

# HEWITT TEXAS

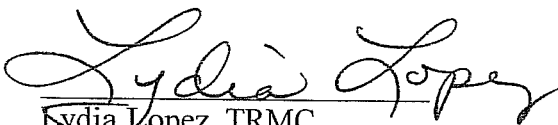
## NOTICE OF MEETING OF THE GOVERNING BODY

Notice is hereby given that a **Dinner Workshop** meeting of the governing body of the City of Hewitt will be held on the **18th day of March, 2013 at 5:30 PM** in **Hewitt City Hall, 105 Tampico Drive**, Hewitt, Texas, at which time the following subjects will be discussed:

1. City Manager's update on municipal business:
  - a. Report from City Engineer including review and discussion of Capital Improvement Projects
  - b. Public Safety Fire & Police
  - c. Discussion concerning possible contract for law enforcement services with Midway Independent School District (MISD) for a School Resource Officer
  - d. Park Projects
2. Review regular meeting agenda items.
3. Convene Executive Session pursuant to the Open Meetings Act, Chapter 551, Texas Government Code to discuss the following:
  - Pursuant to §551.072 of the Open Meetings Act. *Tex. Gov't Code*, Council will meet in Executive Session to discuss the purchase, exchange, lease, or value of real property.
4. Close Executive Session.
5. Adjourn.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the governing body of the City of Hewitt, Texas was posted on the Public Notice Board located in front of City Hall at 4:00 AM PM on March 14, 2013.

### CITY OF HEWITT

  
Lydia Lopez, TRMC  
City Secretary

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the Hewitt City Secretary at (254) 666-6171 at least 24 hours prior to the meeting, so that appropriate arrangements can be made.

# HEWITT TEXAS

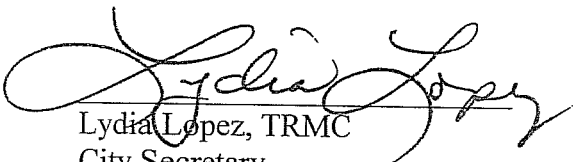
## NOTICE OF MEETING OF THE GOVERNING BODY

Notice is hereby given that a **Regular** meeting of the governing body of the City of Hewitt will be held on the **18th day of March, 2013 at 7:00 PM in the City Council Room at Hewitt City Hall, 105 Tampico Drive, Hewitt, Texas**, at which time the following subjects will be discussed:

1. Consider approval of minutes of the City Council Dinner Workshop/Regular Meeting of February 18, 2013.
2. Hear visitors on matters pertaining to city business.
3. Consider and act upon adoption of an ordinance authorizing the issuance and sale of the City's Combination Tax and Limited Surplus Revenue Certificates of Obligation, Series 2013; levying an annual ad valorem tax for the payment of said certificates; approving an official statement; providing an effective date; and enacting other provisions relating to the subject.
4. Authorize City Manager to negotiate and execute a memorandum of understanding with JEV properties, LP accepting and approving donation of approximately 6.39 acres of land and purchase of 4 acres of adjacent property, for the purpose of constructing city facilities (including the police and fire building) and installation of public infrastructure.
5. Authorize the City Manager to negotiate and execute a professional services agreement with RBDR, PLLC for design and construction of a Police and Fire Facility.
6. Presentation of audit report and opinion by Chris Pruitt, Audit Partner, Patillo, Brown, & Hill, LLP.
7. Consider request for rate increase by Allied Waste Systems, Inc. for residential and commercial waste collection and disposal services.
8. Authorize the City Manager to negotiate and execute an Interlocal Cooperation Agreement with the Waco Metropolitan Area Regional Sewer System (WMARSS) participating cities.
9. Adjourn.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the governing body of the City of Hewitt, Texas was posted on the Public Notice Board located in front of City Hall at 4:00 AM/PM on March 14, 2013.

CITY OF HEWITT

  
Lydia Lopez, TRMC  
City Secretary

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## **CITY ENGINEER'S REPORT**

March 14, 2013

**Note:** All schedules, dates and references to completion dates are approximate and subject to change.

### **Bull Hide Creek WMARSS - Sewer System Conversion**

#### **Phase 2A (New Lift Station No. 4)**

Contractor is completing work on controls, tie-ins to sewer lines and water line, site grading and fencing. Approximately 95% complete.

*Anticipate construction to be completed late March, first part of April, 2013 (dependent upon Phase 2B).*

#### **Phase 2B (Interceptor Sewer and Force Main to Old Temple Road via Castleman Creek and Removal of Existing Lift Station No. 4)**

Working on connections and removing old Lift Station No. 4 from service.

Approximately 95% complete.

*Anticipate construction to be completed late March, first part of April, 2013.*

### **Street Improvements**

#### **Various Streets - Reclaim**

Base has been reclaimed on Del Rio Drive and Tampico Drive. The asphalt surface should be laid next week and that will complete the major part of the work.

Approximately 90% complete

*Anticipate construction to be completed end of March, 2013.*

#### **Devonshire Street & Drainage Improvements**

Construction Plans are 98% complete for the improvements to Devonshire and proposed detention pond. Advertising for bids has been delayed due to adding some water distribution system work to the project. In working with the City's staff, we are going to be able to abandon two old distribution lines running parallel with Devonshire. We plan to advertise for bids in early April and to ask the Council to award the contract in May, 2013.

#### **Will Boleman Dr. & Crescent Dr. Rebuild**

This street rebuild project also includes replacing a water line. We plan to advertise for bids in April, 2013.

# HEWITT TEXAS II

## **I-35 Widening - Utility Adjustments**

Under construction; Lift Station No. 1 – Construction has restarted, concrete is being placed in the walls in the wet-well. Work has also started on relocation of the water and sewer lines. *This project is under contract with TXDOT as is the completion timeline.*

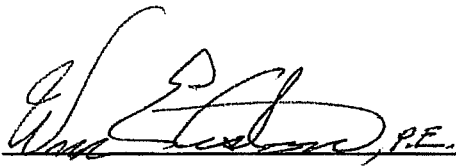
## **Water Utility Improvements**

### **Sun Valley Waterline Replacement (Phase I)**

Contractor is about to finish with all piping work and all that should be remaining will be final cleanup.

*Construction to be completed by May 2013.*

By:



William E. Aston, P.E.



Miles Whitney, E.I.T.



## WORKSHOP ITEM

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**MEETING DATE:** March 18, 2013

**WORK SESSION ITEM #:** 1c.

**SUBMITTED BY:** Jim Devlin, Police Chief

**ITEM DESCRIPTION:**

Discussion concerning a possible contract for law enforcement services with Midway Independent School District (MISD) for a School Resource Officer.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

On March 6, 2013 Chief Devlin and Chief Zachary met with Dr. Jeanie Johnson of Midway ISD to discuss the possibility of MISD forming their own police force. Several ideas were discussed such as size of the department, infrastructure, and jurisdiction.

One concept that came to light was the possibility of the Hewitt and Woodway Police Departments supplying one officer each in lieu of forming a new ISD police department. This action would be formed under a one-year contract to supply MISD with School Resource Officer Services for the entire MISD district. (Possibly beginning in August of 2013) The Officers would be employees of the respective cities, but be responsible for law enforcement services in the district; school related issues, campus security, and interaction and problem solving with the student bodies. The contract would spell out specific duties for these assigned officers detailing job duties while working within the MISD jurisdiction. The district is considering paying for 80% of each officers salary and benefits and other associated costs, the city would have to pay the remaining 20% cost of the employee. There are several advantages to all entities providing this service, rather than sole sourcing a new law enforcement agency.

**ATTACHMENTS:**

None



## **COUNCIL AGENDA ITEM FORM**

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**MEETING DATE:** March 18, 2013

**AGENDA ITEM #:** 1

**SUBMITTED BY:** Lydia Lopez, City Secretary

**ITEM DESCRIPTION:**

Consider approval of minutes of the City Council Dinner Workshop/Regular Meeting of February 18, 2013.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

Attached is a draft copy of the minutes of the meeting. Please review and advise if any corrections are needed.

**ATTACHMENTS:**

Draft minutes

# HEWITT TEXAS

## MINUTES OF A CITY COUNCIL DINNER WORKSHOP/REGULAR MEETING HEWITT CITY HALL – 105 TAMPICO DRIVE February 18, 2013 - 5:30/7:00 PM

**Members Present:** Mayor Wilbert “Walky” Wachtendorf (presiding); Mayor Pro Tem Ed Passalugo; Council Members Vincent R. “Pike” Anderson, Charles D. “Charlie” Turner, Bill Fuller, James Vidrine, and Ronnie McNiel

**Staff Present:** City Attorney Charlie Buenger, City Engineer Bill Aston, City Manager Adam Miles, Police Chief Jim Devlin, Deputy Fire Chief Lance Bracco, Finance Director Lee Garcia, Utilities Director James Black, Director of Human Resources/Civil Service Susana Garcia-Gilmore, and City Secretary Lydia Lopez

### Workshop – 5:30 PM

1. City Manager presented an update on municipal business:
  - a. Report from City Engineer including review and discussion of Capital Improvement Projects
  - b. Fire & Police Building Project
  - c. Community Services Building
  - d. Parks Projects
2. The regular meeting agenda items were reviewed.
3. *Motion by Charlie Turner, second by Ed Passalugo to convene Executive Session at 6:17 pm pursuant to the Open Meetings Act, Chapter 551, Texas Government Code to discuss the following:*
  - Pursuant to §551.072 of the Open Meetings Act. *Tex. Gov’t Code*, Council will meet in Executive Session to discuss the purchase, exchange, lease, or value of real property.
4. *Motion by Ed Passalugo, second by Charlie Turner to close Executive Session and adjourn the Dinner Workshop at 6:58 pm.*

### REGULAR SESSION – 7:00 PM

1. **CONSIDER APPROVAL OF MINUTES OF THE CITY COUNCIL WORKSHOP/REGULAR MEETING OF FEBRUARY 4, 2013.** *Motion by Charlie Turner, second by Ed Passalugo to approve the minutes as submitted but allow for additional corrections; all seven in favor, motion passed.*

2. **HEAR VISITORS ON MATTERS PERTAINING TO CITY BUSINESS.**  
Steve Fortenberry, 701 Oakmont Drive, expressed appreciation to Council for their service to the City and for approving the construction of a new facility for Police and Fire Departments. **No one else appeared.**
3. **CONSIDER ACTION ON RESOLUTION ENDORSING CERTAIN LEGISLATIVE ACTION IN THE REGULAR SESSION OF THE 83RD TEXAS LEGISLATURE TO HELP ENSURE THE CONTINUED GROWTH AND SUCCESS OF HEWITT, THE GREATER WACO AREA, AND ITS RESIDENTS.** *Motion by James Vidrine, second by Bill Fuller to reject approval of resolution; six in favor, Pike Anderson opposed, motion to reject passed.* Council member Turner expressed concern that the Council had not received a prior invitation to the joint meeting held to discuss these issues.
4. **ADJOURN.** *Motion by Ed Passalugo, second by Charlie Turner to adjourn at 7:04 pm, all seven in favor, motion passed.*

Approved: March 4, 2013

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Lydia Lopez, City Secretary

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Wilbert Wachtendorf, Mayor



## ITEM #2 – HEARING OF VISITORS

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### CITIZEN PARTICIPATION AT MEETINGS

1. All citizens are encouraged to discuss matters of concern with the staff and individual council members prior to placing items on the agenda. Many times this will expedite a resolution or allow proper investigation of the matter for presentation to the entire council.

