the interruption in service mentioned in the paragraph next above continues for a period of five (5) days as a sole result of a willful or negligent act of Contractor, the City shall have the right to terminate the rights and privileges granted in this Contract and seek any damages available by law. Customer and Contractor agree that Contractor shall not be responsible or liable in any way for damages caused by fire, flood, earthquake or act of God.
 - c. **Severability:** If any portion of this ordinance shall, for any reason be declared invalid, such invalidity shall not affect the remaining portions thereof.
 - d. **Repealer:** All ordinances, parts of ordinances or resolutions in conflict herewith are expressly repealed.
 - e. **Assignment:** No assignment or subcontracting of this Contract or any right accruing hereunder shall be made in whole or in part by the Contractor without the express written consent of the City. In the event of any assignment or subcontract, the assignee or subcontractor shall jointly assume the liability of the Contractor. If liability cannot be

assigned to the subcontractor of this Contract, then the City shall have the option of canceling this Contract.

- f. In the event that the City is required to take any legal action to enforce the terms and conditions of this agreement because of the breach of or failure to perform any term of condition by the Contractor, the Contractor agrees to pay all costs expended by the City including reasonable attorney fees.
 - g. In the event of a natural disaster which the City is declared a disaster area by the State or Federal Government, City shall have the right to dispose of rubbish and trash and will attempt in good faith to use the Contractor's facilities if they can be used at the same or lower cost than other methods available to the City. This provision shall not apply to the disposal of any rubbish or trash not caused by the natural disaster.
 - h. Except for a Customer's, Producer's or City's obligation to pay amounts due to Contractor, any failure or delay in performance due to contingencies beyond a party's reasonable control, including strikes, riots, terrorist acts, compliance with Applicable Laws or governmental orders, fires and acts of God, shall not constitute a breach of this Contract.
21. **Records and Reports:** City shall have access at all reasonable hours, upon reasonable advance notice, to all of Contractor's records, customer service cards and all papers relating to the operation of said Contractor with the City of Bay City. Upon request, the Contractor shall furnish to the City reports of the results of all complaints and investigations received and actions taken by the Contractor.
22. **Standard Governmental Contract and Purchase Rider.** This Agreement is an Exhibit of and subject to the City of Bay City's Standard Governmental Contract and Purchase Rider, ("Rider"), executed by the Parties on even date. In the event of a conflict between this Agreement and the Rider, the terms of the Rider shall prevail except where the term of this Agreement is more beneficial to the City, in which case, this Agreement, at the City's election shall prevail. Absence of a provision in this Agreement addressed in the Rider shall be subject to the terms of the Rider.

Date: _____

CITY OF BAY CITY, TEXAS

By: _____

ATTEST:_____
Rhonda Clegg, City Secretary

Date: _____

WASTE CORPORATION OF TEXAS, L.P.**APPROVED AS TO FORM:**_____
George Hyde, City AttorneyTHE STATE OF TEXAS §
COUNTY OF MATAGORDAThis instrument was acknowledged before me on the _____ day of _____, 2013, by
_____._____
NOTARY PUBLIC IN AND FOR
MATAGORDA COUNTY, TEXASTHE STATE OF TEXAS §
COUNTY OF MATAGORDAThis instrument was acknowledged before me on the _____ day of _____, 2013, by
_____._____
NOTARY PUBLIC IN AND FOR
MATAGORDA COUNTY, TEXAS

Attachment: WCA (3064 : Sanitation RFQ)

EXHIBIT “B”
CONTRACTOR’S PROPOSAL (RFP)

Attachment: WCA (3064 : Sanitation RFQ)

EXHIBIT “C”
INSURANCE

EXHIBIT “D1”
PERFORMANCE BOND

Attachment: WCA (3064 : Sanitation RFQ)

**EXHIBIT “D2”
PAYMENT BOND**

Attachment: WCA (3064 : Sanitation RFQ)

EXHIBIT “E”

SPECIFICATION & WARRANTY POLICY FOR WASTE CARTS

Attachment: WCA (3064 : Sanitation RFQ)

EXHIBIT “F”
WCA HOUSTON RESIDENTIAL TRUCK LIST

Attachment: WCA (3064 : Sanitation RFQ)

EXHIBIT “G”
CITY FACILITIES

EXHIBIT “H”

**BILL OF SALE AND INVENTORY OF CITY EQUIPMENT, RESIDENTIAL CARTS, AND
COMMERCIAL CONTAINERS**

Attachment: WCA (3064 : Sanitation RFQ)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS, AUTHORIZING THE EXECUTION OF AGREEMENT WITH WASTE CORPORATION OF TEXAS, L.P. FOR THE PROVISION OF SOLID WASTE COLLECTION SERVICES

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

Section one. The Agreement, attached hereto as **Exhibit "A"**, is hereby approved.

Section two. The Mayor is hereby authorized to execute said agreement.

Section three. Upon execution and performance of said agreement, the Finance Director is hereby authorized to release funds in accordance with the terms of the agreement.

PASSED AND APPROVED AT BAY CITY TEXAS THIS _____ DAY OF _____, 2013.

Mark A. Bricker, Mayor
City of Bay City

ATTEST:

APPROVED AS TO FORM:

Rhonda Clegg, City Secretary

George Hyde, City Attorney

Attachment: WCA (3064 : Sanitation RFQ)

EXHIBIT “A”

AGREEMENT

Memo

To: Mayor
City Council

From: Cathy Ezell, Finance Director *CE*
Barry Calhoun, Director of Public Works

Date: July 23, 2013

RE: Sanitation Services

During the Special Called City Council Meeting held on March 28, 2013, City Council brought concerns of the City's current sanitation services. City Council indicated that because of the high demands for residential, commercial and brush pickups, our current equipment would not be able to maintain the projected life expectancy despite aggressive preventative maintenance measures. City Council felt the City needed additional resources in order to continue to serve the citizens of Bay City efficiently. As a result, City Council directed staff to review the economics of the City's current sanitation operations and to prepare Request for Proposals to determine the best options for the City's sanitation services.

The Sanitation Department currently has seventeen (17) staff members that are willing to work and provide the service needed. These staff members provide services for residential and commercial collections, brush and bulk pick-ups, recycling collections, and transfer station operations. However, the Department lacks efficient resources (equipment), the ability to maintain staffing levels and proper training. Also, the Department has been unable to provide customers with a reasonable response time due to these aforementioned issues. At this time there is no foreseeable way of correcting these issues in a timely manner without a substantial increase in funding.

The Request for Proposals asked vendors to provide proposals for three different options. The options are as follows:

- Base Service – This is the service that the City is currently providing. A twice a week residential pickup and a once a week brush and heavy trash pickup.
- Alternate 1 – This would be a once a week residential pickup with a once a week curbside recycling program and a once a week brush and heavy trash pickup.
- Alternate 2 – This would be twice a week residential pickup with a once a week curbside recycling program and a once a week brush and heavy trash pickup.

The proposal also requested that the interested parties give offers to purchase the City's sanitation equipment. The City received three proposals. At this time Alternate 2 would not be cost effective and was not considered in the analysis.

Attachment: WCA (3064 : Sanitation RFQ)

Residential Services:

The monthly rates are determined by the proposed rate being charged by the vendor plus a 5% franchise fee and administration fee charged by the City (**Exhibit B**). These rates are the minimum of what the City must charge to maintain operating costs.

	Base Service Rate	Alternate 1 Rate
City	\$21.35	N/A
WCA*	\$18.00	\$19.00
Progressive	\$21.96	\$19.72
Waste Connections	\$21.60	\$21.71

(*These rates are flexible and can be adjusted.)

Commercial Services:

The monthly rates are based upon the dumpster size and number of pickups per week. The rates include the proposed vendor rate, a 5% franchise fee and a 10% administration fee (**Exhibit C**).

Bids to Purchase Equipment:

Each vendor was presented the option to purchase the City's sanitation equipment. A list of the sanitation equipment (**Exhibit E**) was included in the RFP and each vendor provided a purchase price for the equipment. The equipment listed includes all refuse collector trucks, bulk pick-up equipment, and toters.

	Purchase Price
WCA	\$1,891,199
Progressive	\$1,500,000
Waste Connections	\$1,230,502

As of September 30, 2013, the City will have a remaining debt service balance of \$1,782,287.50 (The Debt Service Schedule is included (**Exhibit F**)). The original debt service was issued in 2009 in the amount of \$2,500,000 and was used to purchase the sanitation equipment. This does not mature until 2019.

Should the City continue to provide its own sanitation services, the service rates will have to increase at a minimum of approximately 10% per month for residential and commercial services. This would increase the revenue approximately \$200,000 to allow for the purchase of new equipment and additional staff needed to continue current operations. **Exhibit D** displays the actual revenues over expenditures for Fiscal Years 2011 and 2012, the estimated revenues over expenditures for Fiscal Year 2013 and the proposed budget for revenues over expenditures for Fiscal Year 2014 (The proposed FY2014 budget does not include any employee raises, health insurance premium increases, supplemental requests, or capital requests.).

Summary of Privatizing:

BASE SERVICE: (A twice a week residential pickup and a once a week brush and heavy trash pickup.)

	Revenue to City	Staff & Operating Expenditure Needed	Currently Sanitation Fund Contributing to General Fund	Net Revenue
WCA	\$621,433	\$255,869	\$204,571	\$160,993
Progressive	\$423,822	\$255,869	\$204,571	(\$36,617)
Waste Connections	\$448,371	\$255,869	\$204,571	(\$12,069)

*With this option the City will not be operating the Transfer Station.

ALTERNATE 1: (A once a week residential pickup with a once a week curbside recycling program and a once a week brush and heavy trash pickup.)

	Revenue to City	Staff & Operating Expenditure Needed	Currently Sanitation Fund Contributing to General Fund	Net Revenue
WCA	\$524,762	\$140,000	\$204,571	\$180,191
Progressive	\$319,835	\$140,000	\$204,571	(\$24,736)
Waste Connections	\$351,700	\$140,000	\$204,571	\$7,129

*With this option the City will not be operating the Transfer Station or Recycling Center.

Based upon this analysis, staff is recommends privatizing the City's sanitation services providing Alternate 1 to the citizens by entering into a contract with WCA. We also recommend the selling of the City's sanitation equipment to WCA.

Staff has checked the references of WCA by contacting the City of Wharton, the City of Sugarland, Sienna Plantation MUD's 1, 2, 3, 10 and 12, and New Territory MUD's 67, 68, 69, 111, and 112. WCA comes highly recommend by these references based upon their excellent customer service.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 04/12/18 05:30 PM
Department: City Secretary
Category: Policy
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 3063

DISCUSSION ITEM (ID # 3063)

**~ DISCUSS AND CONSIDER MOWING CODE VIOLATIONS
WITHIN THE CITY AND LIENS REGARDING MOWING CODE
VIOLATIONS.**

COMMENTS - Current Meeting:

Councilwoman, Becca Sitz presented. She is concerned by the amount of properties that must be mowed monthly. She would like to know more about the process.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 04/12/18 05:30 PM
Department: Public Works
Category: Ordinance
Prepared By: Marla Jasek
Initiator: Marla Jasek
Sponsors:
DOC ID: 3065

DISCUSSION ITEM (ID # 3065)

DISCUSS AND CONSIDER PROPOSED AMENDMENTS TO CHAPTER 22, ARTICLE IV - ELECTRICAL CODE, DIVISION 5 TECHNICAL STANDARDS

When the updated building codes were adopted in December 2015, many of the amendments that were specific to the City of Bay City were eliminated.

There have been several instances where the power to a new building has been delayed because AEP does not allow aluminum conductors on the load side of the power company service drop. AEP's requirements were previously addressed in one of the amendments that was removed from the previous ordinance. Due to this issue, it was decided to review all of the electrical notes that were removed from the ordinance to determine if they need to be put back into the ordinance.

The attachment shows the pre-2016 amendments with comments regarding whether the requirement should be put back into the ordinance or not. A resolution with the recommended amendments could be ready for consideration and/or approval at the May 10, 2018 meeting. That would give the building inspector time to coordinate with AEP on necessary revisions and to notify local electrical contractors and developers of the pending changes.

COMMENTS - Current Meeting:

Assistant Public Works Director, Marla Jasek presented the electrical code amendments.

Chapter 22 Electrical Amendments prior to the adoption of the 2014 Electrical Code

DIVISION 5. - TECHNICAL STANDARDS

✓ Sec. 22-195. - Compliance.

In current ordinance.

No electrical materials, apparatus, devices, appliances, fixtures or equipment shall be installed in the city unless they are in conformity with the provisions of this article, the statutes of the state and the rules and regulations issued by the state under the authority of law.

(Code 1985, § 6-136; Code 2000, § 22-221)

✓ Sec. 22-196. - Standards adopted by reference.

In current ordinance as 2014

²⁰¹⁴
The 2011 Edition of the National Electrical Code as recommended by the National Fire Protection Association is hereby adopted by reference as if set out at length in this article and the same shall be complied with in all electrical wiring, and in the construction, installation, repair, alteration, operation and maintenance of electrical wiring, apparatus or fixtures, except insofar as they may conflict with the provision of this article.

(Code 1985, § 6-137; Code 2000, § 22-222; Ord. No. 1297, § 1, 11-21-2002; Ord. No. 1372, 8-13-2009; Ord. No. 1401, 3-24-2011)

State Law reference— Adoption of electric code, V.T.C.A., Local Government Code 214.214.

Remove - No electrical board.

~~Sec. 22-197. - Chief electrical inspector and electrical board to determine additional standards.~~

~~The chief electrical inspector and the electrical board shall decide all issues not provided for in this article pertaining to the installation, operation or maintenance of electric wiring and apparatus.~~

(Code 1985, § 6-138; Code 2000, § 22-223)

*Put back in - 20amp breaker standard
#14 wire ⇒ 15amp - #14 heats up to get 20amp*

* Sec. 22-198. - Wiring generally.

No wire smaller than number 12 shall be used, other than motor control wiring. All metal and non-metallic conduit shall have a ground wire.

(Code 1985, § 6-140; Code 2000, § 22-225; Ord. No. 1271, § 13, 3-8-2001)

Sec. 22-199. - Meter loop and interior feeder installations.

Except in those occupancies outlined in chapter 5 of the adopted National Electrical Code as being hazardous locations, meter loops and interior feeders may be installed in rigid metal conduit, electrical metallic tubing or rigid nonmetallic (pvc) conduit. Cable assemblies are not approved for meter loop or interior feeders.

Not required - Code does not require conduit and this is a "may" not "shall".

