

HEWITT TEXAS

CITY COUNCIL MEETING AGENDA

May 7, 2018

Workshop/Regular Meeting – 5:30 PM/7:00 PM

CITY HALL, 200 PATRIOT COURT

HEWITT, TX 76643

MAYOR AND CITY COUNCIL

Travis Bailey – Mayor, Ward 1

Ed Passalugo – Mayor Pro Tem, Ward 3

Wilbert Wachtendorf – Council Member, Ward 1

Bill Fuller – Council Member, Ward 2

James Vidrine – Council Member, Ward 2

Steve Fortenberry – Council Member, Ward 3

Kurt Krakowian – Council Member At-Large

CITY STAFF

Adam Miles, City Manager

Charlie Buenger, City Attorney

Miles Whitney, City Engineer

Lydia Lopez, City Secretary

Jim Devlin, Police Chief

Lee Garcia, Finance Director

Lance Bracco, Fire Chief

Waynette Ditto, Library Director

Katie Allgood, Managing Director

Tracy Lankford, Community Dev. Director

Tuck Saunders, Assistant Police Chief

Kevin Reinke, Utilities Director

HEWITT TEXAS

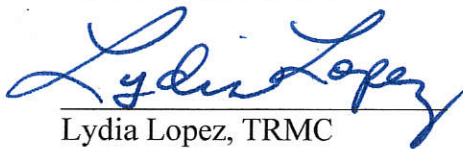
NOTICE OF MEETING OF THE GOVERNING BODY

Notice is hereby given that a **Workshop** meeting of the governing body of the City of Hewitt will be held on the **7th day of May, 2018, at 5:30 PM in Hewitt City Hall, Council Workshop Room, 200 Patriot Court**, Hewitt, Texas, at which time the following subjects will be discussed:

1. Call meeting to order.
2. City Manager's update on municipal business:
 - a. Report from City Engineer
 - b. Briefing and discussion concerning upcoming events:
 - Nacho Daddy (Greater Hewitt Chamber Event) Warren Park – May 12, 2018, 5:30 to 9:00 PM
 - Waste Diversion Day – May 19, 2018
 - c. Briefing and discussion concerning Preliminary Tax Roll.
 - d. Briefing and discussion concerning financial reports.
 - e. Briefing and discussion concerning post-election procedures.
 - f. Briefing and discussion concerning Brush and Bulk Collection Site.
 - g. Briefing and discussion concerning vacancies and appointments.
 - h. Briefing and discussion concerning Public Safety operations – Police & Fire.
 - Midway ISD – School Resource Officer (SRO)
3. Review of the regular meeting agenda.
4. Convene Executive Session pursuant to the Open Meetings Act, Chapter 551, Texas Government Code to discuss the following:
 - **Pursuant to §551.072 – Purchase, Exchange, Lease, or Value of Real Property.**
5. Close Executive Session.
6. 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 3:30 AM/PM on May 4, 2018.

CITY OF HEWITT



Lydia Lopez, TRMC
City Secretary

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 **7th day of May, 2018, at 7:00 PM** in the **City Council Chambers at Hewitt City Hall, 200 Patriot Court**, Hewitt, Texas, at which time the following subjects will be discussed:

1. Call meeting to order.
2. Pledge of Allegiance to the U.S. Flag
3. Special presentation of Hewitt Police Hero Award.
4. Special presentation of proclamation in recognition of "Municipal Clerks Week".
5. Consider approval of minutes of the City Council Workshop and Regular Meeting of April 16, 2018.
6. Hear visitors on matters pertaining to city business. *Under the Texas Open Meetings Act, the Council is prohibited from discussing, responding, or acting on any comments or items that have not been properly posted on the agenda.*
7. Consider and act on designation of Mayor.
8. Consider and act on designation of Mayor Pro Tem.
9. Public hearing and action on a request for a special use permit for a special and other private school at 1731 Spring Valley Blvd. as prescribed in Part 4 of Appendix-A Zoning of the Code of Ordinances of the City of Hewitt.
10. Consider appointment to the Planning & Zoning Commission.
11. Consider award of bid for 2018 - Sierra Slope/Angel Fire Street; Street Improvements to Waco Paving in the amount of \$30,861.12.
12. Authorize the City Manager to negotiate and execute an Interlocal Cooperation Act Agreement with McLennan County for slurry seal of selected public roads in McLennan County Road System, Precinct 4.
13. Consider and take appropriate action to join as plaintiff in the lawsuit between the City of McAllen, et al, vs State of Texas in a challenge to the constitutionality of SB 1004, which relates to the deployment of network nodes in municipal rights-of-way and the fees cities may charge for use of their rights-of-way.
14. Consider an ordinance amending Chapter 78 - Utilities, ARTICLE VII. - Use and Occupancy of City's Rights-of-Way for Provision of Utility, Telecommunications and Cable Services, of the Code of Ordinances of the City of Hewitt, providing rules and regulations related to Network Nodes, Transport Facilities and Node Support Poles, adopting a Design Manual, and providing an effective date.
15. Consider amending the Master Fee Schedule concerning franchise fees and small cell nodes.
16. Authorize City Manager to negotiate and execute a memorandum of agreement concerning acquisition of land related to the Ritchie Road widening project.
17. Consider an ordinance of the City Council of the City of Hewitt, Texas approving and directing initiation and prosecution of eminent domain proceedings for land needed for the Ritchie Road Project, and additional authorizations and findings.
18. 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 3:30 AM/PM on May 4, 2018.

CITY OF HEWITT

A handwritten signature in blue ink, appearing to read "Lydia Lopez", is written over a horizontal line.

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

COUNCIL WORKSHOP AGENDA ITEM #2.a

HEWITT TEXAS II

CITY ENGINEER'S REPORT

May 4, 2018

2015 Bond Projects:

Lift Station No. 5 Removal

At this time, we are working towards getting easements signed.

IH - 35 Waterline

- Phase 2; Sun Valley to Flat Rock Trailers
 - Plans to be submitted to TxDOT for permitting shortly, pending Lift Station No. 5 issues.

Sun Valley Rd.; Waterline Bores.

Contracts have been executed, we will be working on getting a pre-construction meeting scheduled.

2018 Street Improvements; Slurry Seal

Contract documents are being executed.

Alamo Lift Station (Lift Station No. 7)

Will provide update at meeting, if any. We have received permission to go ahead and connect to Waco's line but will have their line temporary plugged until ILA is executed.

Drainage

209/213 Cross Country Drainage Improvements

Contract documents are being executed.

Old Temple Rd; Phase 2

Contractor has been working to complete all the cement stabilized base. Once cure times are achieved then they will pave the remainder of the street.

Ritchie Road Improvements; (From Warren Dr. to Park Place Dr.)

We are finalizing plans.

HEWITT TEXAS

CITY ENGINEER'S REPORT

May 4, 2018

Hewitt Dr. and Panther Way

Bid date has been set for May 18, 2018.

Sierra Slope / Angel Fire Intersection Repair

Bids were received on April 26, 2018. Within the Council packet you should find the Bid Tabulation and my Letter of Recommendation of Award for the Council's consideration.

Plant No. 1; Chemical Disinfectant Building; (Community Services)

We are working on a plan to add onto the existing chemical feed building to provide a place for the L.A.S. equipment to be kept. At this time the existing chemical feed equipment is housed within the electrical control building.

By:



Miles W. Whitney, P.E.

Note: All dates are approximate and subject to change.

HEWITT TEXAS

COUNCIL WORKSHOP AGENDA ITEM #2.b

HOUSEHOLD WASTE

B.O.P.A. DIVERSION DAY

**Solid Waste Operations Center
501 Schroeder Drive**

**RESIDENTS OF HEWITT, LACY LAKEVIEW,
WACO AND WOODWAY ONLY**

**Saturday, May 19, 2018
7:00 a.m. - 1:30 p.m.**

What is "B.O.P.A."?

Bring **B**atteries, **B**ulbs, **O**il, **P**aint, and **A**ntifreeze. Also bring up to 10 tires (off the rims, max size 20"; no ORT, skid steer or earth movers) Bring electronics!

**A CITY WATER BILL &
DRIVER'S LICENSE REQUIRED**



We will **NOT ACCEPT** pesticides, cleaners, unknown items, unlabeled containers, Business, industrial, waste; ammunition, explosives, fireworks, trash and garbage, compressed gas cylinders, gasoline tanks, smoke detectors, flammable liquids such as gasoline or containers larger than 5 gallons.

PLEASE BE PREPARED TO WAIT IN LINE!
FOR MORE INFORMATION CALL THE CITY OF WACO SOLID WASTE SERVICES
(254) 299-2612

Thanks also to Batteries Plus Bulbs, Coca Cola, DEA Waco Resident Office/Waco Task Force Habitat for Humanity ReStore, HOTCOG, Midstate Environmental Services, and Universal Recycling Technologies.



Acceptable Items

- **Paint ONLY**
- **Used Motor Oil & Filters ONLY**
- **Antifreeze ONLY**
- **Batteries of all kinds**
- **Fluorescent bulbs, CFL bulbs ("curly")**
- Telephones, Cell Phones & Chargers
- Scrap Tires (10 per household, No tires with rims/wheels, Residential tires only, No business tires, No OTR, Skid Steer, Earth Movers, large farm or agricultural tires; Maximum size: 20 inches)
- Televisions (CRT, LCD, LED, Plasma, 3D, no consoles)
- Stereo equipment, VCR and DVD players
- Computers (Desktops & Laptops)
- Printers (Ink or Toner)
- Ink/Toner Cartridges
- Computer Accessories (Mice, Keyboards, Webcams, Speakers, Microphones etc.)
- Computer Monitors (CRT, LCD, LED)
- Microwave Ovens (Non PCB)
- Copiers/Fax Machines
- Typewriters
- Telephones
- GPS Units
- Pagers
- PDA's
- Tablets
- Answering Machines
- MP3 Players
- Scanners
- Radios/Boomboxes/CD Players etc.
- Storage Devices (External Hard Drives, Solid State Drives, SD Cards, Memory Cards, Card Readers, etc.)
- Audio Equipment (Speakers, Microphones, DJ Equipment, Receivers, Recording Devices, Headphones, etc.)
- Video Equipment (Cameras, Video Cameras, Web Cams, Recording Devices, etc.)
- Communications Equipment
- Medical Testing Equipment
- Laboratory Equipment
- Circuit Boards
- Cables, Wires, Power Cords, Power Strips
- Small home appliances (no refrigerators)

Items Not Acceptable

- Pesticides, herbicides
- Paint strippers, varnishes,
- Business waste
- Lighter Fluid, Solvents & Varnish
- Flammable mixtures such as gasoline
- Pool chemicals
- Cleaners
- Unmarked or unknown materials
- Freon Containing Devices/Materials (Refrigerators, Air Conditioners, De-Humidifiers)
- Yard Equipment
- Gas Powered Equipment
- Items Leaking Fluid
- PCB Containing Materials
- Large Appliances (Stoves, Washers, Dryers, Dishwasher)
- Trash and garbage

Only Residents of these Cities may come to this free event:
Hewitt Lacy Lakeview Waco Woodway
Need help? Contact your city about proper disposal in your community



COUNCIL WORKSHOP AGENDA ITEM #2.c

The City of Hewitt is now in receipt of the preliminary tax roll. This represents the first report from the McLennan County Appraisal District about the appraised value of property in our City. Due to the fact many values for property throughout the County are under review by the Appraisal Review Board, the information is simply provided to give taxing entities an idea about general trends in values.

For Hewitt, the current estimate, taking several variables into account, is estimated to be \$913,969,153. This is up from last year's 842,794,668. Which represents an increase in overall taxable valuation of right under 9% overall.

During the work session, we will discuss the effect of these new values on the overall budget of the City and identify key issues moving forward.

McLENNAN COUNTY APPRAISAL DISTRICT



April 25, 2018

Dear Entities:

We are emailing your 2018 preliminary values for your entity. These values may not include all commercial and business personal property numbers for this year and may not include all abatement and exemption amounts. We have tried to adjust for the ARB hearing changes and any CAG (Capitol Appraisal Group Values). Please do not rely heavily on these preliminary numbers. We will certify your numbers to you, as we do each year, on July 25th. Please call if you have questions concerning your values.

Sincerely,

Andrew Hahn, Jr.