**NO CITIZEN NOR STAFF MEMBER MAY SPEAK NOR OTHERWISE INTERRUPT ANY MEETING UNTIL RECOGNIZED BY THE PRESIDING OFFICER.**

2. To maintain decorum at public hearings, the mayor will ask the citizens present if they wish to speak for or against the item on the agenda. If so, they will be given an opportunity to do so at the proper time, when recognized by the chair. If more than five citizens wish to address the council on any single agenda item, those citizens are advised to select spokespersons to present their case.
3. Citizens who wish to bring up a matter that pertains to city business or address an item on the agenda may do so, but only under the agenda item "Hear Visitors." **The council is prohibited by law from discussing or acting on any item that has not been posted on the agenda.**
4. **Citizens addressing the city council on items not on the agenda shall be limited to five minutes each. Total time for presentations on any one item or topic shall be limited to twenty-five minutes. The city council members shall not enter into discussion on any subject not properly placed on the agenda; however, the council members may ask questions for clarification purposes.**
5. As a general rule, citizens may not participate in the discussion of the council workshop session.



## **COUNCIL AGENDA ITEM FORM**

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**MEETING DATE:** March 18, 2013

**AGENDA ITEM #:** 3

**SUBMITTED BY:** Lee Garcia, Finance Director

**ITEM DESCRIPTION:**

Consider and act upon adoption of an ordinance authorizing the issuance and sale of the City's Combination Tax and Limited Surplus Revenue Certificates of Obligation, Series 2013; levying an annual ad valorem tax for the payment of said certificates; approving an official statement; providing an effective date; and enacting other provisions relating to the subject.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

Staff recommends approval of the Series 2013 Combination Tax and Limited Surplus Revenue Certificates of Obligation.

**ATTACHMENTS:**

Please see following Ordinance.

LAW OFFICES

**McCALL, PARKHURST & HORTON L.L.P.**

600 CONGRESS AVENUE

SUITE 1800

AUSTIN, TEXAS 78701-3248

TELEPHONE: 512 478-3805

FACSIMILE: 512 472-0871

717 NORTH HARWOOD

SUITE 900

DALLAS, TEXAS 75201-6587

TELEPHONE: 214 754-9200

FACSIMILE: 214 754-9250

700 N. ST. MARY'S STREET

SUITE 1525

SAN ANTONIO, TEXAS 78205-3503

TELEPHONE: 210 225-2800

FACSIMILE: 210 225-2984

**Via E-mail**

**MEMORANDUM**

**TO:** Adam Miles  
Lydia Lopez  
Lee Garcia  
City of Hewitt, Texas

**FROM:** Leroy Grawunder, Jr.

**DATE:** March 11, 2013

**RE:** Ordinance authorizing the issuance of Certificates of Obligation

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Attached is the above-referenced ordinance. The blanks in the ordinance will be completed when the terms of sale of the Certificates of Obligation are determined.

The following may be used for the agenda item:

**Consider and act upon adoption of an ordinance authorizing the issuance and sale of the City's Combination Tax and Limited Surplus Revenue Certificates of Obligation, Series 2013; levying an annual ad valorem tax for the payment of said certificates; approving an official statement; providing an effective date; and enacting other provisions relating to the subject**

We will provide execution copies of the ordinance and related documents for the City Council meeting.

Please call if you have any questions, or if we may be of further assistance.

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

**AUTHORIZING THE ISSUANCE AND SALE OF CITY OF HEWITT, TEXAS COMBINATION TAX AND LIMITED SURPLUS REVENUE CERTIFICATES OF OBLIGATION, SERIES 2013; LEVYING AN ANNUAL AD VALOREM TAX FOR THE PAYMENT OF SAID CERTIFICATES; APPROVING AN OFFICIAL STATEMENT; PROVIDING AN EFFECTIVE DATE; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT**

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|                           |          |
|---------------------------|----------|
| <b>THE STATE OF TEXAS</b> | <b>§</b> |
| <b>COUNTY OF MCLENNAN</b> | <b>§</b> |
| <b>CITY OF HEWITT</b>     | <b>§</b> |

WHEREAS, the City Council of the City of Hewitt, Texas, deems it advisable to issue Certificates of Obligation in the amount of \$3,850,000 for the purposes hereinafter set forth; and

WHEREAS, the Certificates of Obligation hereinafter authorized and designated are to be issued and delivered for cash pursuant to Subchapter C of Chapter 271, Local Government Code and Subchapter B, Chapter 1502, Government Code; and

WHEREAS, the City Council has heretofore passed a resolution authorizing and directing the City Secretary to give notice of intention to issue Certificates of Obligation, and said notice has been duly published in a newspaper of general circulation in said City, said newspaper being a "newspaper" as defined in §2051.044, Texas Government Code; and

WHEREAS, the City received no petition from the qualified electors of the City protesting the issuance of such Certificates of Obligation; and

WHEREAS, it is officially found, determined, and declared that the meeting at which this Ordinance has been adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered and acted upon at said meeting, including this Ordinance, was given, all as required by the applicable provisions of Tex. Gov't Code Ann. ch. 551; Now, Therefore

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HEWITT, TEXAS:**

Section 1. RECITALS, AMOUNT AND PURPOSE OF THE CERTIFICATES. The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section. The certificates of the City of Hewitt, Texas (the "Issuer") are hereby authorized to be issued and delivered in the aggregate principal amount of \$3,850,000 for paying all or a portion of the Issuer's contractual obligations to be incurred in connection with: (i) constructing, equipping and furnishing facilities for the police and fire departments, including related landscaping, parking and infrastructure; and (ii) legal, fiscal, engineering and other professional fees in connection with such projects (collectively, the "Projects").

Section 2. DESIGNATION, DATE, DENOMINATIONS, NUMBERS, AND MATURITIES AND INTEREST RATES OF CERTIFICATES. Each certificate issued pursuant to this Ordinance shall be designated: "CITY OF HEWITT, TEXAS, COMBINATION TAX AND LIMITED SURPLUS REVENUE CERTIFICATE OF OBLIGATION, SERIES 2013," and initially there shall be issued, sold, and delivered hereunder one fully registered certificate, without interest coupons, dated March 1, 2013, in the principal amount stated above and in the denominations hereinafter stated, numbered T-1, with certificates issued in replacement thereof being in the denominations and principal amounts hereinafter stated and numbered

consecutively from R-1 upward, payable to the respective Registered Owners thereof (with the initial certificate being made payable to the initial purchaser as described in Section 10 hereof), or to the registered assignee or assignees of said certificates or any portion or portions thereof (in each case, the "Registered Owner"), and said certificates shall mature and be payable serially on July 1 in each of the years and in the principal amounts, respectively, and shall bear interest from the dates set forth in the FORM OF CERTIFICATE set forth in Section 4 of this Ordinance to their respective dates of maturity or redemption prior to maturity at the rates per annum, as set forth in the following schedule:

| <u>Years</u> | <u>Principal<br/>Amount</u> | <u>Interest<br/>Rates</u> | <u>Years</u> | <u>Principal<br/>Amount</u> | <u>Interest<br/>Rates</u> |
|--------------|-----------------------------|---------------------------|--------------|-----------------------------|---------------------------|
| 2015         | \$ 100,000                  |                           | 2027         | \$ 160,000                  |                           |
| 2016         | 105,000                     |                           | 2028         | 165,000                     |                           |
| 2017         | 110,000                     |                           | 2029         | 170,000                     |                           |
| 2018         | 115,000                     |                           | 2030         | 175,000                     |                           |
| 2019         | 120,000                     |                           | 2031         | 185,000                     |                           |
| 2020         | 125,000                     |                           | 2032         | 190,000                     |                           |
| 2021         | 125,000                     |                           | 2033         | 200,000                     |                           |
| 2022         | 130,000                     |                           | 2034         | 205,000                     |                           |
| 2023         | 135,000                     |                           | 2035         | 210,000                     |                           |
| 2024         | 140,000                     |                           | 2036         | 220,000                     |                           |
| 2025         | 145,000                     |                           | 2037         | 230,000                     |                           |
| 2026         | 155,000                     |                           | 2038         | 235,000                     |                           |

The term "Certificates" as used in this Ordinance shall mean and include collectively the certificates initially issued and delivered pursuant to this Ordinance and all substitute certificates exchanged therefor, as well as all other substitute certificates and replacement certificates issued pursuant hereto, and the term "Certificate" shall mean any of the Certificates.

### Section 3. CHARACTERISTICS OF THE CERTIFICATES.

(a) Appointment of Paying Agent/Registrar. The Issuer hereby appoints The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, to serve as paying agent and registrar for the Certificates (the "Paying Agent/Registrar"). The Mayor or City Manager is authorized and directed to execute and deliver in the name and under the corporate seal and on behalf of the Issuer a Paying Agent/Registrar Agreement with the Paying Agent/Registrar in substantially the form presented at this meeting.

(b) Registration, Transfer, Conversion and Exchange. The Issuer shall keep or cause to be kept at the corporate trust office of the Paying Agent/Registrar books or records for the registration of the transfer, conversion and exchange of the Certificates (the "Registration Books"), and the Issuer hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers, conversions and exchanges under such reasonable regulations as the Issuer and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, conversions and exchanges as herein provided within three days of presentation in due and proper form. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the registered owner

of each Certificate to which payments with respect to the Certificates shall be mailed, as herein provided; but it shall be the duty of each registered owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The Issuer shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. The Issuer shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer, conversion, exchange and delivery of a substitute Certificate or Certificates. Registration of assignments, transfers, conversions and exchanges of Certificates shall be made in the manner provided and with the effect stated in the FORM OF CERTIFICATE set forth in this Ordinance. Each substitute Certificate shall bear a letter and/or number to distinguish it from each other Certificate.

(c) Authentication. Except as provided in subsection (i) of this section, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Certificate, date and manually sign said Certificate, and no such Certificate shall be deemed to be issued or outstanding unless such Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all paid Certificates and Certificates surrendered for conversion and exchange. No additional ordinances, orders or resolutions need be passed or adopted by the governing body of the Issuer or any other body or person so as to accomplish the foregoing conversion and exchange of any Certificate or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution and delivery of the substitute Certificates in the manner prescribed herein. Pursuant to Subchapter D, Chapter 1201, Texas Government Code, the duty of conversion and exchange of Certificates as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of said Certificate, the converted and exchanged Certificate shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Certificates which initially were issued and delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(d) Payment of Principal and Interest. The Issuer hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Certificates, all as provided in this Ordinance. The Paying Agent/Registrar shall keep proper records of all payments made by the Issuer and the Paying Agent/Registrar with respect to the Certificates, and of all conversions and exchanges of Certificates, and all replacements of Certificates, as provided in this Ordinance. However, in the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Issuer. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each registered owner appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

(e) Payment to Registered Owner. Notwithstanding any other provision of this Ordinance to the contrary, the Issuer and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate is registered in the Registration Books as the absolute owner of such Certificate for the purpose of payment of principal and interest with respect to such Certificate, for the purpose of registering transfers with respect to such Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Certificates only to or upon the order of the registered owners, as shown in the Registration Books as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of and interest on the Certificates to the extent of the sum or

sums so paid. No person other than a registered owner, as shown in the Registration Books, shall receive a Certificate certificate evidencing the obligation of the Issuer to make payments of principal and interest pursuant to this Ordinance.