↑ put this last part back in

(Code 1985, § 6-148; Code 2000, § 22-232)

Sec. 22-200. - Conductors.

All conductors on the load side of the power company service drop shall be copper material. No aluminum conductors shall be permitted, with the exception of aerial.

Put back in - AEP will not connect if aluminum is used.

(Code 1985, § 6-149; Code 2000, § 22-233; Ord. No. 1271, § 14, 3-8-2001)

Sec. 22-201. - Normal placement of meter cabinets and metering equipment.

The meter cabinets and electrical metering equipment through which service is rendered by the electric public service company to domestic establishments and buildings combining domestic establishments with commercial or industrial usage shall be installed where readily accessible on the exterior of the building; fireproof meter cabinets or meter sockets shall be supplied by the electric public service company and installed by the electrician performing the work; said meter cabinets are to be located so the center of the opening for the meter dial shall be five feet, nine inches above mean ground level, and shall be readily accessible to the electric public service company service. On apartment buildings, where space limitations will not permit placing all meters at the same heights, they may be arranged in two tiers, with the openings for the meter dials in the lower tier as near as practicable to five feet above mean ground level and the second tier placed as near as practicable above the first. Where space limitations will not permit, the electric public service company, subject to the approval of the chief electrical inspector, may determine the arrangement to be used. All service outlets shall be located so as to permit placing the electric public service company's wires on the wall of the building next to the supply.

Put back in

(Code 1985, § 6-153; Code 2000, § 22-237)

- Note requires a main breaker outside. Fire dept can disable power to building.
- Will need to revise apartment meter placement to meet current AEP requirements.

Sec. 22-202. - Irregular placement of meters.

The electric public service company shall never require the placing of the meter on the front or street side of a building without the written consent of the owner; where not practical in the opinion of the chief electrical inspector to place metering devices on the exterior of the building, the location shall be at a point convenient to the electric public service company's service as determined by the chief electrical inspector.

(Code 1985, § 6-154; Code 2000, § 22-238)

Sec. 22-203. - Service drop attachments.

OK to leave out

The point of attachment of the service drop shall be at the highest practical point, but in no instance less than 12½ feet or more than 25 feet above mean ground level, unless a greater height is necessary to obtain required clearances. Minimum height of the service head shall be 13 feet and the point of service drop attachment shall, in general, be six inches below the service head.

↑ Code specifies 10' min

(Code 1985, § 6-155; Code 2000, § 22-239)

Sec. 22-204. - Location of service disconnecting means.

Put back in - supplements 22-201 w/ specific location

Service disconnecting means shall be located so that the height to the center of the operating handle shall not be less than four feet nor more than six feet above the floor or finish grade. The maximum distance between meter service and disconnection means shall be six feet.

(Code 1985, § 6-156; Code 2000, § 22-240)

Sec. 22-205. - Requirements to facilitate work of fire department.

OK to take/leave out

For the purpose of expediting the extinguishing of fires in all buildings, both public and private, the main disconnect switch shall be placed adjacent to the power company meter on the exterior of all buildings, residential and commercial. No wire or wires shall be installed, operated or maintained over any street, alley, sidewalk or building in the city which shall seriously interfere with the work of the fire department in the use of ladders or other apparatus or which shall obstruct or render hazardous the use of fire escapes; and on complaint of the fire chief or fire marshal, said obstruction or interfering or hazardous wires shall be removed or properly arranged.

(Code 1985, § 6-160; Code 2000, § 22-244)

* Add new note - min 200 amp meter can for all new construction and upgrade/rewiring as per AEP requirements.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 04/12/18 05:30 PM
Department: Finance
Category: Budget
Prepared By: Scotty Jones
Initiator: Scotty Jones
Sponsors:
DOC ID: 3073

DISCUSSION ITEM (ID # 3073)

DISCUSS 2019 PROPOSED BUDGET CALENDAR

COMMENTS - Current Meeting:

Finance Director, Scotty Jones presented the 2018-2019 Budget Calendar.

City of Bay City, Texas

Fiscal Year 2019

Summary Budget Calendar

Date	Activity	Responsible Party
Jan-Feb	Goal Visioning Workshops Develop/Adopt Strategic Priorities	Mayor, City Council Department Heads
March	Capital Planning	Mayor, Finance Director Department Heads
April-May	Mailing of notices of appraised value	Matagorda County Appraisal District
April 12	Distribute budget package to Division Heads	Finance Director
May 4	Turn in budget package to Finance Director	Department Heads
May 25	Submit first draft of budget to Mayor	Finance Director
June 6-8	Budget review with Department Heads	Mayor, Finance Director Department Heads
June 8	Capital Plan Review with Mayor	Finance Director & Department Heads
June 14	Budget Workshop- Capital Planning Regular Council Meeting	Mayor & City Council Department Heads
June 28	Regular Council Meeting	City Council, Mayor
July 12	Budget Workshop – 5-year Capital Plan Regular Council Meeting	Mayor & City Council Department Heads
July 25	Certification of appraisal roll	Chief Appraiser
July 26	Budget Workshop (TBD) Regular Council Meeting	City Council, Mayor
July 31	Distribute budget package to Division Heads	Finance Director
August 2	Proposed Budget filed with City Secretary	Finance Director
August 2	Budget Workshop- 9:00 AM	City Council, Mayor, Department Heads
August 6	Publishes notice of effective and rollback tax rates	Matagorda County Tax Office
August 7	Budget Workshop- 5:00 PM	City Council, Mayor, Department Heads
August 9	Regular Council Meeting -Approve budgetary policy & fund balance policy -Discuss tax rate- Propose desired rate -Set Public Hearings on tax rate (if required) -Set Public Hearings on budget & Capital Plan	City Council Mayor Finance Director
August 23	Regular Council Meeting- 7:00 -Public Hearings on budget & tax rate (if required) -Public Hearing on Capital Plan (Charter 10.16)	City Council
August 30	Special Called Meeting- 5:30 -Public Hearing on budget -Public Hearing on tax rate (if required)	City Council
September 13	Regular Council Meeting -Approve Capital Plan -First and final reading of budget ordinance -First and final reading of tax rate ordinance -First and final reading of fee ordinance	City Council
September 28	Distribute budgets	Finance Director
October 1	Budget becomes effective	N/A

Attachment: BudgetCalendarSummary_Detailed2019 (3073 : 2019 PROPOSED BUDGET CALENDAR)

City of Bay City, Texas
Fiscal Year 2019
Detailed Budget Calendar

Date	Description	Notes
Jan-Feb	Goal Visioning Workshops	Workshops with City Council and Department Heads
April	Capital Project Planning Departments Prepare Business Plans	Preparing for Capital Workshop with City Council Goals for 2019 / Accomplishments 2018
April-May	Mailing of Notices of appraised value	Matagorda County Appraisal District
April 12	Distribute budget packets to staff	Goal Visioning Kick off with Department Heads
May 4	Turn in Business Plans for Review	
May 4	Turn in budget packet to Finance Director	
May 25	Submit first draft of budget to Mayor	
June 8	Capital Plan Review with Mayor	Review Capital Plan to be presented to City Council on June 14
June 11 (Mon)	72 Hour Notice	
June 14 (Thurs)	Budget Workshop- Capital Planning Regular Council Meeting	Present Capital Plan and receive input from Council of Ranking (10-year Plan)
June 25 (Mon)	72 Hour Notice	
June 28 (Thurs)	Regular Council Meeting	
July 9 (Mon)	72 Hour Notice	
July 12	Budget Workshop- 5-year Capital Plan Regular Council Meeting	Narrow 10- year plan down to 5- year plan
July 24	72 Hour Notice	
July 25	Deadline for Certification of Roll (MCAD)	Chief appraiser certifies the approved appraisal roll
July 26	Budget Workshop (TBD) Regular Council Meeting	Outside Organizations
July 26-Aug 5	Calculation of Effective Tax Rate	
July 30 (Mon)	72 Hour Notice	
July 31 (Tues)	Distribute budgets to DH's for review	
August 2 (Thurs)	Budget Workshop -General Fund -Utility -Budget Calendar deadlines -Proposed Fee Ordinance -Budgetary & Financial Policy	Kick Off Budget Workshop
August 2 (Thurs)	Proposed budget filed with City Secretary	
August 3 (Fri)	72 Hour Notice	
August 5 (Sun)	Publication of effective & roll back rates (Matagorda County Tax Assessor/Collector)	Publication not required. Effective & Roll back Rates (Deadline is Aug. 7)
August 7 (Tues)	Budget Workshop	
August 6 (Mon)	72 Hour Notice	Request place holder for public hearing notices to run on Sunday, Aug. 13 and Wednesday, Aug. 16
Aug 9 (Wed)	Deadline to Paper	

Attachment: BudgetCalendarSummary_Detailed2019 (3073 : 2019 PROPOSED BUDGET CALENDAR)

August 9 (Thurs)	Regular Council Meeting Discussion of tax rate; If proposed tax rate exceeds effective tax rate- take record of vote and schedule PH's. Set public hearing on <u>capital plan</u> per Charter	<i>"Consider and/or approve placing a proposal to adopt a tax rate for the 2019 fiscal year as an action item on the agenda of a future meeting, specifying therein the desired rate and publishing notice thereof."</i> <i>"Consider and/or approve setting two public hearings on the proposed 2019 Tax Rate for August 23 and August 30."</i> required if proposed rate exceeds Effective tax rate) <i>"Consider and/or approve setting public hearings on the proposed 2019 Budget for August 23 and August 30."</i>
August 10 (Friday)	Confirm placement with newspaper Put Notices on City's Website	<i>"Notice of Public Hearing on Tax Increase" if applicable</i> <i>"Notice of Public Hearing on Proposed Budget"</i> Ads to run Sun. Aug. 12 & Wed. Aug. 15
August 20 (Mon)	72 Hour Notice for Public Hearings	Put both dates here to avoid Aug 27 PH Notice
August 23 (Thurs)	Regular Council Meeting <i>Public Hearing Capital Plan (Citizen Input)</i> Public Hearings on tax rate (if needed) & Proposed Budget & Capital Plan Tax rate hearings are only needed if proposed tax rate exceeds the effective tax rate. Budget Hearings are always required	<i>Mayor to announce the date of the next public hearing. (August 31 for proposed budget and tax)</i> <i>The governing body may not adopt a tax rate at either of these PH's. At each hearing, the governing body must announce the date, time, and place of the meeting at which it will vote on the tax rate</i> <i>Mayor to announce "the date of the final approval of the budget and tax rate will be in City Hall on Sept. 13, 2018 at 7:00"</i>
August 30 (Thurs)	Special Called Meeting Public Hearing on tax rate and Proposed Budget	<i>There must be some sort of action on the budget after the budget hearing, therefore (LGC 102.007) This action could be the adoption of the budget or else vote to postpone the final budget vote.</i> <i>Announce the date & time for final approval for the budget and tax rate ordinance (September 13 @ 7:00 at CH Council Chambers)</i>
Aug. 31 (Friday)	Deadline to Paper Not required if tax rate does not exceed effective	<i>Place notice on website and newspaper on Wednesday, September 5, 2018 if applicable</i> <i>"Notice of Tax Revenue Increase"</i>
Sept 10 (Mon)	72 Hour Notice	<i>"Consider first and final reading an ordinance approving the annual budget</i> <i>A separate vote is needed to "ratify" the property tax revenue increase reflected in the budget</i> <i>"Consider ratification of the property tax revenue increase reflected in the 2019 budget."</i> <i>"Consider second and final reading fixing the tax rate. Approve Fee Ordinance if applicable</i>
Sept 13 (Thur)	Regular Council Meeting -Adopt Budget and Vote on Tax Rate -Approve Fee Ordinance	
Sept 28	Distribute Budgets	
Oct. 1	Budget becomes effective	

BUDGET GUIDELINES:

Note: Budget must be filed with the City Secretary before the 30th day before the date the governing body makes its tax levy for the fiscal year – therefore **August 14, 2018** is the last day to file the budget with the City Secretary (Local Gov Code 102.004)

Notice of Public Hearing for Budget shall be published not earlier than the 30th or later than the 10th day before the date of the hearing (Local Gov Code 102.0065 c), notice of Public Hearing for Tax Levy shall be published not later than the 7th day before the date of the public hearing (Tax Code 26.06) (publish one time for both dates)

H.B. 3195 brings truth and taxation into the budget process. See new guidelines before publishing proposed budget.

Make sure 2nd public hearing is not over 14 days from the day we vote on tax rate.

Public Hearing for Budget must be scheduled after the 15th day (Aug 17, 2018) after date the proposed budget is filed, 10 days after publication of the notice (August 22, 2018) but before the date the governing body makes its tax levy (Local Gov Code 102.006b). Public Hearing is set for Aug. 23 and 30 which is after the 19th day so the date set is in compliance.

The budget shall be adopted in final form before the later of September 30 or 60 days after the certified totals are received. September 13, 2018 is the 13th day of the last month of the fiscal year and no sooner than the 5th day after the public hearing and not later than 10 days prior to the beginning of the fiscal year, so it meets these requirements. (City Charter Section 10.10). A copy of the budget shall be sent to County Clerk's office, the Bay City Public Library, and the City Secretary. (City Charter 10.11)

TAX GUIDELINES:

Notice of Tax Revenue Increase (Vote on Tax Rate) shall be published after Public Hearings and not later than the 7th day before the date of the public meeting to vote on final tax rate (publish one time) (Sept 5)

Adoption of the tax rate must be a separate item on the agenda. State law requires most cities to adopt a budget before they adopt the tax rate. The City may adopt a budget and at tax rate at the same meeting as long as the budget is adopted first as a separate item.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

AGENDA ITEM (ID # 3071)

Meeting: 04/12/18 05:30 PM
Department: Finance
Category: Budget
Prepared By: Scotty Jones
Initiator: Scotty Jones
Sponsors:
DOC ID: 3071

~ DISCUSS AN ORDINANCE ADOPTING BUDGET AMENDMENTS FOR THE QUARTER ENDING MARCH 31, 2018.

BACKGROUND:

The legal level of budgetary control for the City of Bay City lies at the departmental level. Any revisions that alter the amount of total expenditures/expenses of the department must be approved by City Council.

FINANCIAL IMPLICATIONS:

Amending the budget provides a revised parameter for the budget.

RECOMMENDATION:

Recommend City Council approve the budget amendments as presented.

ATTACHMENTS:

Ordinance and Budget Amendments

COMMENTS - Current Meeting:

Finance Director, Scotty Jones presented budget amendments.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BAY CITY, TEXAS, ADOPTING A "BUDGET AMENDMENT #2 TO THE "ANNUAL BUDGET OF THE CITY OF BAY CITY, TEXAS, FOR THE FISCAL YEAR 2018"; PROVIDING FOR SUPPLEMENTAL APPROPRIATION AND/OR TRANSFER OF CERTAIN FUNDS; PROVIDING FOR SEVERABILITY; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT.