Chief Appraiser

2018 COMPARABLE VALUES

	<u>2016</u>	<u>2017</u>	<u>2018</u>
<u>CITIES</u>	<u>CERTIFIED</u>	<u>CERTIFIED</u>	<u>PRELIMINARY VALUES</u>
BELLMEAD	\$407,683,932	\$422,737,820	\$492,930,476
BEVERLY HILLS	\$95,066,273	\$97,290,846	\$105,299,814
BRUCEVILLE-EDDY	\$61,815,226	\$65,354,079	\$69,143,486
CRAWFORD	\$43,612,949	\$46,789,340	\$53,066,262
GHOLSON	\$36,388,023	\$38,594,749	\$42,598,700
HALLSBURG	\$19,607,102	\$20,428,934	\$23,123,678
HEWITT	\$775,310,599	\$842,794,668	\$913,969,153
LACY LAKEVIEW	\$323,192,032	\$339,763,301	\$356,900,184
LEROY		\$13,415,596	\$14,644,279
LORENA	\$100,283,374	\$111,348,532	\$115,753,034
MART	\$43,124,857	\$44,878,222	\$47,658,343
MCGREGOR	\$330,857,213	\$361,301,290	\$390,530,436
MOODY	\$45,751,039	\$46,483,314	\$49,006,701
RIESEL	\$58,721,493	\$57,545,033	\$59,055,721
ROBINSON	\$734,878,852	\$786,480,615	\$857,677,108
VALLEY MILLS	\$482,230	\$1,014,113	\$1,235,641
WACO	\$8,486,445,283	\$9,249,863,059	\$10,242,693,065
WEST	\$158,738,414	\$169,747,546	\$182,255,427
WOODWAY	\$995,219,789	\$1,071,816,278	\$1,151,497,645
OTHER'S			
MCC	\$15,601,628,400	\$16,550,939,331	\$17,859,115,905
MCLENNAN CNTY	\$14,309,335,387	\$15,476,710,204	\$16,759,660,590
CASTLEMAN CRK	\$22,178,046	\$23,552,531	\$25,014,174
ELM CREEK	\$31,703,702	\$35,087,482	\$38,807,886
MCL & HILL TEHU	\$145,762,935	\$183,139,160	\$195,971,110
WATER CNTRL #2	\$76,070,206	\$81,346,141	\$87,533,874
ISD'S			
AXTELL	\$102,679,309	\$108,146,288	\$117,757,128
BOSQUEVILLE	\$137,157,374	\$147,914,967	\$167,542,615
BRUCEVILLE-EDDY	\$122,760,176	\$134,378,977	\$149,299,105
CHINA SPRING	\$625,484,458	\$692,926,545	\$790,471,916
CONNALLY	\$559,904,883	\$610,650,280	\$650,729,057
CRAWFORD	\$143,182,403	\$155,982,626	\$169,274,685
GHOLSON	\$37,962,679	\$39,680,586	\$46,526,947
HALLSBURG	\$61,722,481	\$63,684,375	\$71,448,082
LA VEGA	\$721,671,751	\$786,349,725	\$883,853,830
LORENA	\$394,030,608	\$419,208,524	\$457,910,618
MART	\$70,789,610	\$71,983,336	\$77,377,453
MCGREGOR	\$363,368,819	\$396,882,314	\$417,782,894
MIDWAY	\$4,158,522,243	\$4,407,721,099	\$4,710,975,195
MOODY	\$99,293,035	\$104,888,345	\$114,967,864
OGLESBY	\$734,446	\$757,188	\$1,012,676
RIESEL	\$688,135,072	\$400,334,996	\$396,068,989
ROBINSON	\$528,693,719	\$557,008,684	\$610,958,272
VALLEY MILLS	\$44,137,095	\$48,507,370	\$52,801,020
WACO	\$4,794,671,002	\$5,294,059,798	\$5,831,635,761
WEST	\$359,444,053	\$375,413,901	\$410,194,011
TOTALS	\$56,918,202,572	\$60,954,902,108	\$66,263,730,810
COMMERCIAL AND BUSINESS PERSONAL PROPERTY VALUES HAVE NOT BEEN NOTICED.			

2017 TAX RATES FOR MCLENNAN COUNTY DISTRICTS			
Taxing District:	Rate:	M&O:	I&S:
MCLENNAN COUNTY	0.505293	0.480558	0.024735
MCLENNAN COUNTY COMM COLL	0.150346	0.115041	0.035305
AXTELL ISD	1.170000	1.170000	
BOSQUEVILLE ISD	1.429973	1.170000	0.259973
BRUCEVILLE-EDDY ISD	1.325000	1.170000	0.155000
CHINA SPRING ISD	1.387194	1.040000	0.347194
CONNALLY ISD	1.374409	1.170000	0.204409
CRAWFORD ISD	1.230500	1.170000	0.060500
GHOLSON ISD	1.040000	1.040000	
HALLSBURG ISD	1.262052	1.040000	0.222052
LAVEGA ISD	1.413532	1.170000	0.243532
LORENA ISD	1.554090	1.170000	0.384090
MART ISD	1.226894	1.040000	0.186894
MCGREGOR ISD	1.330000	1.040000	0.290000
MIDWAY ISD	1.320000	1.040000	0.280000
MOODY ISD	1.361750	1.040000	0.321750
RIESEL ISD	1.450300	1.040000	0.410300
ROBINSON ISD	1.406135	1.170000	0.236135
WACO ISD	1.410000	1.170000	0.240000
WEST ISD	1.290656	1.040000	0.250656
CITY OF BELLMEAD	0.299990	0.227641	0.072349
CITY OF BEV. HILLS	0.490145	0.490145	
CITY OF BRUCEVILLE-EDDY	0.500000	0.500000	
CASTLEMAN CREEK	0.096027	0.096027	
CITY OF CRAWFORD	0.499900	0.280810	0.219090
CITY OF GHOLSON	0.209488	0.209488	
CITY OF HEWITT	0.539677	0.323593	0.216084
CITY OF HALLSBURG	0.070690	0.070690	
CITY OF LACY-LAKEVIEW	0.352628	0.268223	0.084405
CITY OF LORENA	0.592300	0.438399	0.153901
CITY OF LEROY	0.250000	0.250000	
CITY OF MART	0.759233	0.267447	0.491786
CITY OF MCGREGOR	0.594010	0.410714	0.183296
CITY OF MOODY	0.640232	0.640232	
CITY OF RIESEL	0.364347	0.269957	0.094390
CITY OF ROBINSON	0.494500	0.373387	0.121113
CITY OF WACO	0.776232	0.660723	0.115509
CITY OF WEST	0.606477	0.360998	0.245479
CITY OF WOODWAY	0.470000	0.460528	0.009472
ELM CRK WATERSHED	0.032700	0.032700	
MCLENNAN CO. WAC #2	0.000000	0.000000	0.000000
TEHUACANA CREEK W/C DIST. #1	0.025151	0.025151	
OGLESBY ISD	1.170000	1.170000	
CITY OF VALLEY MILLS	0.482600	0.482600	
VALLEY MILLS ISD	1.454000	1.040000	0.414000
Downtown PID #1	0.100000	0.100000	

BUDGET CALENDAR 2018-2019

Date	BUDGET STEPS
4/30	Preliminary Tax Roll to be received by City no later than 4/30.
5/8	BUDGET CREATION BEGINS
	City Manager gives direction for the budget year at the Department Head meeting. Department Heads are tasked to begin work on their departmental budgets, entering their final numbers into the budget software. Finance Director tasked to complete Revenue and Debt budgets.
5/9	CAPITAL PROJECTS - FIVE YEAR PLAN
	City Manager, City Engineer and Staff meet to discuss Capital Projects for the upcoming 5 year period. The final Capital Project list is presented to Council for review.
6/4	CITY MANAGER'S PRESENTATION OF BUDGET OUTLOOK
	City Manager presents his outlook for the upcoming budget year.
6/14	DEPARTMENT DEADLINE FOR BUDGET REQUESTS
	City Manager and Finance Director review Revenue estimates and Department budgets, including Capital Outlay Requests and New Personnel Requests & balance the Proposed Budget. After final review and balancing by City Manager, Finance Director prepares balanced Proposed Budget for Council Workshop. By Charter, the Proposed Budget includes proposed Tax Rate, Debt Service, Capital Outlay and Staffing for the next budget year.
6/18 & 7/2	REGULAR MEETINGS-BUDGET WORKSHOPS (2)
	City Council's Budget Workshop. City Manager presents his Proposed Budget for council discussion. City Council makes changes to Proposed Budget, if any, in preparation for Record Vote on 7/23.
7/20	PUBLISH BUDGET NOTICE OF PUBLIC HEARING
	* "Notice of Public Hearing" in paper (budget notice). Per charter, 15 days prior to public hearing on 8/6. * "Notice of Public Hearing" on website (budget notice). * Preliminary Proposed Budget available for public view in City Secretary's office and on website.
7/23	SPECIAL MEETING- TAKE RECORD VOTE
	* Council determines any tax increase required and takes record vote on tax rate. * Announce date and place for public hearing on the proposed budget on 8/6.
7/25	CERTIFIED TAX ROLL
	Receive Certified Tax Roll from Appraisal District and and adjust final estimate of property tax revenue and present the Effective, Rollback, I&S and M&O Rates.
7/27	PUBLISH REQUIRED TAX NOTICE
	* "Notice of 2018 Tax Year Proposed Property Tax Rate for the City of Hewitt" (published by Tax Assessor). 1st hearing at least 7 days from the publishing. Only published once.) * Publish on Website "Notice of 2018 Tax Year Proposed Property Tax Rate for the City of Hewitt".
8/6	REGULAR MEETING ON BUDGET & TAX RATE (1 of 2)
	* 1st Public Hearing on tax rate (1st hearing at least 7 days from published Notice.) * The Public Hearing on the Budget. * Announce date for Council to vote on tax rate on 8/20.
8/13	SPECIAL MEETING ON TAX RATE (2 of 2)
	* 2nd Public Hearing on the tax rate. (2nd hearing at least 3 days from 1st and no more than 14 days before hearing to adopt.) * Announce date of vote on 8/20.
8/20	REGULAR MEETING-ADOPT TAX RATE & BUDGET
	* Ordinance accepting & approving Tax Roll. * Ordinance Levying a tax rate; special wording on increase in M&O tax revenue and \$\$ on \$100k home. * Ordinance adopting and appropriating budgets.
8/20	Council signs paperwork from Tax Assessor setting rates.
8/21	Web Publishing of Adopted Budget.
10/1	Budget becomes effective.

Calendar for May 2018						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Calendar for June 2018						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Calendar for July 2018						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Calendar for August 2018						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

18, 2	6/18 & 7/2 - Council-Budget Workshop discussion
23	7/23 - Council takes Record Vote setting upper limit to tax rate & approving proposed budget
25	7/25 - Receive CERTIFIED TAX ROLL
20, 27	7/20, 7/27 - Deadlines for publication
6, 13, 20	8/6, 8/13, 8/20 - Required Council meetings in August



COUNCIL WORKSHOP AGENDA ITEM #2.e



MEMORANDUM

FROM

LYDIA LOPEZ, TRMC
CITY SECRETARY

DATE: May 3, 2018

SUBJECT: Post-Election Procedures

The May 5, 2018 General Election was cancelled on March 5, 2018. The order of cancellation named the following candidates duly elected to office: Wilbert "Walky" Wachtendorf, Bill Fuller, and Steve Fortenberry. Texas Election Code sets specific dates for canvassing elections and completing post-election procedures. This year the canvass period is to be conducted May 8-16, 2018. The remaining steps of the Certificates of Election and the Oaths of Office must be conducted within the canvassing period.

As this meeting is prior to May 8, we are not able to issue Certificates of Election nor swear-in elected officers during this meeting. It is important to note that neither the Election Code nor our City Charter require a meeting. That being said, I am presenting two options for your consideration. First option is to hold a special meeting to present Certificates of Election and swear-in new officers between now and May 16, 2018. The second option would be no special meeting. Those elected to office may come by my office to be sworn in and receive their Certificates within this timeframe but as soon as practical.

Please let me know your preference so that I can plan accordingly.

City Secretary's Office

200 Patriot Court

Hewitt, TX 76643

254-296-5602 (phone)

254-666-6014 (fax)

citysecretary@cityofhewitt.com (email)

HEWITT TEXAS

COUNCIL WORKSHOP AGENDA ITEM #2f.