(f) Paying Agent/Registrar. The Issuer covenants with the registered owners of the Certificates that at all times while the Certificates are outstanding the Issuer will provide a competent and legally qualified bank, trust company, financial institution or other agency to act as and perform the services of Paying Agent/Registrar for the Certificates under this Ordinance, and that the Paying Agent/Registrar will be one entity. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

(g) Substitute Paying Agent/Registrar. The Issuer reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 120 days written notice to the Paying Agent/Registrar, to be effective not later than 60 days prior to the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the Issuer covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Certificates, to the new Paying Agent/Registrar designated and appointed by the Issuer. Upon any change in the Paying Agent/Registrar, the Issuer promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each registered owner of the Certificates, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar.

(g) Book-Entry Only System. The Certificates issued in exchange for the Certificates initially issued to the purchaser or purchasers specified herein shall be initially issued in the form of a separate single fully registered Certificate for each of the maturities thereof and the ownership of each such Certificate shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company of New York ("DTC"), and except as provided in subsections (i) and (j) of this Section, all of the outstanding Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

(h) Blanket Letter of Representations. The previous execution and delivery of the Blanket Letter of Representations with respect to obligations of the Issuer is hereby ratified and confirmed; and the provisions thereof shall be fully applicable to the Certificates. Notwithstanding anything to the contrary contained herein, while the Certificates are subject to DTC's Book-Entry Only System and to the extent permitted by law, the Letter of Representations is hereby incorporated herein and its provisions shall prevail over any other provisions of this Ordinance in the event of conflict.

(i) Certificates Registered in the Name of Cede & Co. With respect to Certificates registered in the name of Cede & Co., as nominee of DTC, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created ("DTC Participant") to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates. Without limiting the immediately preceding sentence, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any

ownership interest in the Certificates, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of Certificates, as shown on the Registration Books, of any notice with respect to the Certificates, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of Certificates, as shown in the Registration Books of any amount with respect to principal of or interest on the Certificates. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks being mailed to the registered owner at the close of business on the Record date, the words "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(j) Successor Securities Depository; Transfers Outside Book-Entry Only System. In the event that the Issuer determines that DTC is incapable of discharging its responsibilities described herein and in the representation letter of the Issuer to DTC or that it is in the best interest of the beneficial owners of the Certificates that they be able to obtain certificated Certificates, the Issuer shall (i) appoint a successor securities depository, qualified to act as such under Section 17A of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Certificates and transfer one or more separate Certificates to DTC Participants having Certificates credited to their DTC accounts. In such event, the Certificates shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names registered owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

(k) Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Certificate is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Certificate and all notices with respect to such Certificate shall be made and given, respectively, in the manner provided in the representation letter of the Issuer to DTC.

(l) General Characteristics of the Certificates. The Certificates (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Certificates to be payable only to the Registered Owners thereof, (ii) may and shall be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be converted and exchanged for other Certificates, (v) shall have the characteristics, (vi) shall be signed, sealed, executed and authenticated, (vii) the principal of and interest on the Certificates shall be payable, and (viii) shall be administered and the Paying Agent/Registrar and the Issuer shall have certain duties and responsibilities with respect to the Certificates, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF CERTIFICATE set forth in this Ordinance. The Certificates initially issued and delivered pursuant to this Ordinance is not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Certificate issued in conversion of and exchange for any Certificate or Certificates issued under this Ordinance the Paying Agent/Registrar shall execute the Paying Agent/registrar's Authentication Certificate, in the FORM OF CERTIFICATE set forth in this Ordinance.

(m) Cancellation of Initial Certificate. On the closing date, one initial Certificate representing the entire principal amount of the Certificates, payable in stated installments to the order of the initial purchaser of the Certificates or its designee, executed by manual or facsimile signature of the Mayor and City Secretary, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to such purchaser or its designee. Upon payment for the initial Certificate, the Paying Agent/Registrar shall insert the Issuance Date on Certificate No. T-1, cancel each of

the initial Certificates and deliver to The Depository Trust Company ("DTC") on behalf of such purchaser one registered definitive Certificate for each year of maturity of the Certificates, in the aggregate principal amount of all of the Certificates for such maturity, registered in the name of Cede & Co., as nominee of DTC. To the extent that the Paying Agent/Registrar is eligible to participate in DTC's FAST System, pursuant to an agreement between the Paying Agent/Registrar and DTC, the Paying Agent/Registrar shall hold the definitive Certificates in safekeeping for DTC.

Section 4. FORM OF CERTIFICATES. The form of the Certificates, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached to the Certificates initially issued and delivered pursuant to this Ordinance, shall be, respectively, substantially as follows, with such appropriate variations, omissions or insertions as are permitted or required by this Ordinance.

(a) Form of Certificate.

|        |                                                                                                                                                                 |                                 |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| NO. R- | UNITED STATES OF AMERICA<br>STATE OF TEXAS<br><br>CITY OF HEWITT, TEXAS<br>COMBINATION TAX AND LIMITED SURPLUS REVENUE CERTIFICATE OF OBLIGATION<br>SERIES 2013 | PRINCIPAL<br>AMOUNT<br>\$ _____ |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|

|               |               |               |           |
|---------------|---------------|---------------|-----------|
| Interest Rate | Dated Date    | Maturity Date | CUSIP No. |
|               | March 1, 2013 | July 1, ____  |           |

REGISTERED OWNER:

PRINCIPAL AMOUNT: DOLLARS

ON THE MATURITY DATE specified above, the City of Hewitt, in McLennan County, Texas (the "Issuer"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above. The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from March 1, 2013 at the Interest Rate per annum specified above. Interest is payable on July 1, 2013, and semiannually on each January 1 and July 1 thereafter to the Maturity Date specified above, or the date of redemption prior to maturity; except, if this Certificate is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Certificate or Certificates, if any, for which this Certificate is being exchanged is due but has not been paid, then this Certificate shall bear interest from the date to which such interest has been paid in full.

THE PRINCIPAL OF AND INTEREST ON this Certificate are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Certificate shall be

paid to the registered owner hereof upon presentation and surrender of this Certificate at maturity, or upon the date fixed for its redemption prior to maturity, at the principal corporate trust office of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, which is the "Paying Agent/Registrar" for this Certificate. The payment of interest on this Certificate shall be made by the Paying Agent/Registrar to the registered owner hereof on each interest payment date by check or draft, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the Issuer required by the ordinance authorizing the issuance of this Certificate (the "Certificate Ordinance") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the registered owner hereof, at its address as it appeared on the fifteenth day of the month preceding each such date (the "Record Date") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. In addition, interest may be paid by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. In the event of a non-payment of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Issuer. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each owner of a Certificate appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

ANY ACCRUED INTEREST due at maturity or upon the redemption of this Certificate prior to maturity as provided herein shall be paid to the registered owner upon presentation and surrender of this Certificate for redemption and payment at the principal corporate trust office of the Paying Agent/Registrar. The Issuer covenants with the registered owner of this Certificate that on or before each principal payment date, interest payment date, and accrued interest payment date for this Certificate it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Certificate Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Certificates, when due.

IF THE DATE for the payment of the principal of or interest on this Certificate shall be a Saturday, Sunday, a legal holiday or a day on which banking institutions in the city where the principal corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day that is not such a Saturday, Sunday, legal holiday or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS CERTIFICATE is one of a series of Certificates dated March 1, 2013, authorized in accordance with the Constitution and laws of the State of Texas in the principal amount of \$3,850,000 for paying all or a portion of the Issuer's contractual obligations to be incurred in connection with: (i) constructing, equipping and furnishing facilities for the police and fire departments, including related landscaping, parking and infrastructure; and (ii) legal, fiscal, engineering and other professional fees in connection with such projects.

ON JULY 1, 2023, or any date thereafter, the certificates of this series may be redeemed prior to their scheduled maturities, at the option of the Issuer, with funds derived from any available and lawful source, as a whole, or in part, and, if in part, the particular Certificates, or portions thereof, to be redeemed shall be selected and designated by the Issuer (provided that a portion of a Certificate may be redeemed only in an

integral multiple of \$5,000), at a redemption price equal to the principal amount to be redeemed plus accrued interest to the date fixed for redemption.

AT LEAST 30 days prior to the date fixed for any redemption of Certificates or portions thereof prior to maturity a written notice of such redemption shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, at least 30 days prior to the date fixed for any such redemption, to the registered owner of each Certificate to be redeemed at its address as it appeared on the on the 45th day prior to such redemption date; provided, however, that the failure of the registered owner to receive such notice, or any defect therein or in the sending or mailing thereof, shall not affect the validity or effectiveness of the proceedings for the redemption of any Certificate. By the date fixed for any such redemption due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Certificates or portions thereof that are to be so redeemed. If such written notice of redemption is sent and if due provision for such payment is made, all as provided above, the Certificates or portions thereof that are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the registered owner to receive the redemption price from the Paying Agent/Registrar out of the funds provided for such payment. If a portion of any Certificate shall be redeemed, a substitute Certificate or Certificates having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the registered owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon the surrender thereof for cancellation, at the expense of the Issuer, all as provided in the Certificate Ordinance.

IF AT THE TIME OF MAILING of notice of optional redemption there shall not have either been deposited with the Paying Agent/Registrar or legally authorized escrow agent immediately available funds sufficient to redeem all the Certificates called for redemption, such notice may state that it is conditional, and is subject to the deposit of the redemption moneys with the Paying Agent/Registrar or legally authorized escrow agent at or prior to the redemption date, and such notice shall be of no effect unless such moneys are so deposited on or prior to the redemption date. If such redemption is not effectuated, the Paying Agent/Registrar shall, within five days thereafter, give notice in the manner in which the notice of redemption was given that such moneys were not so received and shall rescind the redemption.

ALL CERTIFICATES OF THIS SERIES are issuable solely as fully registered certificates, without interest coupons, in the denomination of any integral multiple of \$5,000. As provided in the Certificate Ordinance, this Certificate may, at the request of the registered owner or the assignee or assignees hereof, be assigned, transferred, converted into and exchanged for a like aggregate principal amount of fully registered certificates, without interest coupons, payable to the appropriate registered owner, assignee or assignees, as the case may be, having the same denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate registered owner, assignee or assignees, as the case may be, upon surrender of this Certificate to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Certificate Ordinance. Among other requirements for such assignment and transfer, this Certificate must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Certificate or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Certificate or any such portion or portions hereof is or are to be registered. The form of Assignment printed or endorsed on this Certificate may be executed by the registered owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Certificate or any portion or portions hereof from time to time by the registered owner. The Paying

Agent/Registrar's reasonable standard or customary fees and charges for assigning, transferring, converting and exchanging any Certificate or portion thereof will be paid by the Issuer. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer, conversion or exchange, as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer, conversion, or exchange (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or (ii) with respect to any Certificate or any portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date.

IN THE EVENT any Paying Agent/Registrar for the Certificates is changed by the Issuer, resigns, or otherwise ceases to act as such, the Issuer has covenanted in the Certificate Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the registered owners of the Certificates.

IT IS HEREBY certified, recited and covenanted that this Certificate has been duly and validly authorized, issued and delivered; that all acts, conditions and things required or proper to be performed, exist and be done precedent to or in the authorization, issuance and delivery of this Certificate have been performed, existed and been done in accordance with law; that annual ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Certificate, as such interest comes due and such principal matures, have been levied and ordered to be levied against all taxable property in said Issuer, and have been pledged for such payment, within the limit prescribed by law, and that this Certificate is additionally secured by and payable from a limited pledge of the Surplus Revenues of the Issuer's waterworks and sewer system remaining after payment of all operation and maintenance expenses thereof, and all debt service, reserve, and other requirements in connection with all of the Issuer's revenue bonds or other obligations (now or hereafter outstanding) which are payable from all or any part of the net revenues of the Issuer's waterworks and sewer system, all as provided in the Certificate Ordinance.