WHEREAS, by Ordinance No. 1610, the City of Bay City, Texas, adopted its "Annual Budget" for Fiscal Year 2018;

WHEREAS, the City Council has determined the revenues and/or reserves are available for supplement appropriation and/or transfer of certain funds interdepartmentally is economically feasible and in the best interest of prudent budgeting; and

WHEREAS, the City Council desires to amend said Original General Budget to reflect such supplemental appropriation and/or transfer in the fiscal year 2018; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, STATE OF TEXAS:

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby to be true and correct.

Section 2. The "Annual Budget" of the City of Bay City, Texas, for the Fiscal Year 2018, is hereby amended as shown on "Budget Amendment #2" to the Original Budget of the City of Bay City, Texas, for the Fiscal Year 2018, attached hereto. These amendments are for municipal purposes. Said Budget Amendment shall be attached to and made a part of such Annual Budget by the City Secretary and shall be filed as required by state law, a true and correct copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held constitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Bay City, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or constitutional, whether there be one or more parts.

PASSED AND APPROVED on first and final reading this 12th day of April 2018.

CITY OF BAY CITY, TEXAS

Mark Bricker, Mayor

ATTEST:

David Holubec, City Secretary

APPROVED as to FORM:

Habib Erkan, City Attorney
City of Bay City
DENTON, NAVARRO, ROCHA,
BERNAL, & ZECH, P.C.

Attachment: Budget Amendment #2 (3071 : Budget Amendments)

<u>Council Member:</u>	<u>Voted Aye</u>	<u>Voted No</u>	<u>Absent</u>
Chrystal Folse	_____	_____	_____
Bill Cornman Mayor Pro Tem	_____	_____	_____
Julie L. Estlinbaum	_____	_____	_____
Becca Sitz	_____	_____	_____
Jason Childers	_____	_____	_____

Mark Bricker, Mayor

ATTEST:

David Holubec, City Secretary

APPROVED AS TO FORM AND SUBSTANCE:

Habib Erkan, City Attorney

Attachment: Budget Amendment #2 (3071 : Budget Amendments)



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

AGENDA ITEM (ID # 2877)

Meeting: 10/26/17 07:00 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2877

**~ DISCUSS, CONSIDER, AND/OR APPROVE THE CITY OF
BAY CITY PURCHASING DOWNTOWN CHRISTMAS
DECORATIONS IN AN AMOUNT NOT TO EXCEED ELEVEN-
THOUSAND DOLLARS (\$11,000).**

From March 9, 2017 Regular Council Meeting

Report DISCUSS, CONSIDER, AND/OR APPROVE THE CITY OF BAY CITY CONTRIBUTING TO THE HOLIDAY DECORATIONS FOR THE DOWNTOWN SQUARE. -

Mayor Pro Tem Folse explained that about three (3) years ago she believed they got about \$6,000. They were requesting that either the City pay for the lights out of City funding or split it with them.

The Mayor asked who had been paying for it. Mayor Pro Tem stated that they had been paying for it out of their light it up fund. The Mayor asked what tax dollars are we paying this out of. He asked Mayor Pro Tem Folse if she knew, and she stated no.

Councilwoman Estlinbaum stated that the City should pay for it, and added that she did not know what it should come from, but she knew they could find it.

Councilman Cornman asked how much were they asking for, and Ms. Sitz stated it has been on average \$11,00 per year. Councilman Cornman asked Ms. Sitz to give Scotty a budget request for next budget year.

The Mayor asked if Ms. Sitz has asked for funds from the County, and Ms. Sitz stated yes. Mayor Pro Tem Folse pointed out that the County pays for their own.

Mayor Pro Tem Chrystal Folse

COMMENTS - Current Meeting:

Councilwoman, Becca Sitz presented the plans for Christmas decorations and lights by the Historic Downtown Business Association. This is an agenda item that was first discussed on March 9, 2017. The plan was unanimously accepted by motion. The motion was made by Councilwoman Julie Estlinbaum and seconded by Councilman Bill Cornman. Funds are not to exceed \$11,000.

Attachment: Budget Amendments_2nd Qtr (3071 : Budget Amendments)

Date: 3/1/2018

	1. New revenues (originally unbudgeted) are available.
	2. Actual revenues (originally unbudgeted) have exceeded the original adopted budget.
	3. A new project, program or special expenditure has been authorized.
X	4. Transfer reclassification of original adopted budget to realign budget to actual transaction activity as presently needed.

2018
FY2018: Reclassification of expenses - Chemicals for water plants should have been transferred to 61-415-4312 for FY2018.

			<i>Expenditure Increase</i>	<i>Exp. Decrease or Rev. Increase</i>	
Account Description	Fund #	Account #	Debit	Credit	Notes
Chemicals	61	410-4312		\$ 40,000.00	
Chemicals	61	415-4312	\$ 40,000.00		
TOTAL			\$ -	\$ -	

2026

3/2/18
Date

Bary Calhoun

Date 3/2/2018

2014

4/5/18
Date

Council Authorized Signature [Ord #

Date _____



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 04/12/18 05:30 PM
Department: City Secretary
Category: Policy
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 3051

DISCUSSION ITEM (ID # 3051)

**~ RECEIVE AND DISCUSS AN UPDATE ON THE INTERNAL
CHARTER INVESTIGATION REQUESTED BY COUNCIL.**

COMMENTS - Current Meeting:

City Secretary, David Holubec updated Council members on the ongoing internal Charter investigation.

CITY OF BAY CITY
HOME RULE CHARTER
AS AMENDED 2013
(CORRECTED COPY)
March 2018

Attachment: 2013 Home Rule Charter - Corrections from Investigation (3051 : Home Rule Charter Internal Investigation)

October 27, 1988

To: The CITIZENS OF BAY CITY, TEXAS

The Honorable Mayor WILLIAM M. BELL

Mayor Pro Tem FRANK HENDERSON

Council Members: CHRISTOPHER CASTILLO
BILLYE J. HARMER
C. B. "COTTON" KEENER
TOMMY Z. LeTULLE

We the members of the Bay City Charter Commission of 1988 have drafted a proposed Home Rule Charter for the City of Bay City. We pledge to the citizens and voters of Bay City that in writing this instrument, we have put the interest of you and the City's future as our one and only goal. It was not written for the benefit or personal gain of any one of us, any Council member, the Mayor or any prospect for one of those offices.

We are honored by your trust in electing each of us to the Charter Commission and giving us this opportunity to participate in plain old grass-roots self-government. Ten or more of us have met every Tuesday night for four months, approximately three to four hours an evening, (often until 11:00 p.m.). To write this draft we have contributed over 500 hours, not counting the hours of editing, retyping between meetings, and outside discussions with individual citizens and organizations.

We have thoroughly discussed each provision and reviewed it against numerous other charter provisions of other cities. We have tried to put the Charter in simple words, though a few technical paragraphs still remain. It has been revised after citizens expressed their ideas at public hearings. The Mayor and each Council member have had an opportunity to make recommendations. The press and public were invited to attend all meetings and hearings. All viewpoints were considered.

Our City has grown through the years from a small town to a sophisticated small city with almost 200 City employees and an annual budget exceeding \$11 million. We are the only city of our size in the State of Texas without a Home Rule Charter; most cities smaller than Bay City have had a Home Rule Charter for years. The reason is that it works.

We have made financial accountability to the citizens a primary goal. You pay the taxes, and you are entitled to know exactly how your tax dollar is spent.

We have omitted the controversial issues which have prevented passage in the past and have tried to preserve the advantages of our current form of government. Our intent was to strike a proper balance between the rights, duties and powers of each City official. There is definitely more power for the City Council, but there is still ample room for the Mayor to be a strong leader. All are elected by the people. We have also tried to define the duties of all concerned, while preserving as much flexibility as possible.

We now declare the work of this Charter Commission and this proposed Charter to be complete as of October 27, 1988.

Therefore, we the undersigned members duly elected on May 7, 1988 as the Charter Commission of Bay City, Texas, in accordance with the Revised Civil Statutes of the State of Texas, respectfully submit this proposed Charter and request that the governing body of the City of Bay City call a Special Election to be held on January 21, 1989, and that the qualified

voters of the City of Bay City be provided with a copy of this proposed Charter no less than thirty days before the election. We would direct that any such action required by the laws of the State of Texas in submitting this Charter be taken by the City Council of Bay City and the Honorable Mayor William M. Bell.

We have a great pride in this Charter. We genuinely believe this Charter is in the best interest of Bay City now and in the years to come. We urge each of you to read the Charter line-by-line, and then exercise your precious American right - VOTE!

Respectfully submitted,

THE CHARTER COMMISSION
OF BAY CITY, TEXAS

Sue Rosson Tejml
Sue Rosson Tejml
Co-Chairman

J. L. "Jerry" Evans, Jr.
J. L. "Jerry" Evans, Jr.
Chairman

Peggy H. Dodd
Peggy H. Dodd, Secretary

A. J. Brown
A. J. Brown

Jack Hollister
Jack Hollister

F. M. Castillo
F. M. Castillo

Sam Maglitto
Sam Maglitto

Jim W. Cox
Jim W. Cox

Steven E. Reis
Steven E. Reis

Michelle Evans
Michelle Evans

James Roberson
James Roberson

Allen Green
Allen Green

Christine Smith
Christine Smith

R. N. "Bob" Head
R. N. "Bob" Head

William K. Wilder
William K. Wilder

The members gratefully acknowledge the many hours of typing by Betty Nozer.

HOME RULE CHARTER FOR CITY OF BAY CITY, TEXAS

TABLE OF CONTENTS

	<u>Page</u>
<u>PREAMBLE</u>	1
<u>ARTICLE I – INCORPORATION, FORM OF GOVERNMENT, AND BOUNDARIES</u>	1
Section 1.01 – Incorporation	1
Section 1.02 – Form of Government	1
Section 1.03 – The Boundaries	1
Section 1.04 – Boundary Changes	1
<u>ARTICLE II – POWERS OF THE CITY</u>	2
Section 2.01 – General Powers	2
Section 2.02 – Specific Powers	2
Section 2.03 – Eminent Domain	3
Section 2.04 – City Property and Streets	3
Section 2.05 – Tort Liability and Mandatory Written Notice	3
<u>ARTICLE III – THE MAYOR</u>	4
Section 3.01 – Head of City Government	4
Section 3.02 – Qualifications	4
Section 3.03 – Term	4
Section 3.04 – Compensation	5
Section 3.05 – Vacancy and Forfeiture	5
Section 3.06 – General Powers of the Mayor	5
Section 3.07 – Tie Vote	5
Section 3.08 – Power of Veto	5
Section 3.09 – Removal of Appointed, Non-Paid Advisory Person by Mayor	6
Section 3.10 – Other Duties and Powers	6
Section 3.11 – Mayor Pro Tem	6
Section 3.12 – Acting Mayor	6
Section 3.13 – Retention of Voting Privileges	6
<u>ARTICLE IV – THE COUNCIL</u>	6
Section 4.01 – Number, Selection, and Term of Office and Term Limits of the Council	7
Section 4.02 – Qualifications	7
Section 4.03 – Powers of the Council	7
Section 4.04 – Compensation	7
Section 4.05 – Investigative Body	7
Section 4.06 – Meetings of Council	7
Section 4.07 – Council Voting	8
Section 4.08 – Councilmembers and Administrative Divisions	8
Section 4.09 – Finance Committee	9
Section 4.10 – Vacancies, Forfeiture, and Removal	9

ARTICLE V – ORDINANCES	10
Section 5.01 – Ordinances	10
Section 5.02 – Code of Technical Regulations	11
Section 5.03 – Code of Ordinances	11
ARTICLE VI – NOMINATIONS AND ELECTIONS	11
Section 6.01 – Elections	12
Section 6.02 – Regulation of Election	12
Section 6.03 – How to Get Name on Ballot	12
Section 6.04 – Mayor and Councilmember Ballots	12
Section 6.05 – Election of Mayor and Councilmember by Majority	12
Section 6.06 – Canvassing Election Returns	12
Section 6.07 – Recount	13
Section 6.08 – Induction of Council into Office, Meeting of Council	13
Section 6.09 – Council to be Judge of Election Qualifications	13
ARTICLE VII - ADMINISTRATIVE	13
Section 7.01 – Compensation, Benefits, Employment	13
Section 7.02 – Conditions of Employment	13
Section 7.03 – Bond for City Employees	14
Section 7.04 – Nepotism	14
Section 7.05 – City Officers and Administrative Departments	14
Section 7.06 – City Secretary	15
Section 7.07 – Fire Marshal and Volunteer Fire Department	16
ARTICLE VIII – LEGAL AND JUDICIAL	16
Section 8.01 – Attorney for the City	16
Section 8.02 – Municipal Court	16
Section 8.03 – Judges of Municipal Court	17
Section 8.04 – Municipal Court Procedure	17
ARTICLE IX – DEPARTMENT OF FINANCE	17
Section 9.01 – Creation and Purpose of the Department of Finance	17
ARTICLE X – BUDGET	17
Section 10.01 – Fiscal Year	17
Section 10.02 – Preparation and Submission of Budget	18
Section 10.03 – Proposed Budget and Budget – A Public Record	19
Section 10.04 – Workshops and Council Changes to the Proposed Budget	19
Section 10.05 – Public Hearing on Proposed Budget	19
Section 10.06 – Proceedings on Proposed Budget after Public Hearing	19
Section 10.07 – Contingent Appropriation	20
Section 10.08 – Estimated Expenditures Shall Not Exceed Estimated Resources	20
Section 10.09 – Adoption of Budget	20
Section 10.10 – Effective Date of Adoption	20
Section 10.11 – Effective Date of Budget, Certification, Copies made Available	20
Section 10.12 – Budget Establishes Appropriations	20
Section 10.13 – Budget Establishes Amount to be Raised by Taxation	20
Section 10.14 – Budget Amendments after Adoption	21
Section 10.15 – Capital Program	21