CITY OF HEWITT

BRUSH/BULK COLLECTION SERVICE

THIRD (3RD) SATURDAY OF EACH MONTH

The City of Hewitt has partnered with Republic Services to provide brush and bulk collection on the **third (3rd) Saturday of each month** at **1301 S. Hewitt Dr.** Brush and bulk will be accepted from 7AM to 12PM. **Service is for Hewitt residents ONLY and each person using the service must show most recent water bill along with their driver's license.** The first 6 cubic yards will be FREE and each excess cubic yard (see illustration below) will be charged \$5.00 (cash or check ONLY). **Apartment residents are required to pay \$5.00 per load due to not paying for service via water bill.**

For more information call Community Services at (254) 666-3151

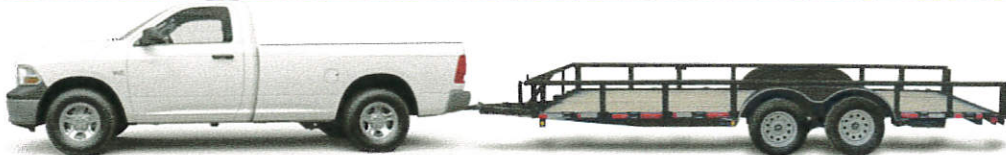
BRUSH / BULK GUIDELINES

ACCEPTED EXAMPLES

- Residential brush
- Furniture
- Refrigerators ***Freon must be removed and tagged by certified technician***
- Stoves
- Dishwashers
- Water tanks
- Household debris

NOT ACCEPTED EXAMPLES

- Commercial brush or bulk
- Flammables
- Construction debris
- Hazardous waste
- Tires
- Shingles
- Pesticides
- Paint Cans



Example of pickup truck and 12ft trailer (No trailers in excess of 21 feet)



6 Cubic Yards
6 ovens / 3 couches



HEWITT TEXAS

COUNCIL WORKSHOP AGENDA ITEM #2g.

CITY OF HEWITT: COUNCIL, BOARDS, AND COMMISSIONS

City Hall 666-6171 (Fax 666-6014); Community Services 666-2447; Utility Billing 666-3151 (after hrs emergency 666-6272); Police Adm. 666-1661; Drug Tips 666-3333; Animal Control 666-6272; Library 666-2442; Park Reservations 666-6173; Municipal Court 666-1208; Chamber of Commerce 666-1200. City of Hewitt web site: www.cityofhewitt.com; Email: citysecretary@cityofhewitt.com

City Council 2 Yr Term - May	Board of Adjustment 2 Yr Term - April	Planning & Zoning Commission 3 Yr Term - June	Parks & Beautification Committee 2 Yr Term - December	Library Board of Directors 2 Yr Term - December
1st & 3rd Mon 7 pm	3rd Thurs 7 pm	1st Tues. 7 pm	2nd Thurs 7 pm	Quarterly as needed
Mayor Travis Bailey Ward 1 (05-2019) 412 Oklahoma Avenue 666-1492	Chairman (04-2018) Jim Winton 1136 Heatherwood 857-9436	(06-2019) VACANCY	(12-2018) Jerry Snider 108 Brenda Drive 307-0613	President (12-2018) Eric Ames 249 Fieldcrest Dr. 710-1576
Wilbert (Walky) Wachtendorf Ward 1 (05-2018) 328 Travis Lane 666-3759	(04-2018) Bradley T. Turner 600 Yukon Pass 723-4912	(06-2019) Bobby Wolske 109 Devonshire 366-4743	(12-2019) Kathy Krakowian 804 Pebble Creek Cr. 424-7192	(12-2019) Gayle H. Shipp 704 Cheyenne Trail 495-1044
Bill Fuller Ward 2 (05-2018) 218 Chelsea/PO Box 568 666-3304	(04-2019) Douglas Bergen 264 Earle Rd. 666-0855	(06-2019) Walter H. Peterson 500 Moss Hill Rd. 757-5128	(12-2019) VACANCY	(12-2018) Karen Copeland 616 Crestwood Dr. 717-4906
James Vidrine Ward 2 (05-2019) 504 Rowan Oak 666-2115	(04-2019) Charles Howard 155 Ellis Farm Rd. 732-4746	(06-2017) Jonathan Denton Dulus 332 Bowie Ln. 855-4013	(12-2019) Fred Bridger 613 Durango Circle 749-8810	Secretary (12-2018) Lydia Dasher 520 Angel Fire Dr. 666-9623
Mayor Pro Tem Ed Passalugo Ward 3 (05-2019) 137 E. Chapman Rd. 420-1926	(04-2019) R. Don Vardeman 432 S First St. 666-2670	(06-2017) Charlie Turner 209 Laredo 666-0087	(12-2018) Davis D. Thigpen 606 Madison Dr. 749-9500	(12-2018) Beth Oakley 708 Angel Fire Drive 644-3594
Steve Fortenberry Ward 3 (05-2018) 701 Oakmont Drive 744-1697	Alternate (04-2018) VACANCY	(06-2017) Michael Lee Hix 336 Bowie Lane 723-5071	(12-2018) Veronica Molina 1201 Radisson (434) 531-2014	(12-2019) VACANCY
Kurt Krakowian At Large (05-2019) 804 Pebble Creek Cr. 224-1202 (cell)	Alternate (04-2019) VACANCY	(06-2017) John J. Baker 317 Bonham Drive 235-0464	(12-2018) VACANCY	Vice President (12-2019) Sally Goldman 132 Texas 666-2436

Updated: 04/12/2018

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 3

SUBMITTED BY: Jim Devlin, Police Chief

ITEM DESCRIPTION:

Special presentation of Hewitt Police Hero Award.

STAFF RECOMMENDATION/ITEM SUMMARY:

The Hewitt Police Hero Award will be presented to seven year old Boston Rosas for his heroic actions on Wednesday, April 11, 2018. Boston called Hewitt 911 to report his step-mother, Rosie Rosas, was having difficulty breathing. Boston was able to calmly provide information to the Hewitt Communications Specialist so that she could get Police, Fire and Rescue enroute. He communicated the needed information while also keeping his siblings calm during this emotional situation. Upon Police, Fire and Rescues arrival Rosie Rosas was barely breathing. Due to his actions, Boston was able to get Rosie Rosas required medical treatment and thus saved her life.

ATTACHMENTS:

None



COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 4

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Special presentation of proclamation in recognition of "Municipal Clerks Week".

STAFF RECOMMENDATION/ITEM SUMMARY:

A proclamation has been prepared to be presented by the Mayor in recognition of Municipal Clerks Week, May 6-12, 2018. The purpose of this recognition is to acknowledge the vital role Municipal Clerks play in local government. I will receive the proclamation.

ATTACHMENTS:

Proclamation

**OFFICIAL
MAYOR'S PROCLAMATION
CITY OF HEWITT, TEXAS**

- Whereas, Municipal Clerks, also known as City Secretaries, are the oldest among public servants, and
- Whereas, The Office of the City Secretary is a vital part of local government, and
- Whereas, The City Secretary provides a professional link between the citizens, the local governing bodies and agencies of government at other levels, and
- Whereas, City Secretaries continually strive to improve the administration of the affairs of the office through participation in education programs, seminars, workshops and the annual meetings of their state, county and international professional organizations.

NOW THEREFORE, I, Travis Bailey, by virtue of the power vested in me as Mayor of the City of Hewitt, Texas do hereby proclaim May 6-12, 2018, as "*MUNICIPAL CLERKS WEEK*" in Hewitt and ask that all the citizens of Hewitt join me in extending appreciation to City Secretary Lydia Lopez for the vital services she performs and her exemplary dedication to our community.

Signed and sealed this 7th day of May, 2018.

Travis Bailey, Mayor

Attest:

Lydia Lopez, City Secretary

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 5

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Consider approval of minutes of the City Council Workshop and Regular Meeting of April 16, 2018.

STAFF RECOMMENDATION/ITEM SUMMARY:

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

ATTACHMENTS:

Draft minutes

HEWITT TEXAS

MINUTES OF A CITY COUNCIL WORKSHOP/REGULAR MEETING HEWITT CITY HALL – 200 PATRIOT COURT April 16, 2018 – 5:30 PM/7:00 PM

Members present: Mayor Pro Tem Ed Passalugo (presiding), Council Members Wilbert “Walky” Wachtendorf, Bill Fuller, James Vidrine, Kurt Krakowian, and Steve Fortenberry

Members absent: Mayor Travis Bailey

Staff present: Assistant City Attorney Kathleen Dow, City Engineer Miles Whitney, City Manager Adam Miles, Police Chief Jim Devlin, Assistant Police Chief Tuck Saunders; Fire Chief Lance Bracco, Community Development Director Tracy Lankford, Managing Director Katie Allgood, Finance Director Lee Garcia, Library Director Waynette Ditto, Utilities Director Kevin Reinke, and City Secretary Lydia Lopez

Staff absent: City Attorney Charlie Buenger

WORKSHOP – 5:30 PM

1. Mayor Pro Tem Ed Passalugo called the meeting to order at 5:30 PM.
2. City Manager presented an update on municipal business:
 - a. Report from City Engineer
 - b. Briefing and discussion concerning upcoming events:
 - o Earth Day Celebration - Warren Park – April 21, 2018, 10:00 AM to 12:00 PM
 - o Citizens Police Academy – February 20, 2018 through April 24, 2018
 - o Nacho Daddy (Greater Hewitt Chamber Event) Warren Park – May 12, 2018, 5:30 to 9:00 PM
 - o Waste Diversion Day – May 19, 2018
 - c. Briefing and discussion concerning financial reports.
 - d. Briefing and discussion concerning Brush and Bulk Collection Site.
 - e. Briefing and discussion concerning vacancies and appointments.
 - f. Briefing and discussion concerning Public Safety operations – Police & Fire.
 - o Midway ISD – School Resource Officer (SRO)
3. The regular meeting agenda was reviewed.
4. *A motion was made by Council Member Wilbert “Walky” Wachtendorf and second by Council Member Bill Fuller to convene Executive Session at 6:33 PM pursuant to the Open Meetings Act, Chapter 551, Texas Government Code to discuss the following:*

- **Pursuant to §551.072 – Purchase, Exchange, Lease, or Value of Real Property.**
5. Close Executive Session/Adjourn. *A motion was made by Council Member Bill Fuller and second by Council Member Steve Fortenberry to close the Executive Session and adjourn the Workshop at 6:55 PM; all six in favor, motion passed.*

REGULAR MEETING – 7:00 PM

1. **CALL TO ORDER.** Mayor Travis Bailey called the meeting to order at 7:00 PM.
2. **PLEDGE OF ALLEGIANCE TO THE U.S. FLAG** – Mayor Pro Tem Ed Passalugo asked Police Chief Jim Devlin to lead the Pledge of Allegiance.

Item not listed on the printed agenda: Hewitt Police Chaplain Leroy Grant, Jr. provided an invocation.

3. **CONSIDER APPROVAL OF MINUTES OF THE CITY COUNCIL WORKSHOP AND REGULAR MEETING OF APRIL 2, 2018.** *A motion was made by Council Member Wilbert “Walky” Wachtendorf and second by Council Member Kurt Krakowian to approve the minutes as submitted but allow for corrections; all six in favor, motion passed.*
4. **HEAR VISITORS ON MATTERS PERTAINING TO CITY BUSINESS.** *Under the Texas Open Meetings Act, the Council is prohibited from discussing, responding, or acting on any comments or items that have not been properly posted on the agenda. NONE*
5. **PUBLIC HEARING AND ACTION ON AN ORDINANCE AMENDING APPENDIX A - ZONING OF THE CODE OF ORDINANCES OF THE CITY OF HEWITT BY THE REZONING OF 699 SUN VALLEY BLVD. (BEING PROPERTY LOCATED IN THE HEWITT MOBILE HOME DISTRICT, BLOCK A, LOT 16, +/- 1.6774 ACRES) FROM MH MANUFACTURED HOME DISTRICT TO BP BUSINESS PARK DISTRICT, PROVIDING AN EFFECTIVE DATE.** Mayor Pro Tem Ed Passalugo asked for those who wished to speak in favor. Feliciano Feregrino appeared in favor. Mayor Pro Tem Ed Passalugo asked for those who wish to appear in opposition. No one appeared. Public hearing was closed. *A motion was made by Council Member James Vidrine and second by Council Member Wilbert “Walky” Wachtendorf to approve the ordinance; all six in favor, motion passed.*
6. **CONFIRM CITY MANAGER’S APPOINTMENT OF SAMMY L. THOMAS TO THE POLICE OFFICERS’ CIVIL SERVICE COMMISSION IN ACCORDANCE WITH CHAPTER 143 OF THE TEXAS LOCAL GOVERNMENT CODE.** *A motion was made by Council Member Wilbert “Walky” Wachtendorf and second by Council Member Steve Fortenberry to confirm City Manager’s appointment of Sammy L. Thomas to the Police Officers’ Civil Service Commission; all six in favor, motion passed.*