THE ISSUER HAS RESERVED THE RIGHT to amend the Certificate Ordinance as provided therein, and under some (but not all) circumstances amendments thereto must be approved by the registered owners of a majority in aggregate principal amount of the outstanding Certificates.

BY BECOMING the registered owner of this Certificate, the registered owner thereby acknowledges all of the terms and provisions of the Certificate Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Certificate Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the Issuer, and agrees that the terms and provisions of this Certificate and the Certificate Ordinance constitute a contract between each registered owner hereof and the Issuer.

IN WITNESS WHEREOF, the Issuer has caused this Certificate to be signed with the manual or facsimile signature of the Mayor of the Issuer (or in the Mayor's absence, by the Major Pro Tem) and countersigned with the manual or facsimile signature of the City Secretary of said Issuer, and has caused the official seal of the Issuer to be duly impressed, or placed in facsimile, on this Certificate.

\_\_\_\_\_  
(signature)  
City Secretary

\_\_\_\_\_  
(signature)  
Mayor

(SEAL)

(b) Form of Paying Agent/Registrar's Authentication Certificate.

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE  
(To be executed if this Certificate is not accompanied by an executed Registration  
Certificate of the Comptroller of Public Accounts of the State of Texas)

It is hereby certified that this Certificate has been issued under the provisions of the Certificate Ordinance described in the text of this Certificate; and that this Certificate has been issued in conversion or replacement of, or in exchange for, a certificate, certificates, or a portion of a certificate or certificates of a series that originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated: \_\_\_\_\_.

The Bank of New York Mellon Trust Company, N.A.  
Dallas, Texas  
Paying Agent/Registrar

By: \_\_\_\_\_  
Authorized Representative

(c) Form of Assignment.

ASSIGNMENT  
Please print or type clearly

For value received, the undersigned hereby sells, assigns and transfers unto: \_\_\_\_\_

Transferee's Social Security or Taxpayer Identification Number: \_\_\_\_\_

Transferee's name and address, including zip code: \_\_\_\_\_

\_\_\_\_\_ the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to register the transfer of the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_.

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a securities transfer association recognized signature guarantee program.

NOTICE: The signature above must correspond with the name of the registered owner as it appears upon the front of this Certificate in every particular, without alteration or enlargement or any change whatsoever.

(d) Form of Registration Certificate of the Comptroller of Public Accounts.

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. \_\_\_\_\_

I hereby certify that this Certificate has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and that this Certificate has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts of the State of Texas

(COMPTROLLER'S SEAL)

(e) Initial Certificate Insertions.

(i) The initial Certificate shall be in the form set forth is paragraph (a) of this Section, except that:

A. immediately under the name of the Certificate, the headings "Interest Rate" and "Maturity Date" shall both be completed with the words "As shown below" and "CUSIP No. \_\_\_\_\_" shall be deleted.

B. the first paragraph shall be deleted and the following will be inserted:

"THE CITY OF HEWITT, TEXAS, in McLennan County, Texas (the "Issuer"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on July 1 in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

| <u>Years</u> | <u>Principal Installments</u> | <u>Interest Rates</u> |
|--------------|-------------------------------|-----------------------|
|--------------|-------------------------------|-----------------------|

(Information from Section 2 to be inserted)

The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from March 1, 2013, at the respective Interest Rate per annum specified above. Interest is payable on July 1, 2013, and semiannually on each January 1 and July 1 thereafter to the date of payment of the principal installment specified above, or the date of redemption prior to maturity; except, that if this Certificate is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Certificate or Certificates, if any, for which this Certificate is being exchanged is due but has not been paid, then this Certificate shall bear interest from the date to which such interest has been paid in full."

C. The Initial Certificate shall be numbered "T-1."

Section 5. INTEREST AND SINKING FUND; SURPLUS REVENUES.

(a) A special "Interest and Sinking Fund" is hereby created and shall be established and maintained by the Issuer at an official depository bank of said Issuer. Said Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of said Issuer, and shall be used only for paying the interest on and principal of said Certificates. All amounts received from the sale of the Certificates as accrued interest shall be deposited upon receipt to the Interest and Sinking Fund, and all ad valorem taxes levied and collected for and on account of said Certificates shall be deposited, as collected, to the credit of said Interest and Sinking Fund. During each year while any of said Certificates are outstanding and unpaid, the governing body of said Issuer shall compute and ascertain a rate and amount of ad valorem tax that will be sufficient to raise and produce the money required to pay the interest on said Certificates as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of said Certificates as such principal matures (but never less than 2% of the original amount of said Certificates as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of said Issuer, with full allowances being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in said Issuer, for each year while any of said Certificates are outstanding and unpaid, and said tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of said Certificates, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law.

(b) The Certificates are additionally secured by revenues of the Issuer's waterworks and sewer system that remain after the payment of all maintenance and operation expenses thereof, and all debt service, reserve and other requirements in connection with all of the Issuer's revenue obligations (now or hereafter outstanding) which are payable from all or any part of the net revenues of the Issuer's waterworks and sewer system, constituting "Surplus Revenues", not to exceed \$1,000. The Issuer shall deposit such Surplus Revenues to the credit of the Interest and Sinking Fund created pursuant to this Section, to the extent necessary to pay the principal and interest on the Certificates. If Surplus Revenues or other lawfully available moneys of the Issuer are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes that otherwise would have been required to be levied pursuant to subsection (a) of this Section may be reduced to the extent and by the amount of the Surplus Revenues or other lawfully available funds then on deposit in the Interest and Sinking Fund.

(c) Article 1208, Government Code, applies to the issuance of the Certificates and the pledge of the taxes and Surplus Revenues granted by the Issuer under this Section and Section 9, respectively, and is therefore valid, effective, and perfected. Should Texas law be amended at any time while the Certificates are outstanding and unpaid, the result of such amendment being that the pledge of the taxes and Surplus Revenues granted by the Issuer under this Section and Section 9, respectively, is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, in order to preserve to the registered owners of the Certificates a security interest in said pledge, the Issuer agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing of a security interest in said pledge to occur.

#### Section 6. DEFEASANCE OF CERTIFICATES.

(a) Any Certificate and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Certificate") within the meaning of this Ordinance, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Certificate, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such

due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the Issuer with the Paying Agent/Registrar for the payment of its services until all Defeased Certificates shall have become due and payable. At such time as a Certificate shall be deemed to be a Defeased Certificate hereunder, as aforesaid, such Certificate and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes herein levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Defeased Certificates that is made in conjunction with the payment arrangements specified in subsection 6(a)(i) or (ii) shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the Issuer expressly reserves the right to call the Defeased Certificates for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Certificates immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the Issuer be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Certificates and interest thereon, with respect to which such money has been so deposited, shall be turned over to the Issuer, or deposited as directed in writing by the Issuer. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Certificates may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection 6(a)(i) or (ii). All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Certificates, with respect to which such money has been so deposited, shall be remitted to the Issuer or deposited as directed in writing by the Issuer.

(c) The term "Defeasance Securities" means any securities and obligations now or hereafter authorized by State law that are eligible to refund, retire or otherwise discharge obligations such as the Certificates.

(d) Until all Defeased Certificates shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Certificates the same as if they had not been defeased, and the Issuer shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(e) In the event that the Issuer elects to defease less than all of the principal amount of Certificates of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Certificates by such random method as it deems fair and appropriate.

## Section 7. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED CERTIFICATES.

(a) Replacement Certificates. In the event any outstanding Certificate is damaged, mutilated, lost, stolen or destroyed, the Paying Agent/Registrar shall cause to be printed, executed and delivered, a new certificate of the same principal amount, maturity and interest rate, as the damaged, mutilated, lost, stolen or destroyed Certificate, in replacement for such Certificate in the manner hereinafter provided.

(b) Application for Replacement Certificates. Application for replacement of damaged, mutilated, lost, stolen or destroyed Certificates shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft or destruction of a Certificate, the registered owner applying for a replacement certificate shall furnish to the Issuer and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft or destruction of a Certificate, the registered owner shall furnish to the Issuer and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft or destruction of such Certificate, as the case may be. In every case of damage or mutilation of a Certificate, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the Certificate so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this , in the event any such Certificate shall have matured, and no default has occurred that is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Certificate, the Issuer may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Certificate) instead of issuing a replacement Certificate, provided security or indemnity is furnished as above provided in this Section.

(d) Charge for Issuing Replacement Certificates. Prior to the issuance of any replacement certificate, the Paying Agent/Registrar shall charge the registered owner of such Certificate with all legal, printing, and other expenses in connection therewith. Every replacement certificate issued pursuant to the provisions of this Section by virtue of the fact that any Certificate is lost, stolen or destroyed shall constitute a contractual obligation of the Issuer whether or not the lost, stolen or destroyed Certificate shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Certificates duly issued under this Ordinance.

(e) Authority for Issuing Replacement Certificates. In accordance with Sec. 1206.022, Government Code, this Section 7 of this Ordinance shall constitute authority for the issuance of any such replacement certificate without necessity of further action by the governing body of the Issuer or any other body or person, and the duty of the replacement of such certificates is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Certificates in the form and manner and with the effect, as provided in Section 3(a) of this Ordinance for Certificates issued in conversion and exchange for other Certificates.

#### Section 8. CUSTODY, APPROVAL, AND REGISTRATION OF CERTIFICATES; BOND COUNSEL'S OPINION; CUSIP NUMBERS AND CONTINGENT INSURANCE PROVISION, IF OBTAINED; ENGAGEMENT OF BOND COUNSEL.

(a) The Mayor of the Issuer is hereby authorized to have control of the Certificates initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Certificates pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Certificates said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Certificates, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such Certificate. The approving legal opinion of the Issuer's Bond Counsel and the assigned CUSIP numbers may, at the option of the Issuer, be printed on the Certificates issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the registered owners of the Certificates. In addition, if bond insurance is obtained, the Certificates may bear an appropriate legend as provided by the insurer.

(b) The obligation of the initial purchaser to accept delivery of the Certificates is subject to the initial purchaser being furnished with the final, approving opinion of McCall, Parkhurst & Horton L.L.P., bond counsel to the Issuer, which opinion shall be dated as of and delivered on the date of initial delivery of the Certificates to the initial purchaser. The engagement of such firm as bond counsel to the Issuer in connection with issuance, sale and delivery of the Certificates is hereby approved and confirmed. The execution and delivery of an engagement letter between the Issuer and such firm, with respect to such services as bond counsel, is hereby authorized in such form as may be approved by the Mayor or the City Manager, and the Mayor or the City Manager is hereby authorized to execute such engagement letter.

Section 9. COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE CERTIFICATES.