Section 10.16 – Council Action On Capital Program	21
ARTICLE XI – TAX	21
Section 11.01 – Taxation.....	22
Section 11.02 – Power to Tax.....	22
Section 11.03 – Approval of the Assessment Roll.....	22
Section 11.04 – Taxes, When Due and Payable.....	22
Section 11.05 – Tax Liens and Liabilities.....	22
Section 11.06 – Joint Interest in Property.....	23
Section 11.07 – Arrears of Taxes Offset to Debt Against City.....	23
Section 11.08 – Tax Remission, Discount and Compromise.....	23
Section 11.09 – Other Rules and Regulations.....	23
Section 11.10 – Tax Suits; Evidence, Limitations.....	23
ARTICLE XII – BORROWING, BONDS, AND AUDIT	24
Section 12.01 – Borrowing	24
Section 12.02 – General Obligation Bonds	24
Section 12.03 – Revenue Bonds	24
Section 12.04 – Sale of Bonds, Bonds Incontestable.....	24
Section 12.05 – Use of Bond Proceeds.....	24
Section 12.06 – Definitions	25
Section 12.07 – Sinking Fund.....	25
Section 12.08 – Audit and Examination of City Books and Accounts.....	25
ARTICLE XIII – FRANCHISES AND PUBLIC UTILITIES	25
Section 13.01 – Inalienability of Public Property	25
Section 13.02 – Power to Grant Franchise.....	26
Section 13.03 – No Indeterminate Term, No Exclusive Franchise	26
Section 13.04 – City's Right to Purchase Franchise Assets.....	26
Section 13.05 – Ordinance Granting Franchise	26
Section 13.06 – Transfer of Franchise	26
Section 13.07 – Regulation of Franchise.....	26
Section 13.08 – Regulation of Rates	27
Section 13.09 – Sale of Electricity, Water, Sewer Services, and Any Other Utilities.....	27
Section 13.10 – Accounts of Municipally Owned Utilities	28
ARTICLE XIV – PLANNING COMMISSION	28
Section 14.01 – Establishment and Organization.....	28
Section 14.02 – Powers and Duties	28
Section 14.03 – The Master Plan	29
ARTICLE XV – INITIATIVE, REFERENDUM, AND RECALL	29
Section 15.01 – In General.....	29
Section 15.02 – Initiative	29
Section 15.03 – Referendum.....	30
Section 15.04 – Recall.....	30
Section 15.05 – Petition.....	31
ARTICLE XVI – GENERAL PROVISIONS	31
Section 16.01 – Personal Interest	31
Section 16.02 – Assignment, Execution, and Garnishment	32

Section 16.03 – Security or Bond Not Required	33
Section 16.04 – Effect of Charter on Existing Law, Contracts, and Assessments	33
Section 16.05 – Judicial Notice	33
Section 16.06 – Severability Clause	33
Section 16.07 – Rearrangement and Renumbering	33
Section 16.08 – Interim Municipal Government.....	33
Section 16.09 – Publicity of Records	33
Section 16.10 – Grammatical Clarifications.....	34
Section 16.11 – Federal and State Law	34
Section 16.12 – Official Newspaper of the City	34
Section 16.13 – Definitions	34
<u>ARTICLE XVII – AMENDMENT AND REVIEW</u>	35
Section 17.01 – Amending the Charter	35
Section 17.02 – Charter Review Commission	35

HOME RULE CHARTER FOR CITY OF BAY CITY TEXAS

PREAMBLE

We, the citizens of Bay City, Texas, do HEREBY adopt this Home Rule Charter pursuant to the laws of the State of Texas.

- Take pride in the sense of *community* which exists,
- Enjoy the *diversity* of our population,
- Emphasize the importance of continual means of *communication*,
- Encourage *economic growth and development*, and
- Plan a better *environment* in which to live, work, and recreate.

ARTICLE I

INCORPORATION, FORM OF GOVERNMENT, AND BOUNDARIES

Section 1.01 – Incorporation

The residents of the City of Bay City (situated in Matagorda County, Texas) living within its legally established boundaries are incorporated forever as a political subdivision of the State of Texas under the name of the "CITY OF BAY CITY, TEXAS" (referred to hereafter as the "City") with all the powers, privileges, rights, duties, and **immunities includes those** which are provided for by this Charter City Ordinances and Texas State law.

Section 1.02 – Form of Government

The municipal government provided by this Charter is the Mayor-Council Form of Government. All powers of the City shall be exercised as stated in this Charter, or if not stated, then as provided by Ordinance or State law.

Section 1.03 – The Boundaries

The boundaries of the City shall be the same as now exist and are hereafter established in annexation and detachment ordinances and proceedings.

Section	1.04	–	Boundary	Changes
---------	------	---	----------	---------

The City shall have the power to change its boundaries by annexing territory for full or limited purposes, or by de-annexing territory, as may be authorized by, and in the manner and form prescribed by, any general law of Texas. Annexation or de-annexation may be initiated by the City, with or without the consent of the territory's inhabitants. Annexation may also be initiated by petition of a landowner of unoccupied or sparsely occupied land, or by petition of the

residents of a territory. All annexations or de-annexations shall be accomplished by ordinance acted upon after a public hearing.

ARTICLE II

POWERS OF THE CITY

Section 2.01 – General Powers

Without the necessity of express enumeration in this Charter, and in addition to the powers enumerated in this Charter, the City shall have all powers now or hereafter granted to municipal corporations by the Constitution and laws of the State of Texas, together with all the implied powers necessary to carry into execution such granted powers.

Section 2.02 – Specific Powers

The City may:

- (a) use a corporate seal;
- (b) sue and be sued by action of its Council, may implead and be impleaded in all courts in all matters;
- (c) contract and be contracted with;
- (d) cooperate with the government of the State of Texas (or its political subdivisions) and the Federal Government;
- (e) own or acquire property within or without its boundaries for any municipal purpose in fee simple or in any lesser interest or estate, by purchase, gift, devise, lease, or condemnation; and may sell, lease, hold, manage, control, and police any property now owned by it or which it may later acquire whether within or without the City limits;
- (f) pass and enforce ordinances, not inconsistent with this Charter and State law, upon any subject expedient for the life; general welfare; health; morals; comfort; safety; amusement; quiet; prosperity; and convenience of the City and its inhabitants, and property; and may provide suitable penalties for the violations of any ordinance;
- (g) prevent, and summarily abate, and remove nuisances;
- (h) construct, own, lease, operate, and regulate all public utilities;
- (i) assess, levy, and collect taxes for general and special purposes on all lawful subjects of taxation;
- (j) borrow money on the faith and credit of the City by the issuance and sale of bonds, certificates of obligation, warrants, or notes of the City; or secured by the revenue of municipally owned utilities or other municipal enterprises;
- (k) appropriate the funds of the City for all lawful purposes;
- (l) create and administer a park trust fund for the purchase of land and capital improvements for municipal parks. Any funds and interest from sale or lease of any municipal park shall be promptly placed in the park trust fund;
- (m) create and establish improvement districts as authorized by Local Government Code No. 372.041;

- (n) control the speed and excessive noise of railroad cars; the construction and grade of railroad tracks, turnouts and switches; and the erection of signal lights and safety devices at street crossings.

Section 2.03 – Eminent Domain

The City shall have full authority to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter, State law, or City ordinance. The City may take the fee in the lands so condemned, or take a lesser estate or interest in land, and its authority shall include the right to condemn public property for such proposes.

Section 2.04 – City Property and Streets

- (a) The City shall have exclusive control of all its property; “property” is defined as including, but not limited to, streets, highways, sidewalks, bridges, parks, recreational facilities, squares, city buildings, airports, landfills, undeveloped land, utility, and/or drainage easements. The City may layout, establish, open, alter, widen, lower, raise, extend, grade, drain, pave, repave, supervise, maintain, care for, construct, remodel, abandon, discontinue, abolish, lease, or sell its property. The foregoing list of City property is intended to illustrate the types of City property and is not intended to vest the City with title to any private property.
- (b) City property shall include all oil, gas, and other minerals not reserved by predecessors in title, and all included waterways not subject to prior or superior authority.
- (c) The City may remove or require the removal of all obstructions and encroachments affecting any City property and V.A.T.S, 1175 is expressly adopted in this Charter. Exclusive control shall also include, but not be limited to, the right to regulate, locate, relocate, remove, or prohibit the location of all utility pipes, lines, poles, wires, or other property; and to remove tree limbs, bushes, or other plant growth extended onto or over City property.
- (d) Assessments for Improvements. The City may provide, by ordinance, that the cost of making improvements shall be paid for by the property owners owning property in the territory specifically benefitted, but not in excess of the enhanced value by reason of the improvements; and a personal charge shall be made against the property owners, as well as a lien, by special assessment against the property.

The Council, or its appointed commission, may set and levy a special assessment and issue assignable or negotiable certificates covering the costs in deferred payments bearing a reasonable rate of interest.

Section 2.05 – Tort Liability and Mandatory Written Notice

- (a) Before the City shall be liable for damages for the death or personal injuries of any person or for damages to or destruction of property of any kind (which does not constitute a taking or damaging of property under Article 1, Section 17, Constitution of the State of Texas), the person injured (if living), or his representatives (if deceased), or the parent or guardian of a minor child, or the legal guardian of a person declared non compos mentis, or the owner or his agent or attorney of the property damaged or

destroyed, shall give the Mayor or City Secretary written notice of such death, injury, damage, or destruction within six months after it has been sustained.

- (b) The written notice shall state specifically when, where, and how the death, injury, damage or destruction occurred; the apparent extent of the injury, damages, or destruction; the dollar amount of damages sustained and claimed; both the mailing address and the actual residence of the claimant by street number and name, town, state, and zip code on the date the claim is presented; the actual residence of the claimant by street number and name, town, state, and zip code for six months immediately preceding the occurrence of such death, injury, damage or destruction; and the names and complete addresses of all witnesses upon whom it is relied to establish the claim for damages.
- (c) The failure to so notify the Mayor or City Secretary within the time and manner specified shall release the City from any liability. No act of any officer or employee of the City shall waive compliance, or estop the City from requiring compliance, with the provisions of this Section as to notice.
- (d) The notice requirements of this section will not apply, if State law mandates that actual notice to the City is sufficient that a death has occurred, the claimant has received some injury, or the claimant's property has been damaged.

ARTICLE III

THE MAYOR

Section 3.01 – Head of City Government

The Mayor shall be the chief administrator and executive officer of the City, and shall be responsible for the proper administration of its affairs. The Mayor shall preside at all meetings of the Council and shall be recognized as the head of the city government for ceremonies, receiving civil process, emergency measures, and military purposes.

Section 3.02 – Qualifications

The Mayor shall be a citizen of the United States of America and a qualified voter of the State of Texas; shall have resided for at least one year preceding the election within the corporate limits of the City or for one year within territory which has been annexed by the City; shall have attained the age of at least twenty-one years on the first day of the term to be filled; and shall not at the same time hold any other elective or appointive public office of emolument.

Section 3.03 – Term

A Mayor shall be elected in 1989 and every third year thereafter by a majority vote of the qualified voters voting at the election. His term of office shall be three years or until his successor has been elected and qualified. No one person shall be elected in the capacity of mayor for more than three consecutive three-year terms.

Section 3.04 – Compensation

The Council shall annually in the budget adopt the compensation and expense account for the Mayor and offer the Mayor any fringe benefits available to other full-time employees including, but not limited to, health insurance and retirement.

Section 3.05 – Vacancy and Forfeiture

- (a) Vacancy – The office of the Mayor shall become vacant upon his death, resignation, removal from office in any manner authorized by law, or forfeiture of his office.
- (b) Forfeiture of Office – The Mayor shall forfeit his/her office if, during a term of office, the Mayor:
 - (1) is no longer a US citizen or qualified voter of the city or lacks any qualification for the office prescribed by this Charter or by other law;
 - (2) violates any express prohibition of this Charter;
 - (3) is convicted of a felony or is convicted of a crime involving moral turpitude; or
 - (4) fails to attend three (3) consecutive regular meetings of the council without being excused by the Council.
- (c) When the mayor no longer possesses all of the qualifications specified in this section, the office shall immediately and automatically become vacant. The council shall be the judge of the qualifications of its members and for these purposes shall have the power to conduct a tribunal, subpoena witnesses and require the production of records. The council shall, by an affirmative vote of a majority of the entire membership, be the final judge in matters involving forfeiture of office by the Mayor.

Section 3.06 – General Powers of the Mayor

The Mayor shall exercise such powers, prerogatives, and authorities as are implied or expressly conferred on him by State law, this Charter, or the Council, by ordinance.

Section 3.07 – Tie Vote

The Mayor shall only be entitled to vote in the case of a tie. The Mayor may not vote if this Charter requires three affirmative votes of Councilmembers.

Section 3.08 – Power of Veto

The Mayor shall have the power to veto any ordinance or resolution passed by the Council, except those ordinances or resolutions which are not subject to the initiative or referendum process under the provisions of this Charter. To be effective, the veto must be in writing, setting forth the Mayor's reason and filed with the City Secretary within five calendar days of the passage of the ordinance or resolution. The City Secretary shall deliver the Mayor's veto message to each Councilmember immediately upon receipt.

Section 3.09 – Removal of Appointed, Non-Paid Advisory Person by Mayor

Except as may be otherwise provided by law, by ordinance or by this Charter, the Mayor shall be the exclusive authority to remove all non-paid advisory persons. The action of the Mayor shall be final with consent of a majority vote of Council.

Section 3.10 – Other Duties and Powers

Unless otherwise provided by State law, ordinance or this Charter, the powers and responsibilities of the Mayor shall include, but shall not be limited to, the following:

- (a) To appoint, subject to the prior consent of the Council, all officers and department heads of the City and the members of all boards, commissions, committees and agencies of the City.
- (b) To exercise control over all departments and divisions of the City and to supervise all officers and employees of the City.
- (c) To recommend to the Council such measures, resolutions, and ordinances as he may deem necessary and proper.
- (d) To keep the Council fully advised as to the financial condition and needs of the City.
- (e) To perform such other duties as may be prescribed by this Charter or required of him by ordinance.

Section 3.11 – Mayor Pro Tem

At the first regular meeting following the induction of newly elected Councilmembers, the Council shall, by three affirmative votes of Councilmembers, elect one Councilmember as Mayor Pro Tem for a one-year term. The Councilmember elected as Mayor Pro Tem shall have had prior tenure as Councilmember of the City of Bay City. The Mayor Pro Tem shall act as Mayor during the absence, disability or disqualification of the Mayor, and shall have the power to perform every act the Mayor could perform if present.

Section 3.12 – Acting Mayor

In the event of absence, disability, or disqualification of both the Mayor and the Mayor Pro Tem at any particular meeting of the Council, the remaining members of the Council shall, by majority vote, designate one of their members as Acting Mayor for that particular meeting; and the Acting Mayor shall have the power to perform every act the Mayor could perform if present.