7. **CONSIDER REAPPOINTMENTS TO THE BOARD OF ADJUSTMENT.** *A motion was made by Council Member Bill Fuller and second by Council Member Kurt Krakowian to approve the reappointment of Jim Winton and Brad Turner; all six in favor, motion passed.*
8. **CONSIDER ACTION TO AMEND THE CITY OF HEWITT POLICY FOR ADMINISTRATION OF BOARDS, COMMISSIONS, AND COMMITTEES TO ALLOW INDIVIDUALS TO CONCURRENTLY SERVE ON MORE THAN ONE BOARD, COMMISSION, OR COMMITTEE UNLESS PROHIBITED BY LAW.** Council Member James Vidrine asked for clarification on the policy. City Manager Adam Miles advised that this policy would allow City Council to formally appoint a member to serve on two boards. *A motion was made by Council Member Bill Fuller and second by Council Member Steve Fortenberry to approve; all six in favor, motion passed.*
9. **CONSIDER AWARD OF BID FOR 2018 – VARIOUS STREET IMPROVEMENTS; SLURRY SEAL TO VIKING CONSTRUCTION, INC., IN THE AMOUNT OF \$177,740.30.** *A motion was made by Council Member Bill Fuller and second by Council Member Wilbert “Walky” Wachtendorf to approve bid; all six in favor, motion passed.*
10. **CONSIDER AWARD OF BID FOR 2017 – 209/213 CROSS COUNTRY DRIVE DRAINAGE IMPROVEMENTS TO HOLY CONTRACTORS, LLC IN AN AMOUNT OF \$63,417.21.** *A motion was made by Council Member Kurt Krakowian and second by Council Member Steve Fortenberry to approve bid; all six in favor, motion passed.*
11. **AUTHORIZE CITY MANAGER TO NEGOTIATE AND EXECUTE WACO METROPOLITAN AREA REGIONAL SANITARY SEWERAGE SYSTEM (WMARSS) PROJECT AGREEMENT RELATED TO THE LA SALLE TRANSFER LIFT STATION/FORCE MAIN PROJECT IN AN AMOUNT NOT TO EXCEED \$3,304,502.24.** *A motion was made by Council Member Wilbert “Walky” Wachtendorf and second by Council Member James Vidrine to approve; all six in favor, motion passed.*
12. **AUTHORIZE CITY MANAGER TO NEGOTIATE AND EXECUTE A MEMORANDUM OF AGREEMENT CONCERNING ACQUISITION OF LAND RELATED TO THE RITCHIE ROAD WIDENING PROJECT.** *A motion was made by Council Member Bill Fuller and second Council Member Kurt Krakowian to approve; all six in favor, motion passed.*
13. **CONSIDER AN ORDINANCE AMENDING CHAPTER 78 - UTILITIES, ARTICLE VII. - USE AND OCCUPANCY OF CITY’S RIGHTS-OF-WAY FOR PROVISION OF UTILITY, TELECOMMUNICATIONS AND CABLE SERVICES, OF THE CODE OF ORDINANCES OF THE CITY OF HEWITT, PROVIDING RULES AND REGULATIONS RELATED TO NETWORK NODES, TRANSPORT FACILITIES AND NODE SUPPORT POLES, ADOPTING A DESIGN MANUAL, AMENDING THE MASTER FEE SCHEDULE, AND PROVIDING AN EFFECTIVE DATE.** City

Manager Adam Miles presented and responded to questions. Mayor Pro Tem Ed Passalugo expressed his opposition to the ordinance in that the phone companies would not be paying their fair share for the use of right of way and this State legislation takes away the rights of way owned by the citizens. City Manager recommended approval so that the City can maintain some provisions to regulate. *A motion was made by Wilbert "Walky" Wachtendorf and second by Council Member Bill Fuller to approve ordinance; three in favor (Wachtendorf, Fuller, Vidrine); three in opposition (Krakowian, Fortenberry, and Passalugo), motion failed.*

14. **CONSIDER AN ORDINANCE AMENDING PART II, APPENDIX A - ZONING, SECTION 12.102 - DEFINITIONS, OF THE CODE OF ORDINANCES OF THE CITY OF HEWITT, PROVIDING FOR THE DEFINITION OF A BEAUTY SHOP, A BARBER SHOP, AND SEMI-PERMANENT COSMETICS, PROVIDING AN EFFECTIVE DATE.** *A motion was made by Council Member James Vidrine and second by Council Member Steve Fortenberry to approve ordinance; all six in favor, motion passed.*
15. **CONSIDER AN ORDINANCE AMENDING CHAPTER 30 - ENVIRONMENT OF THE CODE OF ORDINANCES OF THE CITY OF HEWITT ESTABLISHING ARTICLE XI - STORMWATER, ESTABLISHING RULES AND REGULATIONS RELATED TO MANAGEMENT OF STORMWATER RUNOFF, ESTABLISHING BEST MANAGEMENT PRACTICES, PROVIDING FOR DEFINITIONS, PROVIDING FOR A PENALTY, REPEALING ALL OTHER ORDINANCES IN CONFLICT HEREWITH, AND PROVIDING AN EFFECTIVE DATE.** *A motion was made by Council Member Wilbert "Walky" Wachtendorf and second by Council Member James Vidrine to approve ordinance; all six in favor, motion passed.*
16. **ADJOURN.** *A motion was made by Council Member Bill Fuller and second by Council Member Kurt Krakowian to adjourn the regular meeting at 7:31 PM; all six in favor, motion passed.*

Approved: May 7, 2018

Lydia Lopez, City Secretary

Travis Bailey, Mayor

HEWITT TEXAS

ITEM #6 – HEARING OF VISITORS

PROCEDURES FOR CITIZEN PARTICIPATION AT MEETINGS

1. Citizens are encouraged to discuss matters of concern with the staff and individual council members prior to placing items on the agenda. This will allow the matter to be properly investigated before it is presented to the entire council and will often expedite a resolution.

NO CITIZEN OR STAFF MEMBER MAY SPEAK OR OTHERWISE INTERRUPT ANY MEETING UNTIL RECOGNIZED BY THE PRESIDING OFFICER.

2. To maintain decorum at public hearings, the mayor will ask citizens in attendance if they wish to speak for or against the item on the agenda. If so, they will be given an opportunity to speak at the proper time and 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 a spokesperson to present their case.

Only under the agenda item “Hear Visitors” are citizens permitted to speak regarding matters that pertain to city business or address an item on the agenda. **The council is prohibited by law from discussing or acting on any item that has not been posted on the agenda.**

3. Individual citizens that discuss items not listed on the agenda shall be limited to **five minutes**. If five or more citizens wish to discuss a single item or topic that is not listed on the agenda, then the total presentation will be limited to a maximum of twenty-five minutes. City council members shall **not** enter into discussion on any subject that has not been properly placed on the agenda; however, council members may ask questions for clarification purposes.
4. As a general rule, citizens may not participate or address the council or staff during the workshop session.

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 7

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Consider and act on designation of Mayor.

STAFF RECOMMENDATION/ITEM SUMMARY:

The Council can reappoint the current mayor or any other member as noted below in the Charter excerpt.

Sec. 2.7 - Mayor/mayor pro tem. At its first meeting following each regular election of councilmen, the council shall by election designate one of its numbers as mayor and another of its numbers as mayor pro tem, each of whom shall serve in such capacity for a term of one (1) year. The mayor shall preside at all meetings of the council and shall be recognized as head of the city government for all ceremonial purposes, for the purpose of receiving service of civil process and for emergency purposes, and for military or police purposes, but shall have no administrative duties. The mayor, as a member of the council, shall be entitled to vote upon all affairs considered by the council, but shall have no veto power. The mayor pro tem shall act as mayor during the absence or disability of the mayor, and shall have power to perform every act the mayor could perform if present.

Mayor Travis Bailey will relinquish the chair to Assistant City Attorney Kathleen Dow for this election process.

ATTACHMENTS:

None

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 8

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Consider and act on designation of Mayor Pro Tem.

STAFF RECOMMENDATION/ITEM SUMMARY:

The Council can reappoint the current mayor pro tem or any other member as noted below in the Charter excerpt.

Sec. 2.7 - Mayor/mayor pro tem. At its first meeting following each regular election of councilmen, the council shall by election designate one of its numbers as mayor and another of its numbers as mayor pro tem, each of whom shall serve in such capacity for a term of one (1) year. The mayor shall preside at all meetings of the council and shall be recognized as head of the city government for all ceremonial purposes, for the purpose of receiving service of civil process and for emergency purposes, and for military or police purposes, but shall have no administrative duties. The mayor, as a member of the council, shall be entitled to vote upon all affairs considered by the council, but shall have no veto power. The mayor pro tem shall act as mayor during the absence or disability of the mayor, and shall have power to perform every act the mayor could perform if present.

The incoming Mayor will open nominations for Mayor Pro Tem. Upon completion of this process, the incoming Mayor will preside for the remainder of the meeting.

ATTACHMENTS:

None



COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 9

SUBMITTED BY: Jared DeVries, Community Development Coordinator

ITEM DESCRIPTION:

Public hearing and action on a request for a special use permit for a special and other private school at 1731 Spring Valley Blvd. as prescribed in Part 4 of Appendix-A Zoning of the Code of Ordinances of the City of Hewitt

STAFF RECOMMENDATION/ITEM SUMMARY:

This is a request for a Special Use Permit, by Marie Billings, for a Montessori-style school. The Planning and Zoning Commission met on Tuesday, May 1st to consider the request. After a public hearing and deliberation, the P&Z Commission recommended to approve the request with a vote of 4 to 0 with the following conditions: the number of students is not to exceed 22; and the special use permit is non-transferable.

Attached is a copy of the minutes in the backup material.

ATTACHMENTS:

P&Z Draft Minutes and supporting documentation

HEWITT TEXAS

MINUTES OF THE PLANNING AND ZONING COMMISSION

May 1st, 2018 – 6:00PM

Members Present: Bobby Wolske, John Baker, Jonathan Dulus, Charlie Turner
Members Absent: Walter Peterson, Michael Lee Hix
Staff Present: Tracy Lankford, Community Development Director, Jared DeVries, Zoning Secretary

1. **Call Planning and Zoning Commission to order.** *Charlie Turner called the meeting to order at 6:02PM.*
2. **Consider Approval of Minutes for the April 3, Planning and Zoning Commission regular meetings.** *A motion was made by John Baker and seconded by Jonathan Dulus to approve the minutes as submitted but allow for corrections; all four in favor, motion passed.*
3. **PUBLIC HEARING: Discussion and possible action: Special Permit request for a Nursery, pre-kindergarten, play, day care, special and other private school located at 1731 Spring Valley Road, Hewitt, TX 76643, known as J. Sprawles Tract, Lot 1A being 2.01 Acres, to the City of Hewitt as recorded in McLennan County Clerk's document 2016007459 of the Official Public Records of McLennan County, Texas.** *Speaking in favor: Marie Billings, 601 Crestwood. Speaking against: NONE. A motion was made by John Baker to approve and seconded by Bobby Wolske. All four in favor, motion passed. Recommendation will go before City Council Meeting on May 7th 2018.*
4. **Adjourn.** *A motion was made by John Baker and seconded by Jonathan Dulus to adjourn the meeting at 6:18PM. All five in favor, motion passed.*

Chairman



Jared DeVries, Zoning Secretary

Date Approved

HAVE BEEN INFORMED THAT MR. AND MRS. BILLINGS WOULD LIKE TO PUT A SMALL MONTESSORI PRE-SCHOOL (WITH A CAPACITY OF 20-22 STUDENTS) AT 1731 SPRING VALLEY ROAD, WITH OPERATING HOURS BETWEEN 8:30 A.M-3:00 P.M AND THAT THE SCHOOL WILL BE IN OPERATION MID AUGUST-MAY.

(Please indicate below whether you are for or against this proposal)

SIGNATURE	ADDRESS	DATE	FOR	OPPOSE
<i>Samuel Williams</i>	<i>103 Coventry Dr 76643</i>	<i>4/29</i>	<i>✓</i>	
<i>1100 St</i>	<i>500 St</i>	<i>4/29</i>	<i>✓</i>	
<i>Martha Thomas</i>	<i>100 Coventry Dr 76643</i>	<i>4/29</i>	<i>✓</i>	
<i>Carla Price</i>	<i>115 Westchester Way 76643</i>	<i>4/29</i>	<i>✓</i>	
<i>Patricia McFarland</i>	<i>101 Coventry Dr 76643</i>	<i>4/29</i>	<i>✓</i>	
<i>Rene Olivera</i>	<i>1801 W. Spring Valley 76643</i>	<i>4/29</i>	<i>✓</i>	

HEWITT TEXAS

NOTICE OF MEETING OF THE PLANNING AND ZONING COMMISSION

Notice is given that a **PUBLIC** hearing will be held before the Planning and Zoning Commission of the City of Hewitt, on **Tuesday, May 1st, 2017, at 6:00PM** in the **City Council Room at Hewitt City Hall, 200 Patriot Court, Hewitt, Texas** at which time the following subjects will be discussed:

1. Call Planning and Zoning Commission Meeting to order.
2. Consider Approval of Minutes for the April 3, 2018 Planning and Zoning Commission regular meeting.
3. PUBLIC HEARING: Discussion and possible action: Special Permit request for a Nursery, pre-kindergarten, play, day care, special and other private school located at 1731 Spring Valley Road, Hewitt, TX 76643, known as J. Sprowles Tract, Lot 1A being 2.01 Acres, to the City of Hewitt as recorded in McLennan County Clerk's document 2016007459 of the Official Public Records of McLennan County, Texas.
4. Adjourn.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Planning and Zoning Commission of the above named City of Hewitt, Texas was posted on the Public Notice Board located in front of the City Hall before 5pm on April 13th, 2018.