(a) Covenants. The Issuer covenants to take any action necessary to assure, or refrain from any action that would adversely affect, the treatment of the Certificates as obligations described in section 103 of the Code, the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the Issuer covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Certificates (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the Issuer, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Certificates, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Certificates or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" that is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(3) to take any action to assure that no amount that is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Certificates (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(4) to refrain from taking any action that would otherwise result in the Certificates being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(5) to refrain from taking any action that would result in the Certificates being "federally guaranteed" within the meaning of section 149(b) of the Code;

(6) to refrain from using any portion of the proceeds of the Certificates, directly or indirectly, to acquire or to replace funds that were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) that produces a materially higher yield over the term of the Certificates, other than investment property acquired with –

(A) proceeds of the Certificates invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 30 days or less until such proceeds are needed for the purpose for which the Certificates are issued,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Certificates;

(7) to otherwise restrict the use of the proceeds of the Certificates or amounts treated as proceeds of the Certificates, as may be necessary, so that the Certificates do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings);

(8) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Certificates) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Certificates have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code; and

(9) to assure that the proceeds of the Certificates will be used solely for new money projects.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (a)(8), a "Rebate Fund" is hereby established by the Issuer for the sole benefit of the United States of America, and such Fund shall not be subject to the claim of any other person, including without limitation the holders of the Certificates. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) Use of Proceeds. For purposes of the foregoing covenants (a)(1) and (a)(2), the Issuer understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Certificates. It is the understanding of the Issuer that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated that modify or expand provisions of the Code, as applicable to the Certificates, the Issuer will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Certificates under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated that impose additional requirements applicable to the Certificates, the Issuer agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Certificates under section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the Mayor, the City Manager or Director of Finance to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, that may be permitted by the Code as are consistent with the purpose for the issuance of the Certificates.

(d) Allocation of, and Limitation on, Expenditures for the Projects. The Issuer covenants to account for the expenditure of sale proceeds and investment earnings to be used for the construction and acquisition of the Projects on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Projects are completed. The foregoing notwithstanding, the Issuer shall not expend proceeds of the sale of the Certificates or investment earnings thereon more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Certificates, or (2) the date the Certificates are retired, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the status, for federal income tax purposes, of the Certificates or the interest thereon. For purposes hereof, the Issuer shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) Disposition of Projects. The Issuer covenants that the Projects will not be sold or otherwise disposed in a transaction resulting in the receipt by the Issuer of cash or other compensation, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Certificates. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the Issuer shall not be obligated to comply with this covenant if it obtains a legal opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(f) Designation as a Qualified Tax-Exempt Obligation. The Issuer hereby designates the Certificates as "qualified tax-exempt obligations" as defined in section 265(b)(3) of the Code. In furtherance of such designation, the Issuer represents, covenants and warrants the following: (a) that during the calendar year in which the Certificates are issued, the Issuer (including any subordinate entities) has not designated nor will designate obligations that when aggregated with the Certificates, will result in more than \$10,000,000 of "qualified tax-exempt obligations" being issued; (b) that the Issuer reasonably anticipates that the amount of tax-exempt obligations issued, during the calendar year in which the Certificates are issued, by the Issuer (or any subordinate entities) will not exceed \$10,000,000; and, (c) that the Issuer will take such action or refrain from such action as necessary, and as more particularly set forth in this Section, hereof, in order that the Certificates will not be considered "private activity bonds" within the meaning of section 141 of the Code.

#### Section 10. SALE OF CERTIFICATES AND APPROVAL OF OFFICIAL STATEMENT; FURTHER PROCEDURES.

(a) The Certificates are hereby sold and shall be delivered to \_\_\_\_\_ (the "Purchaser") for cash for the par value thereof and accrued interest thereon to date of delivery, plus a premium of \$ \_\_\_\_\_, with such premium to be used to pay costs of issuance. The Certificates shall initially be registered in the name of such purchaser or its designee. It is officially found, determined, and declared that the Certificate have been sold at public sale to the bidder offering the lowest interest cost, after receiving sealed bids pursuant to an Official Notice of Sale and Bidding Instructions and Official Statement prepared and distributed in connection with the sale of the Certificates. Said Official Notice of Sale and Bidding Instructions and Official Statement, and any addenda, supplement, or amendment thereto have been and are hereby approved by the governing body of the Issuer, and their use in the offer and sale of the Certificates is hereby approved. The Initial Certificate shall be registered in the name of the Purchaser or its designee.

(b) The Issuer hereby approves the form and content of the Official Statement relating to the Certificates and any addenda, supplement or amendment thereto, and approves the distribution of such Official Statement in the reoffering of the Certificates by the Purchaser in final form, with such changes therein or additions thereto as the officer executing the same may deem advisable, such determination to be conclusively evidenced by his execution thereof. The distribution and use of the Preliminary Official Statement dated \_\_\_\_\_, 2013, prior to the date hereof is hereby ratified and confirmed.

(c) The Mayor and Mayor Pro Tem, the City Manager, City Secretary and Director of Finance of the Issuer, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Issuer such documents, certificates and other instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Certificates, the sale of the Certificates and the Official Statement. In case any officer whose signature shall appear on any Certificate shall cease to be such officer before the delivery of such Certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 11. INTEREST EARNINGS ON CERTIFICATE PROCEEDS. Interest earnings derived from the investment of proceeds from the sale of the Certificates shall be used along with other certificate proceeds for the Projects; provided that after completion of such purpose, if any of such interest earnings remain on hand, such interest earnings shall be deposited in the Interest and Sinking Fund. It is further provided, however, that any interest earnings on certificate proceeds that are required to be rebated to the United States of America pursuant to Section 9 hereof in order to prevent the Certificates from being arbitrage bonds shall be so rebated and not considered as interest earnings for the purposes of this Section.

#### Section 12. CONSTRUCTION FUND.

(a) The Issuer hereby creates and establishes and shall maintain on the books of the Issuer a separate fund to be entitled the "Series 2013 Certificate of Obligation Construction Fund" for use by the Issuer for payment of all lawful costs associated with the Projects as hereinbefore provided. Proceeds of the Certificates, shall be deposited into the Construction Fund, other than amounts paid at closing for issuance costs. Upon payment of all such Project costs, any moneys remaining on deposit in said Fund shall be transferred to the Interest and Sinking Fund. Amounts so deposited to the Interest and Sinking Fund shall be used in the manner described in Section 5 of this Ordinance.

(b) The Issuer may place proceeds of the Certificates (including investment earnings thereon) and amounts deposited into the Interest and Sinking Fund in investments authorized by the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended; provided, however, that the Issuer hereby covenants that the proceeds of the sale of the Certificates will be used as soon as practicable for the purposes for which the Certificates are issued.

(c) All deposits authorized or required by this Ordinance shall be secured to the fullest extent required by law for the security of public funds.

#### Section 13. COMPLIANCE WITH RULE 15c2-12.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

(b) Annual Reports.

(i) The Issuer shall provide annually to the MSRB, in an electronic format as prescribed by the MSRB, within six months after the end of each fiscal year, financial information and operating data with respect to the Issuer of the general type included in the final Official Statement authorized by Section 10 of this Ordinance, being the information described in Exhibit A hereto. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in the financial statements of the Issuer appended to the Official Statement, or such other accounting principles as the Issuer may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the Issuer commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the Issuer shall provide unaudited financial information by the required time, and shall provide audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such statements become available.

(ii) If the Issuer changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Issuer otherwise would be required to provide financial information and operating data pursuant to this Section. The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document that is available to the public on the MSRB's internet website or filed with the SEC. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

(c) Event Notices.

(i) The Issuer shall notify the MSRB in an electronic format as prescribed by the MSRB, in a timely manner (but not in excess of ten business days after the occurrence of the event) of any of the following events with respect to the Certificates, if such event is material within the meaning of the federal securities laws:

1. Non-payment related defaults;
2. Modifications to rights of Certificateholders;
3. Certificate calls;
4. Release, substitution, or sale of property securing repayment of the Certificates;
5. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake

such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; and

6. Appointment of a successor or additional trustee or the change of name of a trustee.

(ii) The Issuer shall notify the MSRB in an electronic format as prescribed by the MSRB, in a timely manner (but not in excess of ten business days after the occurrence of the event) of any of the following events with respect to the Certificates, without regard to whether such event is considered material within the meaning of the federal securities laws:

1. Principal and interest payment delinquencies;
2. Unscheduled draws on debt service reserves reflecting financial difficulties;
3. Unscheduled draws on credit enhancements reflecting financial difficulties;
4. Substitution of credit or liquidity providers, or their failure to perform;
5. Adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
6. Tender offers;
7. Defeasances;
8. Rating changes; and
9. Bankruptcy, insolvency, receivership or similar event of an obligated person.

(iii) The Issuer shall notify the MSRB, in a timely manner, of any failure by the Issuer to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such subsection.

(d) Limitations, Disclaimers, and Amendments.

(i) The Issuer shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Issuer remains an "obligated person" with respect to the Certificates within the meaning of the Rule, except that the Issuer in any event will give notice of any deposit made in accordance with this Ordinance or applicable law that causes Certificates no longer to be outstanding.

(ii) The provisions of this Section are for the sole benefit of the registered owners and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Issuer undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to

provide any other information that may be relevant or material to a complete presentation of the Issuer's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Issuer does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

(iii) UNDER NO CIRCUMSTANCES SHALL THE ISSUER BE LIABLE TO THE REGISTERED OWNER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(iv) No default by the Issuer in observing or performing its obligations under this Section shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance. Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Issuer under federal and state securities laws.

(v) Should the Rule be amended to obligate the Issuer to make filings with or provide notices to entities other than the MSRB, the Issuer hereby agrees to undertake such obligation with respect to the Certificates in accordance with the Rule as amended. The provisions of this Section may be amended by the Issuer from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Issuer, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the registered owners of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Certificates consent to such amendment or (b) a person that is unaffiliated with the Issuer (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the registered owners and beneficial owners of the Certificates. The Issuer may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Certificates in the primary offering of the Certificates. If the Issuer so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided.

Section 14. METHOD OF AMENDMENT. The Issuer hereby reserves the right to amend this Ordinance subject to the following terms and conditions, to-wit:

(a) The Issuer may from time to time, without the consent of any holder, except as otherwise required by paragraph (b) below, amend or supplement this Ordinance in order to (i) cure any ambiguity, defect or

omission in this Ordinance that does not materially adversely affect the interests of the holders, (ii) grant additional rights or security for the benefit of the holders, (iii) add events of default as shall not be inconsistent with the provisions of this Ordinance and that shall not materially adversely affect the interests of the holders, (v) qualify this Ordinance under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect, or (iv) make such other provisions in regard to matters or questions arising under this Ordinance as shall not be inconsistent with the provisions of this Ordinance and that shall not in the opinion of the Issuer's Bond Counsel materially adversely affect the interests of the holders.

(b) Except as provided in paragraph (a) above, the holders of Certificates aggregating in principal amount 51% of the aggregate principal amount of then outstanding Certificates that are the subject of a proposed amendment shall have the right from time to time to approve any amendment hereto that may be deemed necessary or desirable by the Issuer; provided, however, that without the consent of 100% of the holders in aggregate principal amount of the then outstanding Certificates, nothing herein contained shall permit or be construed to permit amendment of the terms and conditions of this Ordinance or in any of the Certificates so as to:

- (1) Make any change in the maturity of any of the outstanding Certificates;
- (2) Reduce the rate of interest borne by any of the outstanding Certificates;
- (3) Reduce the amount of the principal of, or redemption premium, if any, payable on any outstanding Certificates;
- (4) Modify the terms of payment of principal or of interest or redemption premium on outstanding Certificates or any of them or impose any condition with respect to such payment; or
- (5) Change the minimum percentage of the principal amount of any series of Certificates necessary for consent to such amendment.

(c) If at any time the Issuer shall desire to amend this Ordinance under subsection (b) of this Section, the Issuer shall send by U.S. mail to each registered owner of the affected Certificates a copy of the proposed amendment. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the office of the Issuer for inspection by all holders of such Certificates.