Section 3.13 – Retention of Voting Privileges

While performing the duties of Mayor, the Mayor Pro Tem or Acting Mayor may still vote as a Councilmember.

ARTICLE IV

THE COUNCIL

Section 4.01 – Number, Selection, Term of Office, and Term Limits of the Council

The Council shall be composed of five Councilmembers and the Mayor. All Councilmembers to be selected at large. Councilmembers No. 1 and 2 shall be elected one year and Councilmembers No. 3, 4, and 5 elected the following year. No Councilmember shall be elected to serve for more than three consecutive two-year terms.

Section 4.02 – Qualifications

A Councilmember shall be a citizen of the United States of America and a qualified voter of the State of Texas; shall have resided for at least one year preceding the election within the corporate limits of the City or for one year within territory which has been annexed by the City; shall have attained the age of at least twenty-one years on the first day of the term to be filled; and shall not at the same time hold any other elective or appointive public office of emolument.

Section 4.03 – Powers of the Council

All powers and authority which are expressly or impliedly conferred on or possessed by the City in Article II of this Charter shall be vested in and exercised by the Council; however, the Council may not exercise powers which are conferred exclusively on other city officers by this Charter.

Section 4.04 – Compensation

The Council shall annually in the budget adopt the compensation for Councilmembers for attendance at meetings and for other duties and may offer each Councilmember any group health insurance available to full-time City employees at the Councilmember's expense.

Section 4.05 – Investigative Body

The Council shall have the power to inquire into the official conduct of any department, agency, office, officer, or employee of the City; for that purpose, shall have the power to administer oaths, subpoena witnesses, compel the production of books, papers and other evidence material to the inquiry. The Council shall provide, by ordinance, penalties for failing or refusing to obey any such subpoena or to produce any such books, papers or other evidence; and shall have the power to punish in the manner provided by such ordinance. No member of the Council shall ever vote upon any matter involving the consideration of his own official conduct.

Section 4.06 – Meetings of Council

- (a) Regular Council Meetings – The Council shall have no less than two regular meetings each month and as many additional meetings, as necessary, to transact the business of the City. The Council shall fix, by ordinance, the days and time of the regular meetings. All meetings of the Council shall be held at the City Hall of Bay City and shall be open to the public, unless State law allows or requires otherwise.
 - (1) The Mayor or Councilmembers, individually or by motion, may place items on the agenda prior to the next agenda being posted.
 - (2) Any interested party may request, in writing, for an item that falls within the City's legal jurisdiction to be placed on the agenda, with a Councilmember's or the

Mayor's sponsorship. The agenda item shall be scheduled as soon as possible, but no later than thirty days from the date of written request.

- (b) Special Meetings – Special meetings shall be called and posted by the City Secretary at the request of the Mayor or by a majority of the Councilmembers.
- (c) Minutes – Minutes of all regular and special open meetings of the Council shall be recorded as public record.
- (d) Executive Sessions – The Council may recess to an executive session for any purpose permitted by State law. The general subject matter for consideration shall be expressed in the agenda or the motion calling for the session. Final action shall not be taken by Council until the matter is placed on the agenda and a vote taken in an open meeting.
- (e) Rules of Procedure – The Council shall, by ordinance, determine its own rules and order of business. A majority of the Council shall constitute a quorum for all meetings.

Section 4.07 – Council Voting

- (a) Council Action – The Council may legislate and act only by ordinance, resolution, or motion. Each member of Council, if present, may vote upon all matters before Council. However, a Councilmember shall abstain when the matter involves the consideration of the Councilmember's official conduct or when required by State law.
- (b) Majority Vote – A majority vote of a quorum present may transact City business and procedural matters, and the Mayor may vote in a tie. However, to be effective, the following actions must be by at least three affirmative votes of Councilmembers and the Mayor may not vote: ordinances, annexations and de-annexations, legal matters, contracts in excess of the state bidding limits, removing and reinstating city officers and employees, creating and changing city positions and departments, changing the personnel policy, matters involving the Mayor's official conduct or financial interest, and declaring any office vacant.
- (c) Override of Mayor's Veto – At any meeting of the Council held not less than seven or more than thirty days after the Mayor has vetoed any ordinance or resolution, the Council may override such veto by four affirmative votes. The ordinance or resolution shall be considered final on the day it was passed and shall not be subject to further veto.

Section 4.08 – Councilmembers and Administrative Divisions

- (a) The following Administrative Divisions are created:
 - (1) Parks and Recreation and Airport
 - (2) Finance, Safety and Insurance, Records Management, and City Hall
 - (3) Police, Fire, Municipal Court, and Fire Marshal
 - (4) Public Works

(5) Public Utilities, Inspections, and Maintenance

- (b) The City Council may create, change, abolish or consolidate the Administrative Divisions.
- (c) Each Councilmember shall serve as the liaison officer, on behalf of the Council, for one Administrative Division for a one-year term. In June 1989, each Councilmember shall begin with the same Administrative Division as his place number and rotate down numerically one Administrative Division each succeeding year.
- (d) Each Councilmember shall have equal responsibility for every division in the City regardless of whether he is the designated liaison officer.

Section 4.09 – Finance Committee

- (a) A Finance Committee is created to review all expenditures of the City, including regular budgeted salary payments and review all financial policies. City Council shall appoint a Finance Chairman and Assistant Chairman, which may include the Mayor, to serve a one-year term.
- (b) The Finance Committee shall meet at least once a quarter to review expenditures and policies as necessary.
- (c) At least once a quarter, Council shall vote to approve the City expenditures made since the last Council approval.

Section 4.10 – Vacancies, Forfeiture, and Removal

- (a) Vacancies – The office of a Councilmember shall become vacant upon his death, resignation, removal from office in any manner authorized by law, or forfeiture of his office.
- (b) Forfeiture of Office - A councilmember shall forfeit his/her office if, during a term of office, he/she:
 - (1) is no longer a US citizen or qualified voter of the city or lacks any qualification for the office prescribed by this Charter or by other law;
 - (2) violates any express prohibition of this Charter;
 - (3) is convicted of a felony or is convicted of a crime involving moral turpitude; or
 - (4) fails to attend three (3) consecutive regular meetings of the council without being excused by the council.
- (c) Filling Unexpired Term – ~~Unless an election is required by Texas state statute,~~ The Council, by three affirmative votes, may, but is not required to, appoint a person to fill the vacated Council position until a successor is elected at the next regular or municipal election to fulfill the unexpired term.

- (c) ~~When any member of the council no longer possesses all of the qualifications specified in this section, the office shall immediately and automatically become vacant. The council shall be the judge of the qualifications of its members and for these purposes shall have the power to conduct a tribunal, subpoena witnesses and require the production of records. The Council shall, by an affirmative vote of a majority of the entire membership, be the final judge in matters involving forfeiture of office by a councilmember.~~
- (d) The procedure for removal or forfeiture shall be the same as prescribed in Section 21.002 of the Local Government Code.

ARTICLE V

ORDINANCES

Section 5.01 – Ordinances

- (a) Enacting Clause – The enacting clause of every ordinance shall be, "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS".
- (b) One Subject – All ordinances, resolutions and motions shall be confined to one subject which is clearly expressed in the title. Appropriation ordinances shall be confined to that subject alone.
- (c) Proposing An Ordinance – The Mayor or any Councilmember may place a proposed written ordinance on the agenda of any Council meeting, but only after the City Attorney has approved it as to form.
- (d) Legal Approval as to Form – Before any ordinance shall be adopted, the City Attorney shall either approve it by signature as to form or shall file detailed written legal objections with the City Secretary. The Council may pass an ordinance in spite of legal objections.
- (e) Reading by Caption Allowed – It shall not be necessary to the validity of any ordinance that it be read by caption more than one time or considered at more than one session of the Council. If read by caption, the full printed ordinance shall be provided to the Council and available to the public at City Hall prior to vote.
- (f) Mayor's Signature – Unless vetoed, every ordinance passed shall be signed by the Mayor (or the Mayor Pro Tem in the Mayor's absence) to signify his approval. However, the failure or refusal of the Mayor to sign an ordinance shall not prevent the ordinance from going into effect.
- (g) Authentication and Recording – All ordinances and resolutions shall be numbered numerically and consecutively in the order in which passed. The City Secretary shall authenticate, by his signature, all ordinances and resolutions passed by the Council; and record them in full and properly index, as a public record.
- (h) Effective Date – Every ordinance shall become effective upon date of the Council's affirmative vote, or vote overriding Mayoral veto, or at any later time specified in the ordinance.
- (i) Publication of Ordinance Providing Penalties – Any ordinance imposing a penalty, fine or forfeiture shall become effective only after the caption has been published in the

City's official newspaper at least one time within ten days after passage. The City Secretary shall note on every ordinance, that must be published and in the Council minutes, the date and medium of publication and attach the relative Publisher's Affidavit. Such notation shall be prima facie evidence of compliance with the requirements of this section.

- (j) Amendment and Repeal – After adoption, an ordinance shall not be amended or repealed except by the adoption of another ordinance amending, repealing, or re-codifying the original ordinance.
- (k) Proof of Ordinance – An ordinance may be proved prima facie by a printed code of ordinances purporting to be printed by authority of the City, or by a copy of the Ordinance certified by the City Secretary.

Section 5.02 – Code of Technical Regulations

The Council may adopt any standard code of technical regulations by ordinance.

Section 5.03 – Code of Ordinances

- (a) It shall be mandatory upon the Council to cause all general ordinances to be totally re-codified and reprinted before the expiration of any ten consecutive years after the last preceding full recodification. General ordinances are those ordinances of a permanent nature which affect the residents of the City at large. Every general ordinance enacted after the original codification required above shall be enacted as an amendment to the code. Council shall codify all general ordinances passed during the preceding fiscal year at least annually.
- (b) The printed code of general ordinances adopted by Council shall be cited officially as the Code of Ordinances, City of Bay City, Texas, and shall be effective without the necessity of any part of the code being published in any newspaper, unless otherwise required by law. The caption, descriptive clause, and other formal parts of the ordinances of the City may be omitted without affecting the validity of the ordinances when they are published as a code.
- (c) A code and all updates shall be given to the Bay City Public Library and High School Library, furnished to City officers and departments, and available in the Mayor's and City Secretary's offices for public reference. The Code may be purchased by the public at a reasonable price fixed by the Council.

ARTICLE VI NOMINATIONS AND ELECTIONS

Section 6.01 – Elections

The regular City election shall be held annually on the first Saturday in May. Run-off elections shall be held on the last Saturday in May. The City Council, by ordinance, shall order all elections and set the date, polling place, hours, and any other necessary details. Notice of elections shall be published in the official newspaper of the City not less than thirty days before each regular election and not less than ten days prior to any run-off election.

Section 6.02 – Regulation of Election

- (a) Elections shall be held in compliance with the State Election Code, this Charter, and City ordinance.
- (b) The Council shall appoint the election judges and other election officials.
- (c) Voting Precincts – City elections shall be held at the voting place designated in the ordinance calling an election. When the total number of qualified voters **justify** it, Council may subdivide the City into two or more convenient, well-defined voting precincts containing approximately the same number of qualified voters in each. The qualified voters actually residing in such a voting precinct shall vote in that precinct in all City elections.

Section 6.03 – How to Get Name on Ballot

Any qualified voter of the City who meets the qualifications of a mayoral candidate (Section 3.02) or a city council candidate (Section 4.02) may have his or her name printed upon the official ballot for a particular office at any election by:

- (a) Filing his sworn application and loyalty affidavit with the City Secretary at least forty-five days prior to the election.
- (b) Simultaneously with the application, a Councilmember candidate shall file a petition signed by 150 qualified voters residing in the City and endorsing the candidate or provide a cash filing fee of \$150.00. A Mayoral candidate shall file a petition signed by 300 qualified voters residing in the City and endorsing the candidate or provide a \$300.00 cash filing fee.

Section 6.04 – Mayor and Councilmember Ballots

The names of all candidates for the office of Mayor or Councilmember (except such as may have withdrawn, dies, or become ineligible) shall be printed on the official ballot without political party designations. The order of the names of candidates for places on the ballot shall be determined by lot.

Section 6.05 – Election of Mayor and Councilmember by Majority

The regular, run-off, or special election of a Mayor and/or Councilmember shall be by majority vote of the qualified voters voting at such election.

Section 6.06 – Canvassing Election Returns

Immediately after each election, the election officials shall deliver all original returns to the City Secretary for safekeeping. The Council shall canvass the returns and declare results of the election in the time period prescribed by state law.

Section 6.07 – Recount

The Council shall canvass any recount as soon as possible after receiving the Recount Commission report and declare results of the recount.

Section 6.08 – Induction of Council into Office, Meeting of Council

At the first regular Council meeting in June, or as soon thereafter as practicable, the newly elected Mayor and/or Councilmembers shall take the oath of office, assume their respective duties, and be issued certificates of office.

Section 6.09 – Council to be Judge of Election Qualifications

- (a) The Council shall be the judge of the election and qualifications of its own members and the Mayor; and for such purposes, shall have power to subpoena witnesses and require the production of records. The decision of the Council shall be subject to judicial review in the proper court.
- (b) No informalities in conducting a City election shall invalidate it, if the election is conducted fairly and in substantial compliance with applicable State law, this Charter, and City ordinances.

ARTICLE VII

ADMINISTRATIVE

Section 7.01 – Compensation, Benefits, Employment

- (a) Compensation – The Council shall set the compensation and benefits, if any, of all officers, department heads, and employees of the City.
- (b) Benefits – The Council shall have the power, but shall not be required, to provide for all or any group of City employees benefits including but not limited to: (1) a retirement plan; (2) health, life, and accident insurance, or any of these. Except as required by State law, the City may or may not contribute toward the cost of any benefit.
- (c) Employment – Only the Mayor or the Council has authority to propose any employment contract for a specific period of time or terms of employment other than those provided for in the Bay City Personnel Policy. To be valid, such an employment contract will have to be in writing, signed by both the employee and the Mayor, and approved by affirmative vote of at least three Councilmembers.

Section 7.02 – Conditions of Employment

As a condition of employment, all non-elected officers and employees of the City shall:

- (a) Personnel Policy – Conform to the general procedures in the Bay City Personnel Policy and within their specific department. The personnel policy is a general, but non-comprehensive, guideline for procedures between the City and its employees. The personnel policy is for information and is not an employment contract. The Council, in

its sole discretion, may unilaterally amend the personnel policy at any time with or without notice, and for any reason it deems appropriate. The Council may administer the policy substantially in whole, in part, and shall periodically update the policy as needed.