City of Hewitt



Jared DeVries, Zoning 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 Zoning Secretary at (254) 666-6173 at least 24 hours prior to the meeting, so that appropriate arrangements can be made.

HEWITT TEXAS

PLANNING AND ZONING COMMISSION

Charlie Turner – Chairman

Bobby Wolske

John J. Baker

Walter H. Peterson

Michael Lee Hix

Jonathan Denton Dulus

CITY STAFF

Adam Miles, City Manager

Miles Whitney, City Engineer

Tracy Lankford, Community Development Director

Jared DeVries, Zoning Secretary

HEWITT TEXAS

MINUTES OF THE PLANNING AND ZONING COMMISSION

April 3rd, 2018 – 6:00PM

Members Present: Bobby Wolske, John Baker, Walter Peterson, Michael Lee Hix, Jonathan Dulus
Members Absent: Charlie Turner
Staff Present: Tracy Lankford, Community Development Director, Miles Whitney, City Engineer, Jared DeVries, Zoning Secretary

- 1. Call Planning and Zoning Commission to order.** *Walter Peterson called the meeting to order at 6:00PM.*
- 2. Consider Approval of Minutes for the March 6, Planning and Zoning Commission regular meetings.** *A motion was made by John Baker and seconded by Michael Hix to approve the minutes as submitted but allow for corrections; all five in favor, motion passed.*
- 3. PUBLIC HEARING: Discussion and possible action: Change the zoning from MH Manufactured Home District to BP Business Park District on property located in the Hewitt Mobile Home District, Block A, Lot 16, +/- 1.6774 Acres, otherwise known as 639 Sun Valley Boulevard.** *Tracy Lankford, Community Development Director, spoke on behalf of the city and recommended the zoning change. Speaking in favor: Maria Concepcion Feregrino, 3621 North 27th St. Waco, Texas. A motion was made by John Baker to approve and seconded by Bobby Wolske. All five in favor, motion passed. Recommendation will go before City Council Meeting on April 16th 2018.*
- 4. Briefing and discussion on a new ordinance that establishes definitions to barbers and beauty shops.** *Jared DeVries, Community Development Coordinator, spoke on behalf of the city and recommended the new ordinance. A motion was made by Bobby Wolske to approve recommendation and was seconded Michael Hix. All five in favor, motion passed. Recommendation will go before City Council Meeting on April 16th 2018.*

5. **Briefing and discussion on a new ordinance that ensures compliance with Texas Commission on Environmental Quality stormwater recommendations.** *A motion was made by John Baker and was seconded by Jonathan Dulus. All five in favor, motion passed. Recommendation of new ordinance will go before City Council Meeting on April 16th 2018.*
6. **Briefing and discussion on the implementation of Right-of-Way ordinances that supplement Tex. S.B. 1004, 85th Leg., R.S. (2017), the new Texas Local Government Code Chapter 284 which mandates that wireless infrastructure providers and wireless service providers have access to public rights of way to locate their facilities.** *A motion was made by John Baker and was seconded by Michael Hix. All five in favor, motion passed. Recommendation of new ordinances will go before City Council Meeting on April 16th 2018.*
7. **Adjourn.** *A motion was made by John Baker and seconded by Jonathan Dulus to adjourn the meeting at 6:17PM. All five in favor, motion passed.*

Chairman

Date Approved



Jared DeVries, Zoning Secretary

HEWITT TEXAS

PLANNING AND ZONING SPECIAL PERMIT APPLICATION

Legal Description of Property: Lot 1A being 2.01 Acres, J. Sprawles Tract

Describe the location of the property as submitted by this application. This may be in the form of a street address, general description, or nearest intersection.

1731 Spring Valley Road, Hewitt, TX 76643

Proposed Special Permit: Child Care

Please describe the interest in property:

Residential house, neighbor to the West, empty lot to the east,
open fields behind, residential neighborhood across the street (Spring Valley)

Existing Building(s) on Property: House

Total square feet of all Buildings on Property: 1,944 sq Ft.

Please provide the following recording information and a copy of the document(s) listed below with this application:

Ownership (deed): Doc. #/MCC No.: 2016007459

Please provide the proposed meeting date for this application to be considered (See Meeting Schedule): _____

The rezoning application must be completed along with the following information:

1. A notarized letter from the property owner authorizing applicant to present the request, if the property owner will not be presenting the request and stating reasons for request.
2. Submit one (1) PDF file, one (1) hardcopy, one (1) CAD file of plat for review purposes – Must be in State Plane Coordinates using the Texas Central Zone NAD 83.
3. Submit one (1) copy of building plans, if existing building(s) exist.
4. Non-refundable application fee (see Fee Schedule)
5. Application, fee, documents, etc., in completed form must be submitted to the Planning Department before or no later than 12:00 noon on the deadline date (see schedule).

I attest that the above information is true and correct to the best of my knowledge and I am now or will be fully prepared to present the above proposal at the Planning and Zoning Commission hearing. I understand that if any of the above information is found to be wrong or inaccurate that my application may be removed from consideration prior to the time the application is voted upon by the governing body of the City.

I, understand that in the event the undersigned is not present or represented at the public hearing, the Planning and Zoning Commission shall have the power to dismiss this proposal either at the call of the case or after hearing and such dismissal shall constitute a denial by both the Planning and Zoning Commission and the City Council.

I reserve the right to withdraw this proposal. However, written withdrawals filed at any time after the giving of notice to the Planning and Zoning Commission shall constitute a denial by the Commission and City Council. I understand that the filing fee is not refundable upon withdrawal of proposal.

Name of Property Owner:

Keith & Marie Billings

Telephone Number:

(Keith-254-715-1794)(Marie 254-424-3059)

Mailing Address:

601 Crestwood Dr. Hewitt, TX 76643

Email Address:

marie.billings@yahoo.com

Signature of Property Owner:

Date:

Name of Applicant/Representative:

Same

Telephone Number:

Mailing Address:

Email Address:

Signature of Applicant/Representative:

Date:

Google Maps 1731 W Spring Valley Rd



Imagery ©2018 Google, Map data ©2018 Google 200 ft



1731 W Spring Valley Rd

Hewitt, TX 76643



West Spring Valley Road

(Bearing Basis)
N 62°00'00" E

Overhead Utility

Overhead Utility

Conc.

Covered

Covered

Gravel Drive

Carport

Residence

Covered

417.20'

Called 2 Acres
Kenneth Darel Stinnett and wife,
Wilma Ruth Stinnett
1188-330 D. R.

2.01 Acres

Called 107.97 Acres
Ver-Man LLC
MCC # 200-043390

Chicken
Coop

Fence

Fence

Portable
Buildings

Chicken
Coop

Fence
N 27°25'35" W

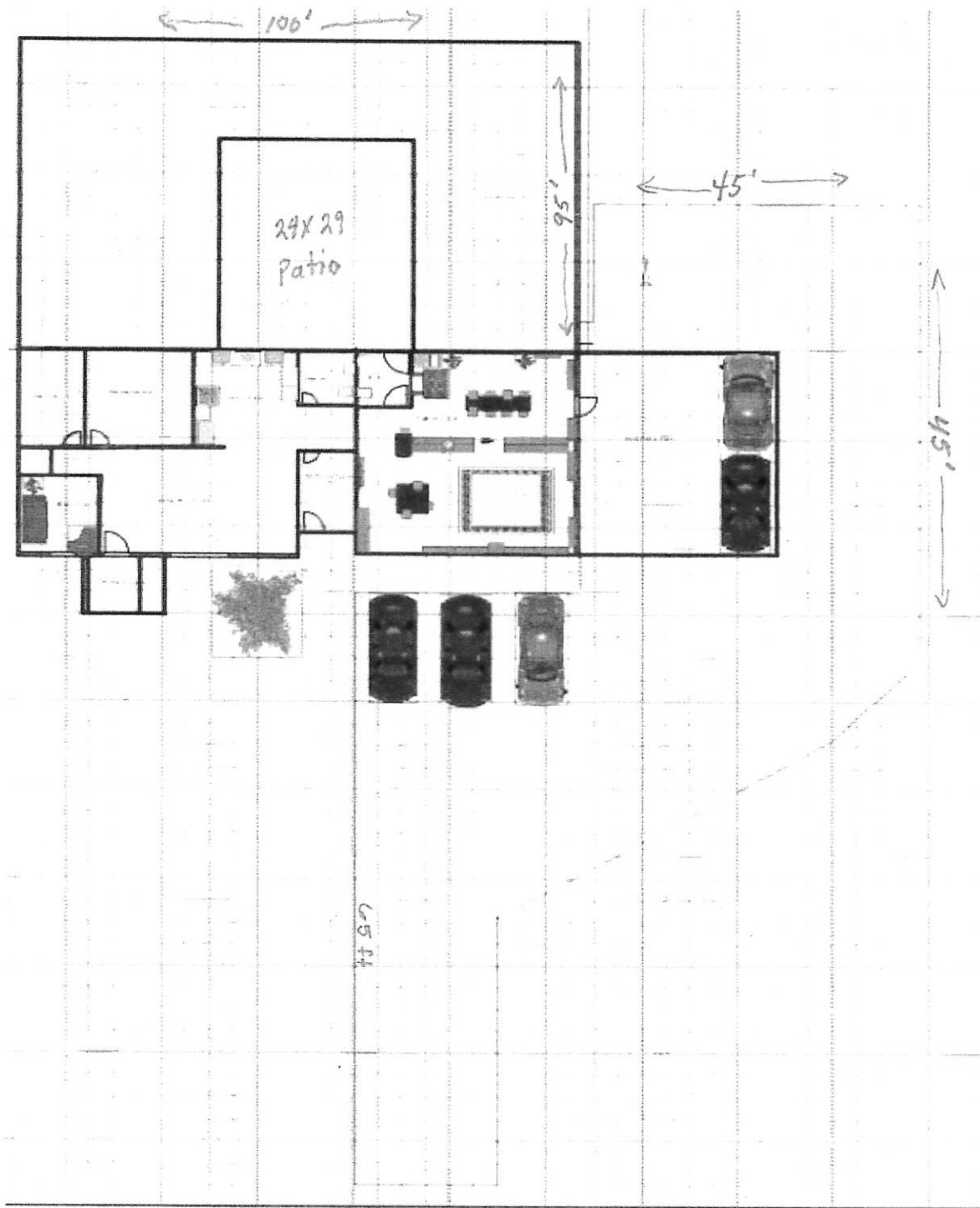
Fence
418.87'

209.21'