(d) Whenever at any time within six months from the date of the mailing of such notice the Issuer shall receive an instrument or instruments executed by the holders of at least 51% in aggregate principal amount of all of the Certificates then outstanding that are required for the amendment, which instrument or instruments shall refer to the proposed amendment and that shall specifically consent to and approve such amendment, the Issuer may adopt the amendment in substantially the same form.

(e) Upon the adoption of any amendatory Ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance with such amendatory Ordinance, and the respective rights, duties, and obligations of the Issuer and all holders of such affected Certificates shall thereafter be determined, exercised, and enforced, subject in all respects to such amendment.

(f) Any consent given by the holder of a Certificate pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the mailing of the notice provided for in this Section, and shall be conclusive and binding upon all future holders of the same Certificate during such period. Such

consent may be revoked at any time after six months from the date of the mailing of said notice by the holder who gave such consent, or by a successor in title, by filing notice with the Issuer, but such revocation shall not be effective if the holders of 51% in aggregate principal amount of the affected Certificates then outstanding, have, prior to the attempted revocation, consented to and approved the amendment.

(g) For the purposes of establishing ownership of the Certificates, the Issuer shall rely solely upon the registration of the ownership of such Certificates on the registration books kept by the Paying Agent/Registrar.

Section 15. APPROPRIATION. To pay the debt service coming due on the Certificates prior to receipt of the taxes levied to pay such debt service, if any, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount, which together with capitalized interest received from the sale of the Certificates, will be sufficient to pay such debt service, and such amount shall be used for no other purpose.

Section 16. EFFECTIVE DATE. In accordance with the provisions of V.T.C.A., Government Code, Section 1201.028, this Ordinance shall be effective immediately upon its adoption by the City Council.

Section 17. SEVERABILITY. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any persons or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this Ordinance, despite such invalidity, which remaining portions shall remain in full force and effect.

(Execution Page Follows)

DULY PASSED AND APPROVED by the City Council of the City of Hewitt, Texas, on the 18th day of March, 2013.

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WILBERT WACHTENDORF, Mayor  
City of Hewitt, Texas

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LYDIA LOPEZ, City Secretary  
City of Hewitt, Texas

(CITY SEAL)

## EXHIBIT A

### **Annual Financial Statements and Operating Data**

The following information is referred to in Section 13(b) of this Ordinance:

The financial information and operating data with respect to the Issuer to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

-- Tables 1 through 5B, inclusive 9, 11 through 15, inclusive, and 19 through 24, inclusive, of Appendix A

-- APPENDIX D (FINANCIAL INFORMATION FOR THE LAST COMPLETED FISCAL YEAR WHICH WILL BE UNAUDITED, UNLESS AN AUDIT IS PERFORMED IN WHICH EVENT THE AUDITED FINANCIAL STATEMENTS WILL BE MADE AVAILABLE)

### **Accounting Principles**

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in paragraph above.

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## **COUNCIL AGENDA ITEM FORM**

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**MEETING DATE:** March 18, 2013

**AGENDA ITEM #:** 4

**SUBMITTED BY:** Adam Miles, City Manager

**ITEM DESCRIPTION:**

Authorize City Manager to negotiate and execute a memorandum of understanding with JEV properties, LP accepting and approving donation of approximately 6.39 acres of land and purchase of 4 acres of adjacent property, for the purpose of constructing city facilities (including the police and fire building) and installation of public infrastructure.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

JEV Properties, LP approached the City concerning the possible donation of approximately 6.39 acres of land for construction of the proposed police and fire facility. The subject property is located on Ritchie Road near Hewitt Drive. Additionally, the city would acquire an additional 4 acres of land immediately adjacent to and South of the donated tract for future buildings. Funding for purchase of the additional land would be from the sale of surplus city property. The surplus property to be sold at auction includes the current Fire Station at Johnson and Second Street as well as a 1.25 acre tract located at the intersection of Ritchie Road and Devonshire Street. In total the city would acquire approximately 10.39 acres of land. Approval of this item would authorize the City Manager to finalize negotiations, auction surplus city property, accept the donation, and complete transfer of the properties.

**ATTACHMENTS:**

None



## **COUNCIL AGENDA ITEM FORM**

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**MEETING DATE:** March 18, 2013

**AGENDA ITEM #:** 5

**SUBMITTED BY:** Adam Miles, City Manager

**ITEM DESCRIPTION:**

Authorize the City Manager to negotiate and execute a professional services agreement with RBDR, PLLC for design and construction of Police and Fire facility.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

As requested, RBDR has provided the attached contract for review and consideration by the city. The standard AIA agreement outlines the scope of professional services including design, bidding, and construction of the proposed Police and Fire facility. Approval of this item would authorize the City Manager to negotiate and execute this agreement; design work would begin immediately.

**ATTACHMENTS:**

Standard Form of Agreement



PLLC ■ Architects

913 Franklin Avenue ■ Suite 100 ■ Waco, Texas 76701 ■ Phone 254-776-8380 ■ Fax 254-776-7390

## m e m o r a n d u m

Date: February 18, 2013

To: Mr. Adam Miles  
City Manager  
City of Hewitt  
105 Tampico Drive  
PO Box 610  
Hewitt, Texas 76643

From: Teresa Raso

Re: Police and Fire Headquarters  
for the City of Hewitt  
RBDR Project No.: 13020  
**Contract Documents**

Please find enclosed two (2) originals of AIA Document B101-2007, *Standard Form of Agreement Between Owner and Architect*. These are for your review and signature.

Once they have been signed, please retain one (1) original for your records and return the other original to this office for our records.

Should you have any questions regarding this matter, please do not hesitate to call. Thank you.

c: File

Keith Bailey, AIA  
Grant Dudley, AIA

ARCHITECTURE

David E. Wright, AIA, LEED AP BD+C  
Bernadette Hookham, AIA, LEED AP BD+C

PLANNING

INTERIOR DESIGN



# AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Eleventh day of February in the year Two Thousand Thirteen

*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:

*(Name, legal status, address and other information)*

City of Hewitt  
105 Tampico Drive  
PO Box 610  
Hewitt, TX 76643  
Telephone Number: (254) 666-6171  
Fax Number: (254) 666-6014

and the Architect:

*(Name, legal status, address and other information)*

RBDR, PLLC  
913 Franklin Ave.  
Suite 100  
Waco, TX 76701  
Telephone Number: (254) 776-8380

for the following Project:

*(Name, location and detailed description)*

RBDR Project No.: 13020 - City of Hewitt Police and Fire Headquarters

New construction of a police and fire departments headquarters of approximately 24,000 square feet including offices, training rooms, truck storage, sleeping quarters, storage, etc.

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

Architect's Consultants shall include structural engineer and mechanical/electrical/plumbing (MEP) engineer as a part of basic services.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

September 2013

.2 Substantial Completion date:

TBD

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

Init.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

N/A

.2 Automobile Liability

N/A

.3 Workers' Compensation

As required by law

.4 Professional Liability

\$1,000,000.00

## ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by

the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents

including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

#### § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

##### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

##### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 3.6 CONSTRUCTION PHASE SERVICES

#### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests

for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

#### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

#### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

| Additional Services                  | Responsibility<br>(Architect, Owner<br>or<br>Not Provided) | Location of Service Description<br>(Section 4.2 below or in an exhibit<br>attached to this document and<br>identified below) |
|--------------------------------------|------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| § 4.1.1 Programming                  | Architect                                                  | 4.2.1                                                                                                                        |
| § 4.1.2 Multiple preliminary designs | Not Provided                                               |                                                                                                                              |
| § 4.1.3 Measured drawings            | Not Provided                                               |                                                                                                                              |
| § 4.1.4 Existing facilities surveys  | Not Provided                                               |                                                                                                                              |

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User Notes:

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|          |                                                           |                 |        |
|----------|-----------------------------------------------------------|-----------------|--------|
| § 4.1.5  | Site Evaluation and Planning (B203™–2007)                 | Owner/Architect | 4.2.5  |
| § 4.1.6  | Building information modeling                             | Architect       | 4.2.6  |
| § 4.1.7  | Civil engineering                                         | Not Provided    |        |
| § 4.1.8  | Landscape design                                          | Architect       | 4.2.8  |
| § 4.1.9  | Architectural Interior Design (B252™–2007)                | Architect       | 4.2.9  |
| § 4.1.10 | Value Analysis (B204™–2007)                               | Not Provided    |        |
| § 4.1.11 | Detailed cost estimating                                  | Not Provided    |        |
| § 4.1.12 | On-site project representation                            | Not Provided    |        |
| § 4.1.13 | Conformed construction documents                          | Not Provided    |        |
| § 4.1.14 | As-Designed Record drawings                               | Architect       | 4.2.14 |
| § 4.1.15 | As-Constructed Record drawings                            | Not Provided    |        |
| § 4.1.16 | Post occupancy evaluation                                 | Not Provided    |        |
| § 4.1.17 | Facility Support Services (B210™–2007)                    | Not Provided    |        |
| § 4.1.18 | Tenant-related services                                   | Not Provided    |        |
| § 4.1.19 | Coordination of Owner's consultants                       | Not Provided    |        |
| § 4.1.20 | Telecommunications/data design                            | Not Provided    |        |
| § 4.1.21 | Security Evaluation and Planning (B206™–2007)             | Not Provided    |        |
| § 4.1.22 | Commissioning (B211™–2007)                                | Not Provided    |        |
| § 4.1.23 | Extensive environmentally responsible design              | Not Provided    |        |
| § 4.1.24 | LEED® Certification (B214™–2007)                          | Not Provided    |        |
| § 4.1.25 | Fast-track design services                                | Not Provided    |        |
| § 4.1.26 | Historic Preservation (B205™–2007)                        | Not Provided    |        |
| § 4.1.27 | Furniture, Furnishings, and Equipment Design (B253™–2007) | Architect       | 4.2.27 |
|          |                                                           |                 |        |

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

- 4.2.1 RBDR to prepare as a part of Basic Services based upon Owner's criteria
- 4.2.5 RBDR shall assist the Owner with site evaluation and planning as a part of Basic Services
- 4.2.6 RBDR shall provide as a part of Basic Services
- 4.2.8 RBDR shall provide landscape design services as a part of Basic Services
- 4.2.9 RBDR shall coordinate interior finish and color selections with the Owner as a part of Basic Services
- 4.2.14 RBDR to provide bid/construction documents in electronic format (on CD/DVD)
- 4.2.27 RBDR shall provide as a part of Basic Services

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;

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- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 One ( 1 ) weekly visit to the site by the Architect over the duration of the Project during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twenty-four ( 24 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor

the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely

and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other (Specify)

### § 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### § 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of

services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

A fixed fee amount of Two Hundred Twenty-Eight Thousand Four Hundred Dollars and Zero Cents (\$228,400.00) with progress payments for Basic Services in each phase as indicated in 11.5

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

### Hourly Rates:

|                                           |          |
|-------------------------------------------|----------|
| Principal.....                            | \$110.00 |
| Architect.....                            | \$90.00  |
| Interior Designer.....                    | \$60.00  |
| Project Coordinator/Manager.....          | \$55.00  |
| Architect-in-Training/CAD Technician..... | \$50.00  |
| Interior Assistant/CAD Technician.....    | \$50.00  |
| Clerical.....                             | \$30.00  |

Compensation for Additional Services of the Architect's consultants shall be the amount invoiced to the Architect plus ten percent (10.00 %).