Section 7.03 – Bond for City Employees

All municipal officers and employees who receive or payout any City monies shall be bonded before they enter office. The Council shall set the amount of each bond and the City shall pay the expense.

Section 7.04 – Nepotism

No person related within the second degree by affinity, or within the third degree by consanguinity, to the Mayor or any elected officer of the City, shall be appointed to any office, position, clerkship, or other service of the City. This prohibition shall not apply; however, to any person who shall have been continuously employed by the City for a period of six months prior to the election of any city official so related to him or for thirty days prior to the appointment of any City officer related to him.

Section 7.05 – City Officers and Administrative Departments

- (a) City Officers – City officers are: Mayor, Councilmembers, City Secretary, City Attorney, City Treasurer, Municipal Judges, and Chief of Police.
- (b) Organization – By ordinance, the Council may create, discontinue, re-designate, or combine any of the departments appointed officers, City positions, deputies, assistant officers, and assistant department heads. The Mayor shall have an opportunity to make written recommendations to the Council prior to any vote to change administrative organization. Any ordinance changing administrative organization shall require a two-thirds majority, or four of five affirmative votes, of Council.
- (c) Supervision of Departments – The head of each department shall be a director or officer who shall have supervision and control over his department. Two or more departments may be headed by the same individual. The Mayor may head one or more departments, but only on a temporary basis not to exceed sixty days.
- (d) Appointment – City officers and directors of departments shall be appointed by the Mayor with the consent of the Council (unless this Charter specifies appointment by the Council only) within or a maximum of one hundred twenty (120) days. Appointment shall be within sixty (60) days after vacancy occurs. Each appointee shall not take office until his appointment is approved by Council.

Consent of the Council shall be by three affirmative votes of Councilmembers as an agenda item at a regular or special Council meeting within sixty days of nomination.

Should the Council vote to deny consent to an appointment, the Mayor shall name a new nominee for Council consideration and consent within thirty days of date the first nominee was not confirmed. The Council may reconsider a negative vote once as a regular agenda item, but only within thirty days of original vote denying consent.

If the Council does not consent to the Mayor's first or second nominee, any two Councilmembers may nominate a new nominee, but appointment shall only be upon four affirmative votes of Councilmembers. (No Councilmember may nominate more than one nominee at a time.) If no Council nominee is confirmed within thirty days of vote not confirming the Mayor's last nominee, then the nomination process shall begin again under this Section 7.05(d) with the Mayor's next nominee.

- (e) Interim – Interim City officers and directors of departments shall be appointed by the Mayor with the consent of Council for a maximum of sixty days. A permanent City officer or department head shall be nominated and submitted to Council for approval within sixty days of a vacancy occurring in the permanent position.
- (f) Removal – Department Heads and non-elected officers of the City appointed by the Mayor may be suspended by the Mayor, with or without pay, and/or removed by the Mayor with the prior consent of the Council. Other employees of the City shall be removed by their respective department head with the consent of the Mayor.

However, all non-elected City officers and any employees may be suspended with or without pay and/or removed by four affirmative votes of the Council, with or without the recommendation of the Mayor, as an agenda item at a regular or special Council meeting.

- (g) Appeal
 - (1) The suspension and/or removal shall permanently terminate the officer's or employee's appointment or employment with the City unless the Council shall provide for an appeals hearing at City Hall.
 - (2) Following the hearing, a majority of the Council may remove the suspension and reinstate the officer or employee to his office or position of employment with or without all wages and benefits lost during the time of his suspension. If not reinstated, the officer's or employee's termination shall be effective as of the date of his suspension. The action of the Council shall be final on the question of termination or removal of the suspension and reinstatement.
- (h) Reorganization – By ordinance, the Council may create, discontinue, re-designate, or combine any of the departments, appointed officers, City positions, deputies, assistant officers, and assistant department heads. The Mayor shall have an opportunity to make written recommendations to the Council prior to any vote to change administrative organization.

Section 7.06 – City Secretary

The City Secretary shall be appointed by the Mayor upon confirmation by three affirmative votes of Council and shall be provided an office in the City Hall sufficient to maintain official City records. The City Secretary may appoint, with Council's consent, such deputy city secretaries as may be authorized by Council.

- (a) Duties of City Secretary or Deputy City Secretaries
 - (1) Be present at and record the minutes of all official meetings of the Council.
 - (2) Be the custodian of all municipal records; authenticate and catalogue by subject and chronological order all ordinances and resolutions; legally index, certify, and

keep the originals of deeds, liens, releases, insurance policies, contracts, and other legal documents of the City.

- (3) Make available to the public the City records required by State law, City ordinance, and any current Personnel Policy.
- (4) Affix the City Seal to all instruments requiring the Seal.
- (5) Perform any and all other acts and duties as may be required by the Mayor, Council, or this Charter.

Section 7.07 – Fire Marshal and Volunteer Fire Department

- (a) Fire Marshal – The Mayor, with consent of Council, shall appoint a Fire Marshal. The Fire Marshal shall be responsible for the enforcement of ordinances pertaining to building codes and general protection of City residents from fire.
- (b) Volunteer Fire Department – Authority is hereby granted to maintain a volunteer fire department. The members in good standing of the volunteer fire department shall set their own rules and regulations for membership and organization, and shall elect a Fire Chief as their chief administrative officer and as a liaison with the Mayor and Council.

ARTICLE VIII

LEGAL AND JUDICIAL

Section 8.01 – Attorney for the City

- (a) The City Attorney shall be appointed by the Mayor upon confirmation by three affirmative votes of Councilmembers. The City Attorney shall have been licensed to practice law at least three years in the State of Texas.
- (b) The City Attorney shall be the legal advisor of, and the attorney for, the City, Mayor, Councilmembers, and all of the officers and departments of the City. He shall represent the City in all litigation and legal proceedings; however, the Council may retain special legal counsel for any purpose and at any time it deems appropriate and necessary.
- (c) The City Attorney shall approve every ordinance as to form before it is acted upon by the Council.
- (d) The Council may authorize Assistant City Attorneys to be appointed by the City Attorney with the consent of the Council.

Section 8.02 – Municipal Court

A Municipal Court of the City shall be established and maintained for the trial of misdemeanor offenses, and shall have all powers prescribed by State law.

Section 8.03 – Judges of Municipal Court

- (a) The Presiding Judge and any Associate Judges of the Court shall be appointed by the Mayor upon confirmation by three affirmative votes of Councilmembers.
- (b) The presiding Judge and all Associate Judges shall be a citizen of the United States of America and a qualified voter of the State of Texas; shall have resided for at least one year preceding his appointment within the corporate limits of the City or for one year within territory which has been annexed by the City; and shall have attained the age of at least twenty-five years on the first day of his appointment. Said appointment shall be for a term of three years.
- (c) The Presiding Judge shall be the Administrative Judge and responsible for the administration of the Municipal Court and the legality of its procedures.

Section 8.04 – Municipal Court Procedure

- (a) The City Attorney or an Assistant City Attorney shall serve as City Prosecutor in the Municipal Court.
- (b) A Municipal Court Clerk and any Deputy Clerks of the Court shall be authorized by the Council, appointed by the Presiding Judge with the consent of the Council, and be under the direction of the Presiding Judge.
- (c) The Municipal Court Clerk or any Deputy Clerks shall have the power to administer oaths and affidavits, make certificates, affix the seal of the Court thereto, and perform all acts in issuing processes and conducting the business of the Court.
- (d) The Council shall determine what costs, if any, shall be charged for proceedings in and processes issued by the Court. All costs and fees imposed by the Municipal Court shall be paid into the City Treasury for the use and benefit of the City.
- (e) All jurors shall be residents of the City, possess the qualifications of a juror in State District Court, and be summoned as a juror in Justice Court is summoned.

ARTICLE IX

DEPARTMENT OF FINANCE

Section 9.01 – Creation and Purpose of the Department of Finance

A Department of Finance may be created by Ordinance as determined by City Council upon prior consultation with the Chief Administrative Officer. The City shall maintain a Purchasing Policy by Ordinance.

ARTICLE X

BUDGET

Section 10.01 – Fiscal Year

The fiscal year of the City shall begin on the 1st day of October and end on the last day of September of the succeeding year. All funds collected by the City during any fiscal year,

including both current and delinquent revenues, shall belong to that fiscal year and may be applied to the payment of expenses incurred during that fiscal year. (Excepted are funds to pay interest and create a sinking fund for the City's bonded indebtedness.)

All revenues uncollected at the end of any fiscal year, and any unencumbered funds actually on hand, shall become resources of the next succeeding fiscal year.

By ordinance, and for good cause, the Council may change the fiscal year if the City's finances are not jeopardized.

Section 10.02 – Preparation and Submission of Budget

A proposed budget shall be submitted containing a financial plan for the next fiscal year. It shall be submitted to Council by July 1st in advance of each fiscal year and shall contain the following:

- (a) A budget message outlining the proposed financial policies and priorities of the City for the fiscal year and the impact those policies and priorities will have on future years. The message shall explain any significant changes in financial policies, debt, and revenue as compared to the previous fiscal year, any factors affecting the ability to raise resources through issuance of debt and include such other issues as deemed desirable.
- (b) A consolidated statement of anticipated receipts and proposed expenditures for all funds, departments, and tax income.
- (c) Parallel columns opposite each revenue and expenditure line item shall show:
 - (1) for prior fiscal year – amount budgeted and amount actually collected or spent;
 - (2) for current fiscal year – amount budgeted, amount actually collected or spent by June 1st, and estimated deficit or excess; and
 - (3) for next fiscal year – proposed budget amount.
- (d) A summary estimate of deficits and excess funds for each department and the City as a whole for the current fiscal year.
- (e) Bonds and loans – An individual schedule of requirements for all bond issues and loans outstanding, showing rates of interest, date of issue, maturity date, amount authorized, amount issued or spent, principal paid and due, interest paid and due, and purpose for the bond or loans.
- (f) Capital Improvements – Each capital improvement shall be a line item with parallel columns opposite showing:
 - (1) for all past fiscal years appropriate – the amount budgeted, amount actually spent, source of funds (i.e. depreciation reserve, grant, bond, etc.), deficit or excess amount over budget;
 - (2) for current fiscal year – amount budgeted, amount actually spent by June 1st, source of funds, and estimated deficit or excess;

- (3) for next fiscal year – amount to be budgeted, source of funds.
- (g) General fund and special fund resources in detail.
- (h) Property valuation analysis.
- (i) Tax rate analysis.
- (j) Tax levies and tax collections by year for the last five years.
- (k) The proposed appropriation ordinance.
- (l) The proposed tax levying ordinance.
- (m) Objectives as established by Council.
- (n) Goals to meet objectives of Council.
- (o) Methods to measure milestones, outcomes, and performance related to the goals.

Section 10.03 – Proposed Budget and Budget – A Public Record

All proposed and final budgets and all supporting schedules shall be a public record. They shall be filed with the City Secretary and submitted to each Councilmember. The Mayor shall provide copies for distribution to all interested persons and to the Bay City Public Library.

Section 10.04 – Workshops and Council Changes to the Proposed Budget

- (a) Workshops – The Mayor or Council shall schedule as many public workshops as necessary to review and revise the proposed budget.
- (b) Council Changes – The Council may, by majority vote, add, delete, and/or alter any proposed line item and amount at any workshop and/or Council meeting. The Chief Administrative Officer shall incorporate all Council changes in the proposed budget prior to the next Council workshop or meeting at which the budget will be considered.

Section 10.05 – Public Hearing on Proposed Budget

The Council shall fix the time and place for one or more public hearings on the proposed budget.

Section 10.06 – Proceedings on Proposed Budget after Public Hearing

After the conclusion of any public hearing, the Council may increase or decrease the items of the proposed budget, except items in proposed expenditures fixed by law. If the Council increases the total proposed expenditures, it shall also provide for an increase in the total anticipated revenue at least equal to proposed expenditures.

Section 10.07 – Contingent Appropriation

Provision shall be made in the annual budget for a contingent appropriation in an amount not more than seven (7) percent of the total budget to be used in case of unforeseen items of expenditure. Such contingent appropriation shall be under the control of the Chief Administrative Officer and distributed by him/her after approval by the city council. Council, with recommendation from the Chief Administrative Officer, may adjust the percentage of the contingency appropriation for cause.

Section 10.08 – Estimated Expenditures Shall Not Exceed Estimated Resources

The total estimated expenditures of the general fund, available utility fund, and debt service fund shall not exceed the total estimated resources (prospective income plus cash on hand). The classification of revenue and expenditure accounts shall conform as nearly as local conditions will permit to the uniform classification as promulgated by the American Institute of Certified Public Accountants or some other nationally accepted classification.

Section 10.09 – Adoption of Budget

The budget shall be adopted, by ordinance, by a majority vote of Councilmembers.

Section 10.10 – Effective Date of Adoption

The budget shall be adopted in final form not sooner than five days after the last public hearing on the proposed budget and not later than ten days prior to the beginning of the fiscal year. If the Council fails to adopt a budget, the then existing budget together with its tax-levying ordinance and its appropriation ordinance, shall remain in effect month-to-month on a pro rata basis until a new final budget is adopted.

Section 10.11 – Effective Date of Budget, Certification, Copies made Available

Upon final adoption, the budget shall be in effect for the fiscal year and effective as of the first day of the fiscal year. A copy of the budget, as finally adopted, shall be filed with the City Secretary, the County Clerk of Matagorda County, and the Bay City Public Library. Copies of the final budget shall be made available for the use of all City officers, department heads, departments, committees, and for the use of interested persons and civic organizations.

Section 10.12 – Budget Establishes Appropriations

From the effective date of the budget, the proposed expenditures shall be appropriated to the line item as stated.

Section 10.13 – Budget Establishes Amount to be Raised by Taxation

From the effective date of the budget, the total amount budgeted shall be a determination of the amount of levy for the City in the corresponding tax year. In no event shall property tax levy exceed the legal limit provided by the laws and the constitution of the state of Texas.

Section 10.14 – Budget Amendments after Adoption

- (a) Supplemental Appropriations – If, during the fiscal year, the City Treasurer certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council, by ordinance, may make supplemental appropriations for the fiscal year up to the amount of the excess.
- (b) Emergency Appropriations – To meet a public emergency created by a natural disaster or man-made calamity affecting life, health, property, or the public peace, the Council may make emergency appropriations not to exceed ten per cent of the current fiscal year's budgeted receipts. Those appropriations may be made by an emergency ordinance. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may, by emergency ordinance, authorize the issuance of emergency notes payable not later than the last day of the fiscal year.
- (c) Estimated Expenditures Shall Not Exceed Estimated Resources – The total estimated expenditures of the general fund and debt service fund shall not exceed the total estimated resources of each fund (prospective income plus cash on hand). The classification of revenue and expenditure accounts shall conform as nearly as local conditions will permit to the uniform classification as promulgated by the National Committee on Government Accounting or some other nationally accepted classification.