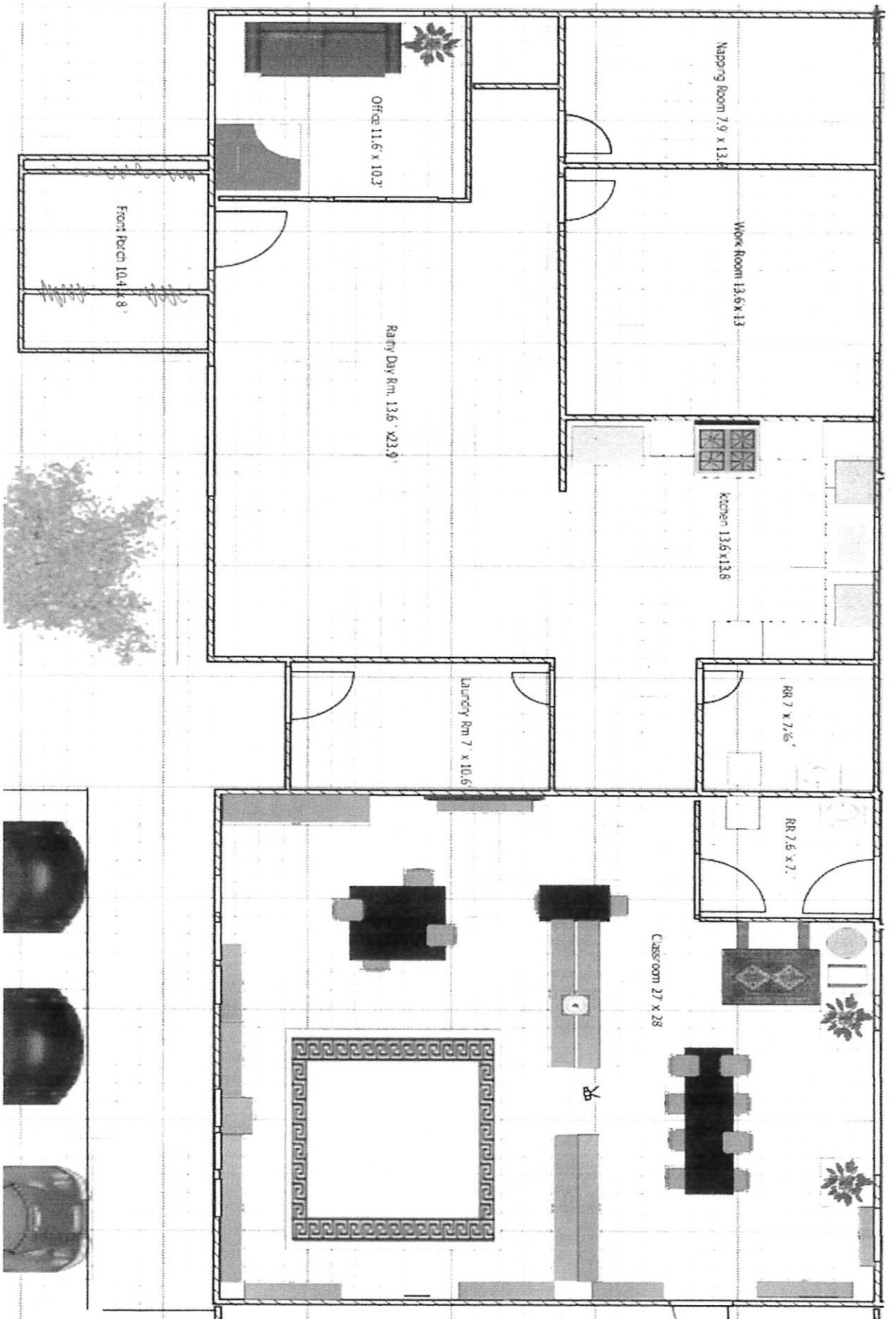
Fence

S 62°27'23" W

"E": By graphics plotting only.
"X"
Rate Map, Community Panel No.
ive date of SEPTEMBER 26, 2008
ly be determined by an Elevation
bove information, this property
Hazard Area. This Flood
tract will never flood.



drive way to be done
in the future



APPLICATION REVIEW

Z-2018-3

HEARING DATE: May 1, 2018

1. CASE # Z-2018-3
PROPERTY ADDRESS: 1731 Spring Valley Road
LEGAL DESCRIPTION: Lot 1A, J. Sprowles Tract

2. APPLICANT: Marie Billings
MAILING ADDRESS: 601 Crestwood Drive, Hewitt, Texas 76643

3. REQUEST:

SPECIAL PERMIT FOR MONTESSORI SCHOOL:

ZONING:

R-1 SINGLE-FAMILY RESIDENTIAL

SUMMARY DESCRIPTION OF USES IN R-1: The purpose of the R-1, Single-Family District is to allow for single-family homes. This is the default zoning district for the city. Permitted Uses are as shown in Section 4.101.

PLANNING SERVICES REVIEW

NEIGHBORHOOD CHARACTER:

This property is located within a large are of Residential use. The majority of the surrounding area is residential in nature.

COMMUNITY DEVELOPMENT RECOMMENDATION:

Community Development recommends ***APPROVAL*** of this request for a special permit located at 1731 Spring Valley Blvd. based on the following findings:

- 1) The proposed zoning is in keeping with the land use component of the Comprehensive Plan.
- 2) The public infrastructure is adequate to provide for uses allowed in R-1 zoning district.
- 3) The property meets all the size and width requirements for R-1 zoning.
- 4) The property is located on a public street.

Notices: 9 mailed; returned,

ENGINEERING SERVICES DATA

1. Street condition: Good X Acceptable Needs Reconstruction
2. Street width: Existing: ROW 60' Pavement 55'

Required: ROW Pavement
3. Curb and Gutter:
Needs to be installed Exists X Needs Reconstruction
4. Offsite Drainage facilities are adequate to meet additional runoff resulting from the rezoning.
5. Water is available to the property, and it will serve the heaviest uses allowed under the requested zoning.
6. Sewer is available to the property.

INSPECTION SERVICES REVIEW

Comments

No objections.

FIRE DEPARTMENT REVIEW:

ANTICIPATED FIRE RESPONSE TIME:

IS THE FIRE RESPONSE TIME ADEQUATE?: Y (Y) YES (N) NO

Fire Department Comments and Recommendations: No Comments

HEALTH DEPARTMENT REVIEW

INSPECTION/PERMIT REQUIRED N (Y) YES (N) NO

DATE OF INSPECTION: To be determined

Health Department Comments and Recommendations: None

POLICE DEPARTMENT REVIEW

No Comments

PROPERTY OWNERS LIST

Applicant: Marie Billings

Owner: Marie Billings

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 10

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Consider and act on appointment to the Planning and Zoning Commission.

STAFF RECOMMENDATION/ITEM SUMMARY:

Mr. Jim Pless resigned his service on the Board of Adjustment due to a conflict with the meeting times; however, he has expressed an interest in serving on the Planning & Zoning Commission.

ATTACHMENTS:

None



COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 11

SUBMITTED BY: Adam Miles, City Manager

ITEM DESCRIPTION:

Consider award of bid for 2018 – Sierra Slope/Angel Fire Street; Street Improvements to Waco Paving Inc. in the amount of \$30,861.12.

STAFF RECOMMENDATION/ITEM SUMMARY:

After bid solicitation, four bids were received and opened on April 28, 2018. Waco Paving Inc. provided the lowest bid in the amount of \$30,861.12. City staff recommends award of this project as recommended by City Engineer.

ATTACHMENTS:

Letter from City Engineer
Bid Tabulation

MAY 2, 2018

CITY COUNCIL

CITY OF HEWITT, TEXAS

VIA: EMAIL

RE: 2018 - SIERRA SLOPE / ANGEL FIRE; STREET IMPROVEMENTS

COUNCIL:

BIDS WERE OPENED ON THE ABOVE CAPTIONED PROJECT ON APRIL 26, 2018. FOUR BIDS WERE SUBMITTED. THE LOWEST BID WAS SUBMITTED BY WACO PAVING, INC.; IN THE AMOUNT OF \$30,861.12. THE BID TABULATION FOR THIS PROJECT SHOULD BE INCLUDED WITHIN YOUR COUNCIL PACKET.

WACO PAVING, INC. HAS CONSTRUCTED PROJECTS WITHIN THE CITY OF HEWITT IN THE PAST, THAT HAVE BEEN TO THE SATISFACTION OF THE CITY. THE MOST RECENT PROJECT BEING 2017 - SEMINOLE TRAIL; STREET RECLAIM.

IT IS MY RECOMMENDATION THAT THIS CONTRACT BE AWARDED TO WACO PAVING, INC.

SINCERELY:



Miles W. Whitney P.E.
MILES W. WHITNEY, P.E.

Base Bid Tabulation

Project: 2018 - Sierra Slope / Angel Fire: Street Improvements
 Owner: City of Hewitt, TX
 Component: Bid Tabulation
 Prepared By: MWW
 Date: 4/26/2018
 Reviewed By: MWW

BASE BID TOTALS		Contractor 1		Contractor 2		Contractor 3		Contractor 4			
		Unit Price	Bid Price	Unit Price	Bid Price	Unit Price	Bid Price	Unit Price	Bid Price		
		Qty.	Unit	Waco Paving, Inc.		Barnett Contracting, Inc.		Holy Contractors, LLC		TTG Utilities, LP	
Bid Item											
1	Street Excavation and Preparation; Complete	192	S.Y.	\$ 18.00	\$ 3,456.00	\$ 30.00	\$ 5,760.00	\$ 52.09	\$ 10,001.28	\$ 22.00	\$ 4,224.00
2	6" Compacted Thickness Cement Stabilized Gravel Base; Installed	127	S.Y.	\$ 33.84	\$ 4,297.68	\$ 20.00	\$ 2,540.00	\$ 23.63	\$ 3,001.01	\$ 40.00	\$ 5,080.00
3	1.5" Compacted Thickness, Hot-Mixed, Asphaltic Concrete Surface (TXDOT "D" Crushed Stone Aggregate; Installed	127	S.Y.	\$ 34.48	\$ 4,378.96	\$ 20.00	\$ 2,540.00	\$ 27.56	\$ 3,500.12	\$ 63.00	\$ 8,001.00
4	12" Wide Reinforced Concrete Valley Gutter; Installed	319	S.F.	\$ 16.31	\$ 5,202.89	\$ 10.00	\$ 3,190.00	\$ 10.00	\$ 3,190.00	\$ 13.50	\$ 4,306.50
5	Standard Reinforced Concrete Curb and Gutter; Installed	76	L.F.	\$ 39.77	\$ 3,022.52	\$ 30.00	\$ 2,280.00	\$ 24.00	\$ 1,824.00	\$ 29.00	\$ 2,204.00
6	Removal of Reinforced Concrete Curb and Gutter, Complete	76	L.F.	\$ 13.00	\$ 988.00	\$ 10.00	\$ 760.00	\$ 12.00	\$ 912.00	\$ 13.00	\$ 988.00
7	Standard Reinforced Concrete Street Returns/Fillets; Installed	117	S.F.	\$ 27.27	\$ 3,190.59	\$ 10.00	\$ 1,170.00	\$ 17.10	\$ 2,000.70	\$ 23.00	\$ 2,691.00
8	Unclassified Compacted Fill; Installed	6	S.Y.	\$ 124.58	\$ 747.48	\$ 200.00	\$ 1,200.00	\$ 167.00	\$ 1,002.00	\$ 52.00	\$ 312.00
9	Re-Sod with Like Kind Grass (Disturbed Areas); Complete	1	L.S.	\$ 1,590.00	\$ 1,590.00	\$ 3,000.00	\$ 3,000.00	\$ 1,500.00	\$ 1,500.00	\$ 1,000.00	\$ 1,000.00
10	SWPPP Design and Implementation	1	L.S.	\$ 302.00	\$ 302.00	\$ 2,500.00	\$ 2,500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,550.00	\$ 1,550.00
11	Traffic Control Design and Implementation	1	L.S.	\$ 600.00	\$ 600.00	\$ 3,500.00	\$ 3,500.00	\$ 1,500.00	\$ 1,500.00	\$ 6,400.00	\$ 6,400.00
12	Mobilization (Not to Exceed 10% of Total Project Bid)	1	L.S.	\$ 3,085.00	\$ 3,085.00	\$ 3,000.00	\$ 3,000.00	\$ 2,940.00	\$ 2,940.00	\$ 3,500.00	\$ 3,500.00
										Reviewed By	
										MMVVV	

Denotes corrected Bid Price



Miles W. Whitney, P.E.

Cayote Consulting, LLC
 T.B.P.E. Firm No. F-16387



COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 12

SUBMITTED BY: Adam Miles, City Manager

ITEM DESCRIPTION:

Authorize the City Manager to negotiate and execute an Interlocal Cooperation Act Agreement for slurry seal of selected public roads in McLennan County Road System, Precinct 4.

STAFF RECOMMENDATION/ITEM SUMMARY:

The County has asked the City to consider authorizing this interlocal agreement concerning the bid for micro slurry seal work by Viking Contractors. As provided by the State's purchasing regulations, agencies may use pricing from other publicly bid projects in certain circumstances. In this case, Viking is offering the County the same pricing per yard as bid to Hewitt and will be able to do the County work while they are already set up in the area. The County Commissioners will consider the interlocal agreement at their next meeting on May 15. There is no cost for the City of Hewitt in approving this item. Staff recommends approval by the City Council.

ATTACHMENTS:

Agreement

**INTERLOCAL COOPERATION ACT AGREEMENT FOR
SLURRY SEAL OF SELECTED PUBLIC ROADS IN THE
MCLENNAN COUNTY ROAD SYSTEM
PRECINCT 4**

**THE STATE OF TEXAS
COUNTY OF MCLENNAN**

This AGREEMENT is entered into this _____ day of _____, 2018, by and between the CITY OF HEWITT, TEXAS ("HEWITT") and MCLENNAN COUNTY ("COUNTY"), each duly organized and existing under the laws of the State of Texas, and each acting herein and through its duly authorized official.