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

### Hourly Rates:

|                                           |          |
|-------------------------------------------|----------|
| Principal.....                            | \$110.00 |
| Architect.....                            | \$90.00  |
| Interior Designer.....                    | \$60.00  |
| Project Coordinator/Manager.....          | \$55.00  |
| Architect-in-Training/CAD Technician..... | \$50.00  |
| Interior Assistant/CAD Technician.....    | \$50.00  |
| Clerical.....                             | \$30.00  |

Compensation for Additional Services of the Architect's consultants shall be the amount invoiced to the Architect plus ten percent (10.00 %).

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent ( 10.00 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

|                              |             |           |     |    |              |
|------------------------------|-------------|-----------|-----|----|--------------|
| Schematic Design Phase       | Fifteen     | percent ( | 15  | %) | \$34,260.00  |
| Design Development Phase     | Twenty      | percent ( | 20  | %) | \$45,680.00  |
| Construction Documents Phase | Fifty       | percent ( | 50  | %) | \$114,200.00 |
| Bidding or Negotiation Phase | Five        | percent ( | 5   | %) | \$11,420.00  |
| Construction Phase           | Ten         | percent ( | 10  | %) | \$22,840.00  |
| <hr/>                        |             |           |     |    |              |
| Total Basic Compensation     | one hundred | percent ( | 100 | %) | \$228,400.00 |

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

| Employee or Category (RBDR)          | Rate     |
|--------------------------------------|----------|
| Principal                            | \$110.00 |
| Architect                            | \$90.00  |
| Interior Designer                    | \$60.00  |
| Project Coordinator/Manager          | \$55.00  |
| Architect-in-Training/CAD Technician | \$50.00  |
| Interior Assistant/CAD Technician    | \$50.00  |
| Clerical                             | \$30.00  |

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and

.11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent ( 10.00 %) of the expenses incurred.

#### § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

N/A

#### § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

6.00 % per annum

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

#### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

N/A

- .3 Other documents:  
*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, TX 78701-3945; Phone (512) 205-9000, has jurisdiction over individuals licensed under the Architect's Registration Law, Texas Civil Statutes, Article 249a.

This Agreement entered into as of the day and year first written above.

**OWNER**

\_\_\_\_\_  
(Signature)

Adam Miles

City Manager

\_\_\_\_\_  
(Printed name and title)

**ARCHITECT**

\_\_\_\_\_  
(Signature)

David E. Wright

Partner

\_\_\_\_\_  
(Printed name and title)



## **COUNCIL AGENDA ITEM FORM**

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**MEETING DATE:** March 18, 2013

**AGENDA ITEM #:** 6

**SUBMITTED BY:** Lee Garcia, Finance Director

**ITEM DESCRIPTION:**

Presentation of audit report and opinion by Chris Pruitt, Audit Partner, Patillo, Brown & Hill, LLP.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

Annual audit for fiscal year 2011-2012 has been completed with an unqualified opinion.

**ATTACHMENTS:**

NONE - Audit Report will be distributed at the meeting.

# HEWITT TEXAS

## COUNCIL AGENDA ITEM FORM

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**MEETING DATE:** March 18, 2013

**AGENDA ITEM #:** 7

**SUBMITTED BY:** Adam Miles, City Manager

**ITEM DESCRIPTION:**

Consider request for rate increase by Allied Waste Systems, Inc. as well as an increase in the refuse administrative fee for residential and commercial waste collection and disposal services.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

As per the current contract for refuse collection and disposal, Allied has requested a rate increase of 1.9%. The contract does tie rate increases to several factors which include changes to the Consumer Price Index for Central Texas and changes to disposal fees. Consumer Price Index information is included in the back up material. Approval of this item would authorize Allied Waste to adjust their rates as shown in the back up material.

**ATTACHMENTS:**

Letter

Rate Schedule

Consumer Price Index (CPI)



February 25, 2013

City of Hewitt  
Adam Miles, City Manager  
P.O. Box 610  
Hewitt, TX 76643-0610

VIA CERTIFIED U.S. MAIL: 7007 0710 0003 8391 7867

Dear Adam,

Allied Waste is proud to be the service provider for the city of Hewitt. In accordance with the terms of the Refuse and Recyclable Materials Collection contract with the City, Allied Waste requests a rate adjustment to reflect the changes in the Consumer Price Index (CPI).

We are requesting an annual rate increase of 1.9% as allowed by the contract in Section 14.02 Modification to Rates. Attached for your review is a copy of the most current CPI publication and a new rate schedule. The effective date of the increase would be April 1, 2013.

If you have any questions please do not hesitate to contact me on my cell phone at (903) 681-4308, at the office at (903) 874-8717 or via email at [lcapehart@republicservices.com](mailto:lcapehart@republicservices.com). I will wait to hear from you on what steps, if any, I need to follow in order to implement the adjustment. Allied Waste appreciates your business and I look forward to hearing from you in the near future.

Best Regards,

Laura Capehart  
Municipal Services Manager

Enc. Rate Schedule  
Consumer Price Index (CPI)

# City of Hewitt

## Rate Schedule

Effective April 1, 2013

### Residential

|                                                  |                 |
|--------------------------------------------------|-----------------|
| Once per week REFUSE collection with polycart    | \$ 11.90        |
| Twice per month RECYCLE collection with polycart | \$ 3.40         |
| Total charge to resident/per month               | <u>\$ 15.30</u> |

Additional polycart/ per month \$ 4.53

### Commercial Hand Collection

Once per week REFUSE collection with polycart \$ 15.93

Additional polycart/per month \$ 4.53

### Front Load Containers

| SIZE   | 1X week | 2X week | 3X week | 4X week | 5X week | Extra |
|--------|---------|---------|---------|---------|---------|-------|
| 2 yard | 81.70   | 145.21  | 208.77  | 272.22  | 335.71  | 46.17 |
| 3 yard | 91.90   | 160.79  | 233.21  | 303.86  | 374.54  | 46.17 |
| 4 yard | 99.06   | 175.66  | 254.70  | 332.54  | 410.35  | 53.86 |
| 6 yard | 119.46  | 211.59  | 303.73  | 395.86  | 488.04  | 61.57 |
| 8 yard | 141.34  | 247.84  | 368.14  | 460.77  | 567.22  | 61.57 |

Casters: \$ 31.90

Locks: \$ 12.77

### Roll Off Containers

| SIZE    | TYPE      | Delivery | Rent/Day | Haul Rate/Load | Deposit/ container |
|---------|-----------|----------|----------|----------------|--------------------|
| 20 yard | Open Top  | 127.64   | 3.69     | 439.35         | 255.28             |
| 30 yard | Open Top  | 127.64   | 3.69     | 514.91         | 255.28             |
| 40 yard | Open Top  | 127.64   | 3.69     | 556.89         | 255.28             |
| 42 yard | Compactor | 127.64   | 3.69     | 604.22         | 255.28             |

FRANCHISE FEE 10%

# Consumer Price Indexes for Central Texas and U.S. Urban

## November 2012

(1982-84 = 100)

| Estimated Central Texas Consumer Price Index | Nov '12        | Sep '12        | Nov '11        | Yearly Percent Change | 2-month Percent Change |
|----------------------------------------------|----------------|----------------|----------------|-----------------------|------------------------|
| <b>Food and Beverages</b>                    | 225.1          | 224.3          | 222.1          | 1.3                   | 0.4                    |
| <i>Food at Home</i>                          | 193.5          | 192.2          | 190.8          | 1.4                   | 0.7                    |
| <i>Food Away from Home</i>                   | 262.9          | 263.8          | 260.0          | 1.1                   | -0.3                   |
| <i>Alcoholic Beverages</i>                   | 314.7          | 308.8          | 308.4          | 2.0                   | 1.9                    |
| <b>Housing</b>                               | 186.9          | 185.7          | 182.2          | 2.9                   | 0.6                    |
| <b>Apparel</b>                               | 115.7          | 119.7          | 126.3          | -8.4                  | -3.3                   |
| <b>Transportation</b>                        | 216.7          | 228.3          | 214.2          | 1.2                   | -5.1                   |
| <b>Medical Care</b>                          | 387.6          | 376.5          | 372.3          | 4.1                   | 2.9                    |
| <b>Recreation</b>                            | 111.0          | 111.2          | 107.9          | 2.9                   | -0.2                   |
| <b>Education and Comm.</b>                   | 138.7          | 138.9          | 138.1          | 1.2                   | 0.6                    |
| <b>Other Goods &amp; Services</b>            | 371.4          | 370.3          | 359.5          | 3.3                   | 0.3                    |
|                                              |                |                |                |                       |                        |
| <b>All Items</b>                             | <b>222.3</b>   | <b>223.4</b>   | <b>218.1</b>   | <b>1.9</b>            | <b>-0.5</b>            |
| <b>U.S. Urban Average</b>                    | <b>Nov '12</b> | <b>Sep '12</b> | <b>Nov '11</b> | <b>Yearly % Chg.</b>  | <b>2-mo % Chg.</b>     |
| <b>Food and Beverages</b>                    | 234.7          | 234.2          | 230.7          | 1.7                   | 0.2                    |
| <i>Food at Home</i>                          | 232.3          | 231.6          | 229.4          | 1.3                   | 0.3                    |
| <i>Food Away from Home</i>                   | 240.0          | 239.6          | 234.0          | 2.6                   | 0.2                    |
| <i>Alcoholic Beverages</i>                   | 231.2          | 231.0          | 227.4          | 1.7                   | 0.1                    |
| <b>Housing</b>                               | 223.8          | 223.9          | 220.0          | 1.7                   | 0.0                    |
| <b>Apparel</b>                               | 129.6          | 128.6          | 127.3          | 1.8                   | 0.8                    |
| <b>Transportation</b>                        | 214.5          | 221.7          | 211.4          | 1.5                   | -3.2                   |
| <b>Medical Care</b>                          | 418.7          | 418.0          | 404.9          | 3.4                   | 0.2                    |
| <b>Recreation 2/</b>                         | 114.8          | 115.0          | 113.2          | 1.4                   | -0.2                   |
| <b>Education and Comm.2/</b>                 | 134.7          | 134.6          | 132.7          | 1.5                   | 0.1                    |
| <b>Other Goods &amp; Services</b>            | 396.7          | 396.2          | 390.8          | 1.5                   | 0.1                    |
|                                              |                |                |                |                       |                        |
| <b>All Items</b>                             | <b>230.2</b>   | <b>231.4</b>   | <b>226.2</b>   | <b>1.4</b>            | <b>-0.3</b>            |
|                                              |                |                |                |                       |                        |

Estimated by Baylor Center for Business and Economic Research

[https://business.baylor.edu/Tom\\_Kelly/Nov'12cpi.docx](https://business.baylor.edu/Tom_Kelly/Nov'12cpi.docx)



## **COUNCIL AGENDA ITEM FORM**

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**MEETING DATE:** March 18, 2013

**AGENDA ITEM #:** 8

**SUBMITTED BY:** Adam Miles, City Manager

**ITEM DESCRIPTION:**

Authorize City Manager to negotiate and execute an Interlocal Cooperation Agreement with the Waco Metropolitan Area Regional Sewer System participating cities.

**STAFF RECOMMENDATION/ITEM SUMMARY:**

Several cities participate in the current Waco Metropolitan Area Regional Sewer System (WMARSS) Interlocal agreement. Hewitt is a participating member and the City Manager serves as Hewitt's representative on the Board. Like the other cities, Hewitt owns and pays for a percentage of the overall M&O expenses of the entire system. Hewitt also pays a proportionate share of costs related to large Capital Improvement Projects like the Bull Hide Creek Wastewater Treatment Plant. Currently, Hewitt has 1.722 Million Gallons Per Day (MGD) in treatment capacity in the system; a little less than 20% of the overall system capacity.