Section 10.15 – Capital Program

- (a) Submission to Council - On a yearly basis, a five (5) year Capital Program shall be prepared and submitted to Council prior to the final date for submission of the budget defined in Section 10.02.
- (b) Contents – The Capital Program shall include the following: (1) A clear general summary of its contents; (2) a list of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity of such improvements (at Council's discretion, other capital purchases, such as equipment, may be included); (3) cost estimates, method of financing, and recommended time schedules for each such improvement; and (4) goals, milestones and measurements in sufficient detail as to define the performance of each capital improvement.

Section 10.16 – Council Action on Capital Program

The Council shall give notice of a public hearing on the proposed Capital Program and shall hold said hearing in the same manner as provided for the annual budget. The hearing for the proposed Capital Program and the notice of same may be in conjunction with the annual budget. The Council shall, by resolution, adopt the Capital Program with or without amendment after the public hearing and not later than 10 days before the beginning of the fiscal year.

ARTICLE XI

TAX

Section 11.01 – Department of Taxation

~~The Council shall have the power to levy, assess, and collect taxes within the jurisdiction of the City for any municipal purpose. The tax rate shall be calculated, publicized, and adopted in accordance with Texas law.~~

~~Except as otherwise provided by law or this Charter, the Council shall have the power to establish by way of ordinance or resolution such rules, regulations, and procedures to enforce and facilitate the collection and payment of all taxes due to the City as it may deem expedient, and may provide such penalty and interest as prescribed by State of Texas law for the failure to pay such taxes.~~

There may be established a Department of Taxation to collect taxes, the head of which shall be the City Tax Collector. The City Tax Collector shall give a surety bond for faithful performance of his duties, including compliance with all controlling provisions of the State law bearing upon the functions of his office, in sum which shall be fixed by the City Council at not less than \$25,000.00.

Section 11.02 – Power to Tax

The Council shall have the power to levy, assess and collect an annual tax upon real and personal property within the City as now or hereafter provided by State law. The Council shall also have the power to levy any additional taxes as now or hereafter may be authorized by State law.

Section 11.03 – Approval of the Assessment Roll

The Council shall approve the assessment roles as returned by the Matagorda County Appraisal District and adopt them for tax collections for the appropriate fiscal year.

Section 11.04 – Taxes, When Due and Payable

All taxes due the City shall be payable at the office of the City Tax Collector or any other place designated by ordinance at any time after the tax rolls for the City have been completed and approved or a soon thereafter as possible. Taxes shall be paid before February 1, following the year which was assessed. All taxes not paid before that date shall be deemed delinquent and shall be subject to penalty and interest. Failure to levy and assess taxes through omission on the tax roll shall not relieve the party omitted for taxes for the years in question.

Section 11.05 – Tax Liens and Liabilities

a) Tax Lien

All property, having a situs within City limits on the first day of January of each year shall stand charged with a special lien in favor of the City from said date for taxes due on it. Any lien shall be superior to all other liens, except other prior liens, regardless of when

the other liens were created. All persons purchasing any of that property on or after the first day of January in any year shall take it subject to those liens.

b) Personal Liability

In addition to the liens provided above, on the first day of January of any year, the owner of property subject to taxation by the City shall be personally liable for the taxes due on it for that year. The City shall have the power to sue for and recover personal judgment for taxes without foreclosure or to foreclose its lien or liens or to recover both personal judgment and foreclosure.

c) Insufficient Legal Description

In any suit where it appears that the description of any property on the City assessment rolls is insufficient to identify the property, the City shall have the right to plead a good description of the property to be assessed, to prove it and to have its judgment foreclosing the tax lien and/or for personal judgment against the owners for those taxes.

Section 11.06 – Joint Interest in Property

The City Tax Collector shall not be required to make separate assessments of joint or conflicting interest in any real estate.

Section 11.07 – Arrears of Taxes Offset to Debt Against City

The City shall be entitled to counterclaim and offset a party's tax arrearage against any debt, claim, demand or account owned by the City to that party. No assignment or transfer of that debt, claim, demand or account after the taxes are due, shall affect the right of the City to so offset.

Section 11.08 – Tax Remission, Discount and Compromise

Except as herein provided, neither the Council nor any other official of the City shall ever extend the time for paying taxes; nor remit, discount or compromise any tax legally due the City; not waive the penalty and interest. However, the Council may compromise any tax lawsuit.

Section 11.09 – Other Rules and Regulations

The Council may provide by ordinance procedures and penalties to enforce the collection and payment of taxes to the City Tax Collector.

Section 11.10 – Tax Suits; Evidence, Limitations

A certified statement made by the City Tax Collector shall be prima facie evidence of the truth of all recitations and facts shown by City tax rolls and shall be sufficient proof (subject to rebuttal only by pleading and proof by defendant) of the following facts:

- a) That the person, partnership, association or corporation therein shown to be a taxpayer was such; owned the property listed; the property was subject to taxation in the City; and was rendered by said party or agent at the value placed on the tax rolls.

- b) That the taxes due upon such property were legally levied for the purposes shown on such rolls and that the same are valid and unpaid.
- c) That all acts and proceedings required by law or by ordinance of said City for rendering, appraising and fixing values upon said property and the giving of all notices to such taxpayers have each and all been performed and complied with at the time and in the manner and form required; that all things that might be construed as conditions precedent to the lawful demand upon such taxpayers to pay the amount of taxes on those rolls have been performed at the time and in the manner required by law.

ARTICLE XII

BORROWING, BONDS, AND AUDIT

Section 12.01 – Borrowing

The Council shall have the power, except as prohibited by law, to borrow money by whatever method it may deem to be in the public interest, including Certificate of Obligation.

Section 12.02 – General Obligation Bonds

The City shall have the power to borrow money on the credit of the City and to issue general obligation bonds for permanent public improvements or for any other lawful public purpose, and to issue refunding bonds to refund outstanding bonds of the City previously issued.

Section 12.03 – Revenue Bonds

The City shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending, or repairing public utilities, recreational facilities, or any other lawful self-liquidating municipal function, and to issue revenue bonds to evidence the obligation created by them. Those bonds shall be a charge upon and payable solely from the properties, interest pledged, and/or income from both the property and/or interest. The holders of the revenue bonds shall never have the right to demand payment out of monies raised or to be raised by taxation.

Section 12.04 – Sale of Bonds, Bonds Incontestable

No bond (other than refunding bonds) issued by the City shall be sold for less than par value and accrued interest. All bonds of the City, having been issued, sold, and delivered to the purchaser, shall then be incontestable. All refund bonds issued in exchange for outstanding bonds previously issued shall be incontestable after the exchange.

Section 12.05 – Use of Bond Proceeds

The proceeds of all bonds sold by the City shall be used only for the purpose for which issued. A property tax paying resident citizen may prevent the diversion or anticipated diversion of bond proceeds to an unauthorized purpose by injunction and/or any other legal remedy.

Section 12.06 – Definitions

- (a) Bonds are defined as bonds, certificates of obligation, or any other obligation creating or evidencing the indebtedness of the City.
- (b) Refunding bonds are defined as (1) bonds issued in exchange for and in lieu of outstanding bonds of the City; and (2) bonds sold and the proceeds used to redeem outstanding bonds; and (3) the issuance of bonds to redeem outstanding bonds of the City in advance of their stated maturity; and (4) refunding bonds issued in any manner allowed by the general law of the State.

Section 12.07 – Sinking Fund

It shall be the duty of the Council to levy an annual tax sufficient to pay the interest on and provide the necessary sinking fund required by law on all outstanding general obligation bonds of the City. The interest and sinking fund shall be deposited in a separate account and shall not be diverted to or used for any other purpose than to pay the interest and principal on such bonds. The sinking fund, maintained for the redemption of any debt, may be invested in any interest-bearing bonds of the United States government, the State of Texas, or any other lawful investments.

Section 12.08 – Audit and Examination of City Books and Accounts

At the close of each fiscal year, a complete audit of all City finances and utilities shall be made by a licensed Public Accountant, who shall be selected by the Mayor with approval of Council. The audit accountant shall not regularly maintain or keep any of the City's accounts or records.

The audit shall include a recapitulation of any audits made during the fiscal year. All audit reports shall be filed with the City Secretary and available for public inspection, made a part of City archives, and a copy given to the Bay City Public Library.

The Council shall annually publish a condensed one-page summary of the certified audit in the City's official newspaper.

ARTICLE XIII

FRANCHISES AND PUBLIC UTILITIES

Section 13.01 – Inalienability of Public Property

The right of control and use of the public streets, highways, sidewalks, alleys, parks, public squares, and public places of the City is hereby declared to be inalienable by the City, except by ordinances not in conflict with this Charter. No act or omission by the Council or any officer or agent of the City shall be construed to grant, renew, extend, or amend by estoppel or indirection any right, franchise, or easement affecting public streets, highways, sidewalks, alleys, parks, public squares, public places, and other City real property.

Section 13.02 – Power to Grant Franchise

The Council shall have the power, by ordinance, to grant, renew, and extend all franchises of all public utilities operating within the City (including cable television), and, with consent of the franchise holder, to amend them as provided herein or required by Federal or State law.

Section 13.03 – No Indeterminate Term, No Exclusive Franchise

No franchise shall be granted for an indeterminate term, nor shall any franchise be granted for a term of more than twenty years. No franchise shall be exclusive unless permitted by State or Federal Law.

Section 13.04 – City's Right to Purchase Franchise Assets

No franchise shall be granted, renewed, extended, or amended, except on condition that the City shall have the right at any time within five years of the expiration of the term, to purchase the property of the franchise holder at a price to be determined according to the method agreed upon in the ordinance granting, renewing, extending, or amending the franchise.

Section 13.05 – Ordinance Granting Franchise

Every ordinance granting, renewing, extending, or amending a public utility franchise shall be considered at two regular meetings of the Council, and shall not be adopted in final form until thirty days after the first consideration. Within five days following each consideration of the ordinance, the full text of the ordinance shall be available to the public at City Hall and the caption published once in the official newspaper of the City. The ordinance shall not become effective until sixty days after the date of its adoption in final form by the Council.

Section 13.06 – Transfer of Franchise

If a public utility franchise is transferred, the City shall have the right to terminate said franchise unless the City has given prior approval of the transfer.

Section 13.07 – Regulation of Franchise

Every grant, renewal, extension, or amendment of a public utility franchise, whether so provided in the ordinance or not, shall be subject to the right of the Council to:

- (a) Forfeit any franchise, by ordinance, at any time, for failure of the holder to comply with the terms of the franchise, but only after notice and hearing.
- (b) Impose reasonable regulations to insure safe, efficient, and continuous service to the public.
- (c) Require expansion and extension of plants and facilities necessary to provide adequate service to the public.
- (d) Require every franchise holder to furnish to the City, without cost to the City, full information regarding the location, character, extent, and condition of all facilities of the franchise holder in, over, and under the streets, alleys, and other public property of the City; and to regulate the location, relocation, and removal of facilities.

(e) Maintenance Shared Pro Rata

Collect from every public utility operating in the City its fair and just proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping, and sprinkling the portions of the alleys, bridges, culverts, viaducts, and other public places and ways of the City as may be occupied or used in whole or in part by the utilities; or to compel the public utility to perform its just share of these acts at its own expense.

(f) Shared Usage of Poles, Etc.

Require every franchise holder to allow other public utilities to use its tracks, poles, wires, pipes, or other facilities, including bridges and viaducts, if Council finds the use to be in the public interest. Provided that Council shall fix a reasonable rental to be paid to the owner of the facility for usage, after notice to the interested parties and a hearing of the facts.

(g) Accounts, Audit, and Records

- (1) Examine and audit at any time the accounts and other records of any franchise holder.
- (2) Require annual and other reports, including reports on the local operations of the utility, in the form, and with the information required by Council.

(h) Require and collect any lawful compensation and rental.

Section 13.08 – Regulation of Rates

The Council may, by ordinance, after notice and hearing, regulate the rates of every public utility franchise holder operating in the City, provided that no ordinance shall be passed as emergency measure. The Council shall employ, at the expense of the franchise holder, a professional rate consultant to conduct investigations, present evidence, and advise the Council.

At no time, in fixing rates and charges for utility services with the City, shall there be included any part of the value of any franchise granted by the City. Any franchise holder requesting an increase in its rates shall have the burden of establishing by clear and convincing evidence the value of its investments and the amount and character of its expenses and revenues.

No legal action to contest any rate fixed by the Council shall be instituted by the public utility or holder of a utility franchise, until the holder or utility has filed a motion for rehearing with the Council, setting out specifically each ground of its complaint against the rate fixed by the Council, and until after Council has acted on the motion or had a period of sixty days within which to act upon the motion for rehearing.

Section 13.09 – Sale of Electricity, Water, Sewer Services, and Any Other Utilities

- (a) The City may purchase, construct, or operate a utility system inside or outside the municipal boundaries, and may regulate the system in a manner that protects the interests of the City. The City may own land inside or outside its boundaries for these purposes.
- (b) The City may extend the lines of its utility systems outside the municipal boundaries and may sell water, sewer, gas, or electric service to any person outside its boundaries. The City may contract with persons outside its boundaries to permit them

to connect with those utility systems on terms the Council considers to be in the City's best interest. This subsection does not authorize the extension of electric lines into the corporate limits of another municipality.

- (c) If the City owns and operates a utility system, the City may prescribe the kind of water or gas mains, sewer pipes, and electric appliances that may be used inside or outside the City limits. The City may inspect those facilities and appliances, require that they be kept in good condition at all times, and prescribe the necessary rules, which may include penalties, concerning them.

Section 13.10 – Accounts of Municipally Owned Utilities

Accounts shall be kept for each public utility owned and operated by the City, in a manner which shows the true and complete financial results of City ownership and operation (including all assets appropriately subdivided into different classes; all liabilities subdivided by classes; depreciation reserve, other reserves, and surplus; revenues; operating expenses including depreciation, interest payments and rental; and any other disposition of annual income).

The accounts shall show the actual capital cost to the City of each public utility owned; the cost of all extensions, additions, and improvements; and the source of funds spent for capital purposes. They shall show as nearly as possible the cost of any service furnished to or rendered by any utility to any other city or governmental department.

The Council shall require and publish an annual report showing the financial results of City ownership and operation, giving the information specified in this section, or required by Council.