WITNESSETH

WHEREAS, it is in the best interests of the citizens of McLennan County for the various governmental entities located in this County to cooperate in the provision of governmental services where such cooperation will result in a more efficient, higher quality and/or more cost-effective provision of such services; and

WHEREAS, with regard to the project defined below, these governmental functions and services can be more efficiently provided by the City and County working cooperatively; and

WHEREAS, City and County have found it advisable to enter into an Interlocal Cooperation Act agreement wherein the City provides or causes to be provided the governmental functions described below as authorized by the Interlocal Cooperation Act, Chapter 791, Government Code; and

WHEREAS, the County and the City are authorized to enter into an agreement for the cooperative purchase of goods and services pursuant to Chapter 791, Government Code; and

WHEREAS, the County currently maintains roads within the Timber Creek Addition known as "**Timber Ridge Trail**", and "**Coldwater Circle**" ("Roads") (total area approximately 8,050 square yards); and

WHEREAS, these Roads are in need of maintenance in the form of a slurry seal; and

WHEREAS, the COUNTY desires a slurry seal of these Roads; and

WHEREAS, HEWITT contracted with Viking Construction, Inc., to apply a slurry seal to streets in HEWITT; and

WHEREAS, the COUNTY has requested that HEWITT add the slurry seal for the Roads to its contract with Viking Construction, Inc.; and

WHEREAS, the cost of a slurry seal of the Roads will be a cost not to exceed **\$30,345**; and

WHEREAS, the COUNTY is willing to pay the cost of sealing the Roads;

NOW, THEREFORE in consideration of the promises, terms, and agreements herein set forth, HEWITT and the COUNTY agree as follows:

1. INCORPORATION OF RECITALS

All of the recitals and preambles herein above stated are found to be true and correct and are incorporated herein and made a part of this Agreement.

2. CONTRACT FOR CONSTRUCTION

HEWITT shall authorize a Change Order to its contract with Viking Construction, Inc., which will include the slurry sealing of the Roads maintained by the COUNTY. Amount of this change order shall not exceed **\$30,345**.

3. PAYMENT FOR CONSTRUCTION

HEWITT will provide the COUNTY with an invoice within 30 days of completion of the project. The COUNTY will pay HEWITT the amount of the invoice within twenty (20) working days of the County's receipt of the invoice.

4. COORDINATION OF WORK

The COUNTY will coordinate all work on the Roads with the contractor. HEWITT will pay the contractor. The Parties agree that the contractor will perform no work on county roads prior to being directed to do so in writing by the County.

5. MISCELLANEOUS

- A. ENTIRE AGREEMENT. This agreement constitutes the entire Agreement between HEWITT and the COUNTY, and all negotiations and all understandings between the parties are merged herein.
- B. AMENDMENTS. This Agreement can be supplemented and/or amended only by a dated written document executed by both the COUNTY and HEWITT.
- C. VENUE. The obligations and undertakings of each of the parties to this Agreement shall be performable at Waco, McLennan County, Texas.
- D. CHOICE OF LAW. This Agreement is governed by the laws of the State of Texas.
- E. AUTHORIZATION. The COUNTY and HEWITT agree that their respective governing bodies have authorized the execution of this Agreement and such execution is correct and proper in all respects.
- F. MULTIPLE COPIES. This Agreement is to be executed in multiple counterparts, each of which constitutes an original.

EXECUTED this _____ day of _____, 2018.

CITY OF HEWITT, TEXAS

By: _____
Adam Miles, City Manager

ATTEST:

Lydia Lopez, City Secretary

MCLENNAN COUNTY, TEXAS

By: _____
Scott M. Felton, County Judge

ATTEST:

J.A. "ANDY" HARWELL, County Clerk
McLennan County, Texas

By: Myrce'tez Gowan, DEPUTY



COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 13

SUBMITTED BY: Adam Miles, City Manager

ITEM DESCRIPTION:

Consider and take appropriate action to join as plaintiff in the lawsuit between the City of McAllen, et al, vs State of Texas in a challenge to the constitutionality of SB 1004, which relates to the deployment of network nodes in municipal rights-of-way and the fees cities may charge for use of their rights-of-way.

STAFF RECOMMENDATION/ITEM SUMMARY:

In August of 2017, the City of McAllen Texas filed a lawsuit that challenges the unconstitutionally low right-of-way rental fees in S.B. 1004. That bill, passed during the 2017 regular session and effective September 1, requires a city to allow access for cellular antennae and related equipment ("small cell nodes") in city rights-of-way, and it also entitles cell companies and others to place equipment on city light poles, traffic poles, street signs, and other poles.

The bill gives cities limited authority over placement, and it caps a city's right-of-way rental fee at around \$250 per small cell node. The price per node in the current bill is a taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities. The lawsuit also claims that S.B. 1004 unconstitutionally delegates a city's legislative authority to control its rights-of-way to private businesses.

In order to join with McAllen in this lawsuit, there is a one-time cost of fifteen cents (\$0.15) per resident, based on the last census. For Hewitt, this amounts to \$2,140.

ATTACHMENTS:

Engagement Agreement



May 3, 2018

City of Hewitt
c/o Charles Buenger
3203 N Robinson Dr.
Waco, TX 76706
buengerlawfirm@gmail.com

Re: SB 1004 litigation

Dear Mr. Buenger:

Kevin Pagan advises me that the City of Hewitt may approve participation, along with several other Texas cities, in a challenge to the constitutionality of SB 1004, which relates to the deployment of network nodes in municipal rights-of-way and the fees cities may charge for the use of their rights-of-way.

In this matter, the City of McAllen will be the lead client, responsible for receiving and paying monthly billing statements. In order to facilitate the logistics of billing among what is anticipated to be a large number of cities, each city, including McAllen, will send Bickerstaff Heath Delgado Acosta LLP an amount equal to \$0.15 per resident of the city as shown by the 2010 federal census. Those funds along with any other funds earmarked for the prosecution of the suit will be placed in the Bickerstaff Heath Delgado Acosta LLP Trust Account and will be used to pay the law firm's fees and expenses only after those fees and expenses are incurred and billed. If the funds raised by the initial assessments are not sufficient to complete the litigation, it may be necessary for McAllen to make additional contributions and it may seek contributions from cities and other sources; however, your city will not be required to make an additional assessment to continue as a party to the litigation. At the end of the litigation any funds remaining will be returned proportionately to the participating cities, except that if the additional assessment is exhausted and additional funds are obtained above the amount of the initial assessment, any refund will go to McAllen and any other city providing funds above the amount of their initial assessment and will be computed in proportion to their contribution above the amount of their initial assessment.

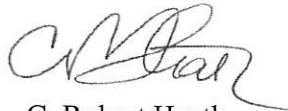
I will coordinate primarily with Kevin Pagan. I am enclosing a copy of the City of McAllen's Engagement Agreement with the firm. These terms, other than payment, will also apply to representation of your city.

Charles Buenger
May 3, 2018
Page 2

To document your city's decision to participate in this matter and the firm's authority to represent it, I am enclosing a letter authorizing representation that you should complete and return to me. Along with that letter I am also enclosing a copy of our Conflict of Interest Disclosure and Agreement. It explains the possibility of conflicts arising among the group of cities participating in this matter and states an agreement to waive certain rights that would normally be part of our attorney-client relationship in order to make this joint representation feasible. By executing the letter authorizing representation you are also agreeing to the Conflict of Interest Disclosure and Agreement.

Please feel free to contact me either by telephone or email if you have questions or would like to discuss any of these issues. We look forward to representing the City of Hewitt in this matter.

Sincerely,



C. Robert Heath

CRH/bv
Enclosure(s)

Bickerstaff Heath Delgado Acosta LLP
3711 S. MoPac Expy., Building 1, Suite 300, Austin, Texas 78746

ENGAGEMENT AGREEMENT

This agreement sets forth the standard terms of our engagement as your attorneys. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this agreement carefully and contact us promptly if you have any questions. Please retain this agreement in your file.

Identity of Client. We will be representing the interest of a group of Texas cities, as representation is authorized by each city. The City of McAllen is the first such city and has agreed to receive and pay the statements for legal services rendered by the firm. Such payments will be subject to a cost sharing arrangement with other cities that have authorized the firm to represent them in this matter.

Attorneys. Bickerstaff Heath Delgado Acosta LLP is engaged by you as your attorneys, and I, C. Robert Heath, will be the partner who will coordinate and supervise the services we perform on your behalf. We routinely delegate selected responsibilities to other persons in our Firm when, because of special expertise, time availability or other reasons, they are in a better position to carry them out. In addition, we will try, where feasible and appropriate, to delegate tasks to persons who can properly perform them at the least cost to you.

The Scope of Our Work. You should have a clear understanding of the legal services we will provide. We will provide services related only to matters as to which we have been specifically engaged. Although in the future we may from time to time be employed on other matters, our present relationship is limited to representing the above-named client in the matters described in Exhibit A. We will at all times act on your behalf to the best of our ability. Any expressions on our part concerning the outcome of your legal matters are expressions of our best professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed. We cannot guarantee the success of any given matter, but we will strive to represent your interests professionally and efficiently.

Fees for Legal Services. Our charges for professional services are customarily based on the time devoted to the matter, the novelty and difficulty of the questions presented, the requisite experience, reputation and skill requested to deal with those questions, time limitations imposed by the circumstances, and the amount involved and the results obtained. Unless otherwise indicated in writing, our fees for legal services are determined on the basis of the hourly rates of the respective lawyers and other timekeepers who perform the services. These rates vary depending on the expertise and experience of the individual. We adjust these rates annually, increasing them to reflect experience, expertise, and current economic conditions. We will notify you in writing if this fee structure is modified. The initial agreed billing rates for attorneys and other timekeepers engaged on your work are attached as Exhibit B.

Other Charges. All out-of-pocket expenses (such as copying charges, travel expenses, messenger expenses, filing and other court costs, and the like) incurred by us in connection with our representation of you

will be billed to you as a separate item on your statement. A description of the most common expenses is included as Attachment C and agreed to as part of this agreement.

Billing Procedures and Terms of Payment. Our billing period begins on the 16th of the month and ends on the 15th of the following month. We will render periodic statements to you for legal services and expenses. We usually mail these periodic statements on or about the first of the month following the latest date covered in the statement. Each statement is payable within 30 days of its stated date, must be paid in U.S. Dollars, and is considered delinquent if not paid in full within 30 days of its stated date. We will include all information reasonably requested by you on all statements and will reference any purchase order number provided by you. If you have any question or disagreement about any statement that we submit to you for payment, please contact me at your earliest convenience so that we can resolve any problems without delay. Typically, such questions or disagreements can be resolved to the satisfaction of both sides with little inconvenience or formality.

Termination of Services. You have the right at any time to terminate our employment upon written notice to us, and if you do we will immediately cease to render additional services. We reserve the right to discontinue work on pending matters or terminate our attorney-client relationship with you at any time that payment of your account becomes delinquent, subject to Court approval if necessary. In the event that you fail to follow our advice and counsel, or otherwise fail to cooperate reasonably with us, we reserve the right to withdraw from representing you upon short notice, regardless of the status of your matter. No termination, whether by you or by us, will relieve you of the obligation to pay fees and expenses incurred prior to such termination.

Retention of Documents. Although we generally attempt to retain for a reasonable time copies of most documents generated by this Firm, we are not obligated to do so indefinitely, and we hereby expressly disclaim any responsibility or liability for failure to do so. We generally attempt to furnish copies of all documents and significant correspondence to you at the time they are created or received, and you agree to retain all originals and copies of documents you desire among your own files for future reference. Because you will have been furnished with copies of all relevant materials contained in our files during the course of the active phase of our representation, if you ask us to retrieve materials contained in a file that has been closed, you agree that we will be entitled to be paid a reasonable charge for the cost of retrieving the file and identifying, reproducing, and delivering the requested materials. It is our Firm's policy to destroy all copies of materials in connection with the representation six (6) years after the completion of the engagement. Before destroying the materials, we will attempt to contact the client identified in this agreement; however, this document serves as notice to you that if we are unable to contact our client at the most recent address contained in our file, we will destroy the materials without further notice. It is your responsibility to notify us of any change in address or other contact information.

Fee Estimates. We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Our attorneys do their best to estimate fees and expenses for particular matters when asked to do so. However, an estimate is just that, and the fees and expenses required are ultimately a function of many conditions over which we have little or no control, especially in litigation or negotiation situations where the extent of necessary legal services may depend to a significant degree upon the tactics of the opposition. Unless otherwise agreed in writing

with respect to a specific matter, all estimates made by us will be subject to your agreement and understanding that such estimates do not constitute maximum or fixed-fee quotations and that the ultimate cost is frequently more or less than the amount estimated.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, United States of America, without giving effect to its choice of laws provisions. Venue of any case or controversy arising under or pursuant to this Agreement will be exclusively in Travis County, Texas, United States of America.