The City of Waco is not only a member city, but also the operator of the system. The purpose of this item is to consider changes to the agreement concerning reimbursement to Waco for M&O and Capital projects. The new language seeks to clarify how and when re-imbursement will be paid when expenses are incurred by WMARSS. Specifically, the main proposed changes to the current Interlocal Agreement are found in Article 6 and Article 7 of the revised agreement, included as back-up material to this item. These revisions have been approved by the WMARSS Board with input sought and received by each participating entity. The revised language does not present a significant change from the current agreement, the main purpose is to clarify a procedure for re-imbursement. Council approval is needed to authorize the City Manager to execute this revised agreement.

**ATTACHMENTS:**

Draft Agreement w/proposed changes

control the division of revenue. The City of Lorena shall not share in the revenue received pursuant to the contract with Sandy Creek or any succeeding contract with a successor to Sandy Creek.

## ARTICLE 6

### **Projects for Improvements, Upgrades, Repairs, and Closure to WMARSS Facilities**

- 6.1 Should a project for the improvements, upgrades or repairs to the WMARSS Facilities or closure of WMARSS Facilities become necessary, the Cities will share the cost of such project based on the proportionate share of the Annual Operation and Maintenance Expense calculated as provided in Section 5.4.2 for the Fiscal Year in progress at the time the WMARSS Board approves the project for the improvements, upgrades or repairs. The proposed project must be approved by the affirmative vote of at least seventy-five percent (75%) of the votes cast by the WMARSS Board.
- 6.2 After the Board has approved a project under this article, each participating city (other than Waco) shall provide its funding share for the project by executing an agreement with Waco to obligate said city to pay its proportionate share to Waco.
- 6.2.1 The agreement shall identify the proportionate share of the total amount of the project that said city is obligated to pay.
- (a) The proportionate share shall be identified as a percentage of the total amount needed to complete the project.
  - (b) The total amount of the agreement may be based on either the engineer's estimate of the cost or the amount actually bid by the bidder to be awarded the contract shall be included. If based on engineer's estimate, once the project is bid, Waco shall advise the participating cities of any adjustment needed in their respective proportionate amounts.
  - (c) During the construction or installation of the project, Waco shall notify said city of any needed changes to the project that will increase the actual costs of the project as soon as practical. This notification may be by email or other suitable communication.
- 6.2.2 The agreement shall identify the source of the funds to be used by said city and shall identify where the funds are being held.
- 6.2.3 The city shall obligate itself to pay Waco said city's proportionate share of the project expenditure based on periodic invoices prepared by Waco during the process of planning, designing, and constructing or installing the project improvements, upgrades, repairs, or closures up to a total amount set out in the agreement. Payments shall be made within 20 days of receiving an invoice from Waco.
- (a) Invoices will be based on estimates payable from the contractor performing the work on the project.
- 6.2.4 If said city fails to make its payments in a timely manner and fails to make payment within thirty (30) days of receiving the invoice from Waco:

- (a) Waco shall send notice to the defaulting city (with a copy to the other cities) giving the defaulting city thirty (30) days to cure the default.
- (b) A payment made after the payment is due begins to accrue interest on the 31<sup>st</sup> day after receiving the invoice from Waco. The interest rate shall be determined as provided in Chapter 2251 of the Texas Government Code<sup>1</sup>.
- (c) The defaulting city may request an extension to pay its share by filing a request with the WMARSS Board. In the request, the defaulting city must explain the reason it is unable to pay its share and provide a timeline for when it will be able to make the payments. The extension request must be approved by the Board (either at a meeting or thru other written communications). Since the failure to pay by the defaulting city may result in another city having to pay a larger portion of the costs in order to stay current on payments to contractors, suppliers, etc., the defaulting city may be required to sign an agreement stating the approved payment schedule and providing for a penalty amount or interest payment on the funds. The city or cities paying the deficit amount to stay current on the payments to contractors, suppliers, etc., shall share the penalty and/or interest amount in proportion to what they pay.
- (d) If the default is not cured (or an extension request filed as provided above), a meeting of the WMARSS Board shall be held within fourteen (14) days of the end of the thirty (30) day cure period to discuss the breach as provided in Section 11.1.

6.3 If an emergency arises that requires an immediate expenditure to avoid regulatory violations and/or penalties and/or to protect the health, safety, or welfare of persons or property, Waco shall proceed with the actions necessary to address the emergency and shall notify the Cities as soon as possible.

6.3.1 The notice to the Cities shall describe the nature of the emergency, the estimated costs to address the emergency, and the estimated schedule to complete necessary actions. As circumstances regarding the emergency change, Waco shall notify the Cities of the change and any increases or decreases in estimated costs to address the emergency.

6.3.2 The notice to the Cities may be by telephone and/or email. A written notice of the costs shall be provided by email and/or U.S. Mail as soon as practical.

6.3.3 The Cities shall share the costs to address the emergency as provided in Section 6.1.

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<sup>1</sup> As of 1/24/2013, from Texas Government Code Section 2251.025 - The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

## ARTICLE 7

### Treatment Capacity Expansion & Peak Flow Storage

#### 7.1 Additional Treatment or Storage Facilities.

- 7.1.1 TPDES Permit No. 11071-001 issued for the WMARSS treatment plant states that whenever the flow measurements for the facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrade of the domestic wastewater treatment and/or collection facilities and whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from TCEQ to commence construction of the necessary additional treatment and/or collection facilities.
- 7.1.2 Acquiring additional capacity requires the expansion of existing facilities and/or the construction of new facilities, including but not limited to, treatment facilities (or satellite treatment plants) and associated lift stations and interceptors as well as storage facilities for peak flows that alleviate the need for treatment facilities. Costs to acquire these facilities include the design and engineering services and land acquisition as well as the construction costs. In addition, the services of a program manager may be retained to oversee such projects. All of these costs for a project covered by this Article will be shared by the WMARSS Cities based on the amount of capacity (treatment or storage) that the city is acquiring in the project.
- (a) These shared costs do not include costs for transmission lines or lift stations that are part of the internal collection facilities of any city. For example, the costs to construct facilities to transport Lorena's wastewater to the WMARSS Point of Entry for the Bull Hide Creek WWTP are not part of the WMARSS shared costs.

#### 7.2 Mandated Expansion.

- 7.2.1 When additional capacity or facilities are required by written notice from a regulatory agency, the Operator shall calculate and forward to each City a copy of such notice and information on each City's capacity in WMARSS. Operator shall also include information showing the flow measurements and calculations relative to the 75% / 90% permit requirements. A City may not use more than its capacity in WMARSS after the capacity determination has been established, unless the City acquires additional capacity from one of the other Cities. This acquisition may take the form of a lease for extra capacity through payment of the capital costs for that capacity until WMARSS capacity is expanded to include capacity for the City that is using more capacity than it owns.
- 7.2.2 The WMARSS Operator shall act in good faith to notify each City if additional capacity is needed with ample time to allow each City a reasonable opportunity to prepare and respond. At such time as additional capacity is needed, each City will decide how much additional capacity it desires and inform the Operator.

- (a) The Operator will calculate the total amount of expansion necessary and the total cost for each City requesting additional capacity.
- (b) Each City purchasing additional capacity may use any legal method available to it to pay for its additional capacity, including contracting with one or more of the other Cities to finance the additional capacity. Each City will allocate sufficient funds to cover the cost of any additional capacity that it may request from time to time.
- (c) If a City elects not to participate in an expansion of WMARSS and is not required to obtain additional capacity by applying the 75% / 90% standard as applied to that City's daily average and annual average flows for the highest three consecutive months, that City will not be required to share in acquisition and construction costs associated with the expansion. If a City elects not to participate in the expansion as set forth herein, that City's ownership interest in WMARSS shall remain at the capacity MGD level it owned prior to the WMARSS expansion. Consequently, its percentage of ownership in WMARSS will be reduced.

7.3 Once a project under this Article is approved by the Board, each participating city (other than Waco) shall provide its funding share for the project by executing an agreement with Waco to obligate said city to pay its proportionate share to Waco.

7.2.1 The agreement shall identify the cost share of the total amount of the project that said city is obligated to pay.

- (d) The share shall be identified in terms of the capacity (treatment or storage) being acquired and as a percentage of the total project.
- (e) The total amount of the contract may be based on either the engineer's estimate of the cost or the amount actually bid by the bidder to be awarded the contract shall be included. If based on engineer's estimate, once the project is bid, Waco shall advise the participating cities of any adjustment needed in their respective amounts.
- (f) During the construction of the project, Waco shall notify said city of any needed changes to the project that will increase the actual costs of the project as soon as practical. This notification may be by email or other suitable communication.

7.2.2 The agreement shall identify the source of the funds to be used by said city and shall identify where the funds are being held.

7.2.3 The city shall obligate itself to pay Waco said city's share of the project based on periodic invoices prepared by Waco during the process of planning, designing, and constructing of the project up to a total amount set out in the agreement. Payments shall be made within 20 days of receiving an invoice from Waco.

- (a) Invoices will be based on estimates payable from the contractor performing the work on the project.

7.2.4 If said city fails to make its payments in a timely manner and fails to make payment within thirty (30) days of receiving the invoice from Waco:

- (e) Waco shall send notice to the defaulting city (with a copy to the other cities) giving the defaulting city thirty (30) days to cure the default.
- (f) A payment made after the payment is due begins to accrue interest on the 31<sup>st</sup> day after receiving the invoice from Waco. The interest rate shall be determined as provided in Chapter 2251 of the Texas Government Code.
- (g) The defaulting city may request an extension to pay its share by filing a request with the WMARSS Board. In the request, the defaulting city must explain the reason it is unable to pay its share and provide a timeline for when it will be able to make the payments. The extension request must be approved by the Board (either at a meeting or thru other written communications). Since the failure to pay by the defaulting city may result in another city having to pay a larger portion of the costs in order to stay current on payments to contractors, suppliers, etc., the defaulting city may be required to sign an agreement stating the approved payment schedule along with a penalty amount or interest payment on the funds another city is paying. The city or cities paying the deficit amount to stay current on the payments to contractors, suppliers, etc., shall share the penalty and/or interest amount in proportion to what they pay.
- (h) If the default is not cured (or an extension request filed as provided above), a meeting of the WMARSS Board shall be held within fourteen (14) days of the end of the thirty (30) day cure period to discuss the breach as provided in Section 11.1.
- (i) If the project involves increasing the capacity (treatment or storage) of WMARSS, another city may offer to make the payments of the defaulting city to obtain ownership of the capacity to the extent of those payments. The WMARSS Board must approve and accept said offer.

## **ARTICLE 8**

### **Operation**

#### **8.1 WMARSS Operator.**

8.1.1 The Cities have chosen the City of Waco (“Operator”) to be the entity that will manage, operate, and maintain the WMARSS.

- (a) As a municipality, the City of Waco has the right of eminent domain to acquire property for a public purpose, whether located inside or outside the municipality to provide for, enlarge, or improve a sewage system including sewage collection, drainage, treatment, disposal and emptying facilities. (Title 8 of the Texas Local Government Code) As the Operator, Waco may acquire property for WMARSS Facilities with the approval of the WMARSS Board. Waco may initially acquire title to