ARTICLE XIV

PLANNING COMMISSION

Section 14.01 – Establishment and Organization

The City Council is hereby authorized to ~~shall~~ establish a ~~permanent~~ Planning Commission for the City with the number, qualifications, terms, and meetings of the members thereof to be determined by ordinance.

The Commission shall be responsible to Council.

Section 14.02 – Power and Duties

The powers and duties of the Planning Commission shall be determined by ordinance and may include the following:

- (a) Make and/or amend a Master Plan for the physical development of the City;
- (b) Review plats for subdividing land within the City's corporate limits and extra territorial jurisdiction;

- (c) Submit to the Mayor a list of recommended capital improvements by priority which in the opinion of the Commission are necessary or desirable;
- (d) Consult with department heads and the Chief Administrative Officer concerning planning for their areas;
- (e) Perform such additional duties and powers as may be prescribed by ordinance.

Section 14.03 – The Master Plan

The Master Plan for the physical development of the City of Bay City shall contain the commission's recommendations for development and beautification of the City. A copy of the Master Plan, or any part or amendment, shall be filed with the Mayor and each Councilmember. Any minority opinion of the Commission may be attached.

The Mayor shall promptly submit such plan to the Council with his recommendations. Recommendations affecting the Master Plan may be made to the Council by any City department through its department head.

At least one public hearing must be held before the Council may adopt any of such recommendations.

ARTICLE XV

INITIATIVE, REFERENDUM, AND RECALL

Section 15.01 – In General

- (a) The time table and the petition procedure for initiative, referendum, and recall shall be the same throughout this article.

Section 15.02 – Initiative

- (a) Limitation on Initiative Ordinance – The citizens of the City shall have power to "initiate" any ordinance, not in conflict with this Charter or State law, except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject it at the polls.
- (b) Signatures Required – Any initiative ordinance may be submitted to Council by a petition signed by the greater number of one thousand qualified voters of the City or ten percent of qualified voters who voted at the last regular municipal election.
- (c) Public Hearing – A public hearing on the proposed initiative shall be scheduled by the Mayor within fifteen days of the City Secretary's certification of the initiative petition.
- (d) Election – An election to adopt or reject the initiative ordinance or action shall be ordered by Council and held on the next practical uniform election date that is prescribed by state law. If the ordinance proposed by initiative is enacted by Council before the election, then there will be no election.

- (e) **Results of Initiative Election** – If a majority of the qualified voters voting in the initiative election adopt the ordinance, the ordinance shall become effective from date of election, or if different, the effective date specified in the initiative ordinance.
- (f) **Limitation on Initiative** – The Council shall not consider an ordinance or action on the same subject within twelve months of date of a successful initiative election on that subject.

Section 15.03 – Referendum

- (a) **Limitation on Referendum** – The citizens of Bay City may call a referendum election to rescind any Council ordinance or Council vote except those affecting personnel and appropriation ordinances.
- (b) **Signatures Required** – Any referendum ordinance may be submitted to Council by a petition signed by the greater number of one thousand qualified voters of the City or ten percent of the qualified voters who voted at the last regular municipal election.
- (c) **Public Hearing** – A public hearing on the proposed referendum shall be scheduled by the Mayor within fifteen days of the City Secretary's certification of the referendum petition.
- (d) **Election** – An election to adopt or reject the referendum ordinance or action shall be ordered by Council and held on the next practical uniform election day that is prescribed by state law. If the ordinance questioned by referendum is retracted by Council before the election, then there will be no election.
- (e) **Results of Referendum Election** – If a majority votes to uphold the ordinance and/or Council action in question, the ordinance and/or Council action shall be effective as of the date the Council initially voted. If a majority votes to revoke the ordinance and/or Council action in question, that ordinance and/or Council action shall be null and void from the effective date of the certification of the petition.
- (f) **Limitation on Referendum** – The Council shall not consider an ordinance or action on the same subject within twelve months of date of a successful referendum election on that subject.

Section 15.04 – Recall

- (a) **Limitation on Recall** – Only one petition may be filed for each elected official whose removal from office is demanded. No recall petition shall be filed against an office holder within the first six months after he takes office or within the six months immediately preceding the date of the next regular election for his office. No office holder shall be subjected to more than one recall election during a single elective term of office.
- (b) **Signatures Required** – The citizens of Bay City may recall any elected city official, with or without cause, by filing with the City Secretary a petition signed by the greater number of one thousand five hundred qualified voters of the City or twenty percent of the qualified voters who voted at the regular municipal election.

- (c) Reason for Recall – The petition shall contain a general statement of the reason for removal, but neither the office holder, nor the City Secretary, nor the Council, shall have any power to question or contest the sufficiency of the general statement.
- (d) Public Hearing on Recall Petition – After certification of the recall petition, the affected office holder may resign and/or request a public hearing to be held at a regular or specially called Council meeting within fifteen days of date the recall petition was certified.
- (e) Recall Election – The Council shall order and hold one recall election for all certified petitions **within not less than forty (40) days nor more than sixty (60) days of date first petition was certified.** ~~on the next practical uniform election day that is prescribed by state law.~~ If the affected office holder resigns prior to date of recall election, no recall election will be held for that office holder.
- (f) Results of Recall Election – If a majority of the votes cast at a recall election shall be against the recall and removal of the office holder, he shall continue in office. If a majority of the votes cast at the election be for the recall and removal of the office holder, the Council shall declare the office vacant effective as of date of official canvass. The Council shall officially canvass the votes no earlier than two days or later than six days after the recall election. The vacancy shall be filled in accordance with this Charter. An office holder thus recalled and removed shall be ineligible to hold any office in the City for a period of thirty-six months after the date of the recall election.

Section 15.05 – Petition

- (a) Time Limit – Any petition under this article must be completed, filed with the City Secretary, and certified within sixty days of date of the first signature or the petition will be invalid.
- (b) Petition Committee – The five initial signers of the petition shall be the Petition Committee and shall designate two of themselves as the chairperson and co-chairperson of the petition. The Petition Committee shall act as liaison with the signers, circulators, Mayor, Council, and City Secretary.
- (c) Affidavit of Circulators of Petition – Signatures may be on separate petition papers. Attached shall be an affidavit of the circulator that he, and he only, personally circulated that petition paper, that each signature appended was made in his presence, and that he believes each signature to be the genuine signature of the person whose name purports to be, the date of the first signature, and date of last signature.
- (d) Signatures – Each qualified voter shall personally write the following items in ink or indelible pencil and on the same line: his signature, his printed name, his City voting precinct number, his resident address by street and number or other description sufficient to identify his residence, and, optionally, his telephone number for clarification of information by the City Secretary.
- (e) Filing of Recall Petition – All papers comprising a petition shall be assembled and filed as one instrument with the City Secretary. Within ten days after an initial petition is filed and within five days after any supplemental petition is filed, the City Secretary shall determine whether the petition is signed by the requisite number of qualified voters and he shall certify or not certify the petition accordingly.

- (f) Disallowance of Signature – The City Secretary has absolute discretion to disallow a signature if it and/or the identifying data is illegible or insufficient. The City Secretary shall declare void any petition paper which does not have an affidavit attached as required in this article. The City Secretary shall write an "X" in red ink opposite the names of signers found not qualified to vote or disallowed.
- (g) Supplement to Petition – The City Secretary shall immediately notify the chairperson filing the petition if the number of qualified signatures is less than the required number. The petition may be supplemented by filing supplemental petition papers bearing additional qualified signatures, but only if the supplemental petition can be filed before the fifty-fifth day after the first signature on the initial petition.
- (h) Certification of Petition – The City Secretary shall report the results to the Council at its next regular meeting after a certification or non-certification, stating the number of persons found on the petition that are qualified to vote and the number of persons found on the petition who are not qualified to vote or are disallowed. All petitions filed shall immediately be a public record.
- (i) Limitation to Refiling – If the petition, as supplemented, is found to have total signatures of qualified voters in a number less than required, the City Secretary shall promptly return the petition as supplemented to the chairperson filing it. Once the sixty days have elapsed, a new petition for the same purpose shall not be filed within six months of date the original petition was filed.

ARTICLE XVI

GENERAL PROVISIONS

Section 16.01 – Personal Interest

No officer, official, or employee of the City shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the City of any land, or rights or interest in land, materials, supplies, or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than 1% of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer, official, or employee of the City found guilty thereof shall forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the person or corporation contracting with the City shall render the contract voidable by the Mayor and/or the City Council.

Section 16.02 – Assignment, Execution, and Garnishment

Real and personal City property shall not be liable for sale or appropriation under any writ of execution. Funds belonging to the City, in the hands of any person, firm, or corporation, shall not be liable to garnishment, attachment, or sequestration; nor shall the City be liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the City, nor any of its officers or agents, shall be required to answer any such writ of garnishment on any account whatever. The City shall not be obligated to recognize any assignment of wages or funds by its employees, agents, or contractors unless so required by State and/or Federal law.

Section 16.03 – Security or Bond Not Required

It shall not be necessary in any suit or proceeding in which the City is a party for any bond, undertaking, or security to be executed by the City. The City shall have all remedies of appeal provided by law at all courts in this State without bond or security of any kind, but shall be liable as if such bond, undertaking, or security had actually been executed or given.

Section 16.04 – Effect of Charter on Existing Law, Contracts, and Assessments

All City ordinances, resolutions, rules, and regulations, now in force and not in conflict with the provisions of this Charter, shall remain in force until altered, amended, or repealed by Council after this Charter takes effect. All rights of the City under existing franchises, special assessments, contracts, and all existing authority for the issuance of bonds, not in conflict with the provisions of this Charter, shall be preserved in full force and effect.

Section 17.05 – Judicial Notice

This Charter shall be deemed a public act, may be read in evidence without pleading or proof, and judicial notice shall be taken thereof in all courts and places.

Section 16.06 – Severability Clause

If any section, subsection, paragraph, sentence, or clause of this Charter is held to be invalid or unconstitutional by a court of competent jurisdiction, the same shall not invalidate nor impair the validity of the remaining Charter.

Section 16.07 – Rearrangement and Renumbering

The Council shall have the power, by ordinance, to renumber and rearrange all articles, sections, and paragraphs of this Charter or any amendments. Upon the passage of any such ordinance, a copy certified by the City Secretary shall be forwarded to the Secretary of State for filing.

Section 16.08 – Interim Municipal Government

The Mayor, and the five Councilmembers in office at the time of the adoption of this Charter or any amendments thereto, shall continue to serve under this Charter until the expiration of their terms of office or until their successors have been elected and qualified for their respective offices under this Charter. All benefits presently in effect shall continue until the end of the affected person's current term.

Section 16.09 – Publicity of Records

All public records required by law, or this Charter, to be open for public inspection shall be made available at such reasonable times and places as may be established by the Council.

Section 16.10 – Grammatical Clarifications

The use of any gender herein shall be applicable to all genders. The present or past tense shall include the future. The singular and plural number shall each include the other, unless otherwise expressly provided. Council may, by ordinance, make any grammatical or typographical corrections to this Charter so long as such corrections do not affect the intent of the Charter.

Section 16.11 – Federal and State law

This Charter and all present and future City ordinances, resolutions, and rules are intended to be in conformity with all applicable Federal and State law as now enacted or hereafter amended. This Charter will be automatically amended to conform to mandatory State and/or Federal law on the effective date of the new Federal and/or State law.

Section 16.12 – Official Newspaper of the City

The Council, by resolution, shall designate the official newspaper of the City for required publications of notice.

Section 16.13 – Definitions

Council – the five Councilmembers of Bay City, Texas, transacting City business in compliance with State law and this Charter.

L.G.C. – abbreviation for Local Government Code of Vernon's Texas Codes Annotated.

Majority vote of a Council Quorum – a majority of at least three (3) Councilmembers present and casting positive votes. A majority can be two positive votes of three Councilmembers, or in a tie, a positive vote of the Mayor and one Councilmember.

Majority vote of Council – requires at least three positive votes from three Councilmembers, and the Mayor may not vote in a tie, if this Charter requires three affirmative votes of Councilmembers.

May – means the action is optional at the discretion of the party authorized to act.

Person – shall include more than one person, a firm, a corporation, and the plural of these.

Qualified voter – in this charter is a person who is: (1) qualified to vote under the Texas Election Code, Section 11.002; (2) is registered to vote in Matagorda County, Texas; and (3) resides within the City limits of Bay City, Texas.

Shall – means the action is mandatory by the party authorized to act.

State law – the Constitution and Statutes of the State of Texas.

Utility system – means a water, sewer, gas, or electrical system.

V.A.C.S. – abbreviation of Vernon's Annotated Civil Statutes.

V.A.T.S. – abbreviation for Vernon's Annotated Texas Statutes.

ARTICLE XVII

AMENDMENT AND REVIEW

Section 17.01 – Amending the Charter

Amendments to this Charter may be framed and submitted to the voters of the City in the manner provided by State law.

Section 17.02 – Charter Review Commission

Council shall appoint a Charter Review Commission of nine qualified voters in June of the second year after approval of this Charter and every fifth June thereafter. Council shall serve on the Commission as ex-officio, voting members. The City Secretary shall serve as secretary to the Commission in a non-voting capacity. The City Attorney shall serve on the Commission in a non-voting, legal advisory capacity.

(a) Duties of the Commission:

- (1) Inquire into the operation of the City Government and determine whether any Charter provisions require revision. The Commission shall have the power to hold public hearings, compel the attendance of any officer or employee of the City, and compel the production of any City records.
- (2) Propose recommendations for City departments to insure compliance with this Charter.
- (3) Propose Charter amendments, if any, to the Council.

(b) Term of Office:

The term of office of this Charter Review Commission shall be six calendar months from appointment date. Prior to the end of the term, a written report shall be presented to Council, and all Commission records shall be filed with the City Secretary as a public record.

(c) Action by the Council:

Upon receipt of any written report from the Commission, the Council shall within ten days, make copies available to the public at City Hall and publish a synopsis of the report in the official City newspaper. The Council shall consider the report at a public hearing within thirty days of receiving it. The Council may, in its sole discretion, order any amendments recommended by the Commission and/or the Council to be submitted individually to the voters of the City in an election as provided by State law within six months after the term of the Charter Review Commission expires.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 04/12/18 05:30 PM
Department: City Secretary
Category: Policy
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 3052

DISCUSSION ITEM (ID # 3052)

**~ RECEIVE PRESENTATION CONCERNING THE BAY CITY
CHARTER.**

This discussion item is sponsored by Councilwoman Chrystal Folse.

COMMENTS - Current Meeting:

Citizen, Jerry Evans spoke to Council regarding the Charter.