Standards of Professionalism and Attorney Complaint Information. Pursuant to rules promulgated by the Texas Supreme Court and the State Bar of Texas, we hereby advise you that the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. Information on the grievance procedures is available from the State Bar of Texas, and any questions you have about the disciplinary process should be addressed to the Office of the General Counsel of the State Bar of Texas, which you may call toll free at 1-800-932-1900.

Questions. If you have any questions from time to time about any aspect of our arrangements, please feel free to raise those questions. We want to proceed in our work for you with your clear and satisfactory understanding about every aspect of our billing and payment policies; and we encourage an open and frank discussion of any or all of the matters addressed in this agreement.

Acceptance of Terms. If this arrangement is acceptable to you and the City of McAllen, please sign the enclosed duplicate original of this agreement and return it and the required retainer to us at your earliest convenience. We truly appreciate the opportunity to be of service to you and look forward to working with you in a mutually beneficial relationship.

AGREED TO AND ACCEPTED

CITY OF McALLEN

BICKERSTAFF HEATH DELGADO ACOSTA LLP

By:



By:



Date:

7/25/17

cc: Billing Department

Exhibit A — Scope of Services
Bickerstaff Heath Delgado Acosta LLP

While we agree that in the future we may from time to time be employed on other matters, this agreement provides that our relationship is limited to representing and counseling you in connection with the following:

- Research and litigate the constitutionality of SB 1004, which relates to the deployment of network nodes in the public right-of-way and sets fees that cities may impose for such use of their rights-of-way.
- Other legal services assigned or requested, only if the scope of which is confirmed by you in writing at the time of assignment

Other legal services not assigned or requested, and confirmed in writing, are specifically not within the scope of our representation.

Exhibit B — Billing Rates
Bickerstaff Heath Delgado Acosta LLP

TIMEKEEPER	BILLING RATE
Acosta, Alex	\$ 385
Caputo, Cobby	\$ 385
Caroom, Doug	\$ 385
Cheney, Denise	\$ 360
Dugat, Bill	\$ 360
Falk, Syd	\$ 400
Fryer, Cathy	\$ 360
Heath, Bob	\$ 435
Katz, Joshua	\$ 300
Kimbrough, Chuck	\$ 300
Maxwell, Susan	\$ 330
Mendez, David	\$ 385
Mendez, Manuel	\$ 385
Rogers, Emily	\$ 330
Russell, Claudia	\$ 330
Seaquist, Gunnar	\$ 325
Than, Catherine	\$ 330
Weller, Steven	\$ 330
Young, Brad	\$ 330
Gonzalez, Vanessa	\$ 300
Lumpkin, Katy	\$ 300
Fuqua, Kelli	\$ 250
Grinnan, Kimberly	\$ 250
Miller, Gregory	\$ 275
Robinson, Lori	\$ 250
Anderson, Mike	\$ 360
Delgado, Hector	\$ 385
Gangstad, John	\$ 360
Pollan, Tom	\$ 360
Legal Assistants/Specialists	\$ 175
Sherry McCall	\$ 225

Exhibit C—Client Costs Advanced
Bickerstaff Heath Delgado Acosta LLP

The firm incurs expenses on behalf of clients only when required by the legal needs of the clients. Some cases or matters require extensive use of outside copy facilities, and other cases may not be so paper-intensive. Standard services handled within the firm are not charged, and client specific expenses are billed to the client needing those services. An explanation of the billing structure is as follows:

Not Charged

Secretarial and word processing time, routine postage, file setup, file storage, local or ordinary long distance charges, fax charges, and computerized legal research data charges.

Delivery Services

Outside delivery services are used for pickup and delivery of documents to the client as well as to courts, agencies, and opposing parties. Outside delivery fees are charged to the client at the rate charged to the firm. Overnight delivery services are also charged at the rate charged to the firm. Firm Office Services Department personnel may provide delivery service in urgent situations and charges for such in-house service will not exceed the charge that would be made by an outside service in a similar situation.

Postage

Our postal equipment calculates exact U.S. postage for all sizes and weights of posted material. The rate charged for postage is the same as the amount affixed to the material that is mailed. We will not charge clients for postage on routine correspondence; however, the cost of large-volume mail, certified mail, or other additional mail services will be charged to the client.

Copies and Prints

Our standard rate for black and white copies and prints made by firm personnel is \$0.15 per page. Color copies and prints are charged at a standard rate of \$0.55 per page. These charges cover paper, equipment costs, and other supplies. If savings can be realized within the required time frame by sending copy jobs to subcontractors, the firm uses only qualified legal services copiers and the cost charged to the client is the same as the amount billed to the firm.

Phone Charges

Only charges for conference calls or international calls are charged, and charges are billed at the same amount billed to the firm by the outside provider.

Travel

Attorney and other timekeeper time spent traveling on behalf of a client is billed to the client. Hotel, meals, local transportation, and similar expenses are charged based on receipts and travel expense forms submitted by the attorney. Documentation is available to the client if requested.

Maps

Maps produced in conjunction with a project will be billed at \$50 for each 34 x 44 inch map and \$20 for each smaller map, plus cost (time fees) for preparation.

Other Expenses

Expenses incurred with outside providers in connection with the client's legal services will be paid by the client directly to the outside provider unless specifically arranged in advance. If the firm agrees to pay outside providers, the cost charged to the client is the same as the amount billed to the firm. Examples of such charges include: court reporter fees, filing fees, newspaper charges for publication notices, expert witness fees, consultants and other similar expenses.

_____, 2018

C. Robert Heath
Bickerstaff Heath Delgado Acosta LLP
3711 S. MoPac Expy., Bldg. 1, Suite 300
Austin, TX 78746

Re: SB 1004 litigation

Dear Mr. Heath:

The City of Hewitt has approved your firm's representation of our city, along with other Texas cities, in connection with litigation to challenge the constitutionality of SB 1004, which relates to the deployment of network nodes and that sets the fees that cities can charge for the use of their right-of-way. As part of our city's approval, I have reviewed the copy of your firm's Engagement Agreement with the City of McAllen, dated July 25, 2017, and its terms are acceptable to our city.

I understand that in order to facilitate the logistics of billing among what is anticipated to be a large number of cities, each city, including McAllen, will send Bickerstaff Heath Delgado Acosta LLP an amount equal to \$0.15 per resident of the city as shown by the 2010 federal census. Those funds along with any other funds earmarked for the prosecution of the suit will be placed in the Bickerstaff Heath Delgado Acosta LLP Trust Account and will be used to pay the law firm's fees and expenses only after those fees and expenses are incurred and billed. If the funds raised by the initial assessments are not sufficient to complete the litigation, it may be necessary for McAllen to make additional contributions and it may seek contributions from cities and other sources; however, my city will not be required to make an additional assessment to continue as a party to the litigation. At the end of the litigation any funds remaining will be returned proportionately to the participating cities, except that if the additional assessment is exhausted and additional funds are obtained above the amount of the initial assessment, any refund will go to McAllen and any other city providing funds above the amount of their initial assessment and will be computed in proportion to their contribution above the amount of their initial assessment. My city agrees to this procedure and to making its assessment.

I understand that besides group emails, you will be coordinating primarily with Kevin Pagan, and that he will be responsible for coordinating the involvement of the other cities. This is acceptable.

I have read, reviewed, and understand the attached Conflict of Interest Disclosure and Agreement. By my signature below, I represent that I am duly authorized to agree to its terms and conditions on behalf of our city, and thereby to bind our city to those terms and conditions.

Please let me know if you need additional information or we can be of assistance.

Sincerely,

Name

Title

City

CONFLICT OF INTEREST DISCLOSURE AND AGREEMENT

Bickerstaff Heath Delgado Acosta LLP “the Firm” has been requested to represent and plans to represent some or all of the Texas cities and associations listed on Exhibit A, referred to as “the Cities,” in challenging constitutionality of SB 1004, which regulates the deployment of network nodes in the public rights-of-way and sets fees that can be charged for the use of a city’s right-of-way. Because the Texas Disciplinary Rules of Professional Conduct require specific disclosures and waivers for joint representation, this waiver provides notice and consents to the waiver of these rights. The Firm will not be able to represent cities that do not execute this waiver.

We are aware of no conflicts of interest between the Cities regarding this matter at this time; however, potential conflicts of interest may arise in the future. For example, one or more of the Cities could withdraw from participation in this matter and actually oppose the remaining cities. In such an instance, without a conflict waiver, the Firm would be unable to continue representing the Cities in this matter. For this reason the Firm is requiring that current or future conflicts of interest regarding continued or future representation of the Cities, listed on Exhibit A, be waived.

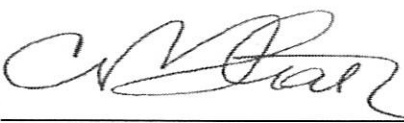
This waiver means that information that otherwise would have been protected by attorney-client privilege might no longer be protected from disclosure by a City withdrawing from the representation. Similarly, an attorney owes a fiduciary duty to his clients and withdrawal or opposition between clients could create conflicting fiduciary duties. For this reason, by waiving conflicts of interest you are releasing the Firm from its fiduciary duty to the extent of the conflict.

It is further the agreement of the Firm and the Cities that representation of the Cities in this matter will not limit the Firm’s ability to represent the cities listed on Exhibit A in other or related matters in the future.

You should carefully consider these issues and consult with independent counsel prior to signing the letter authorizing the firm to represent your city in this matter because your agreement expressly waives conflicts and potential conflicts, consents to the Firm’s representation of the Cities and waives fiduciary duty and confidentiality rights in the same matter and for future representation.

Sincerely,

BICKERSTAFF HEATH DELGADO ACOSTA LLP

By: 
C. Robert Heath



COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 14

SUBMITTED BY: Adam Miles, City Manager

ITEM DESCRIPTION:

Consider an Ordinance amending Chapter 78 - Utilities, ARTICLE VII. - Use and Occupancy of City's Rights-of- Way for Provision of Utility, Telecommunications and Cable Services, of the Code of Ordinances of the City of Hewitt, providing rules and regulations related to Network Nodes, Transport Facilities and Node Support Poles, adopting a Design Manual, and providing an effective date.

STAFF RECOMMENDATION/ITEM SUMMARY:

The City of Hewitt has an important public interest in: protecting municipal rights-of-way for their paramount public purposes; managing the rights-of-way to protect its own utilities; protection of public health, safety and welfare; and maintaining the image and aesthetics of the city for the benefit of its citizens. Recent changes in State Law enacted by the 85th Legislature mandates wireless infrastructure providers and wireless service providers have access to public right of way to locate their facilities.

Hewitt provides for the regulation of Utilities and City Right of Way in Chapter 78 of our Code of Ordinances. Amendments to Chapter 78 are based on new State requirements as well as current best management practices. Included in the backup material is an "Underline and Strikethrough" version of the proposed changes. Underlined words and phrases are proposed to be added, while strikethrough language is to be removed. Consideration for this item also includes approval of a "Design Manual for the Installation of Network Nodes, Transport Facilities and Node Support Poles". Fees related to use of city right-of-way will be considered on a separate item concerning the Master Fee Schedule.

ATTACHMENTS:

Ordinance

ORDINANCE NO. 2018-

**AN ORDINANCE OF THE CITY OF HEWITT, TEXAS,
AMENDING CHAPTER 78 - UTILITIES, ARTICLE
VII. - USE AND OCCUPANCY OF CITY'S RIGHTS-
OF-WAY FOR PROVISION OF UTILITY,
TELECOMMUNICATIONS AND CABLE SERVICES,
OF THE CODE OF ORDINANCES OF THE CITY OF
HEWITT, PROVIDING RULES AND REGULATIONS
RELATED TO NETWORK NODES, TRANSPORT
FACILITIES AND NODE SUPPORT POLES,
ADOPTING A DESIGN MANUAL; PROVIDING AN
EFFECTIVE DATE; PROVIDING A SAVINGS
CLAUSE; AND FINDING AND DETERMINING THAT
THE MEETING AT WHICH THIS ORDINANCE IS
PASSED IS OPEN TO THE PUBLIC AS REQUIRED
BY LAW.**

WHEREAS, the City Council deems it necessary to amend Chapter 78, Utilities, Article VII. – Use and Occupancy of City’s Rights-of-Way For Provision of Utility, Telecommunications and Cable Services based on new State requirements enacted by the 85th Legislature mandating wireless infrastructure providers and wireless service providers have access to public rights of way;

WHEREAS, protecting municipal rights-of-way for public purposes, managing the rights-of-way to protect its own utilities, protection of public health, safety and welfare of the general public are important to the public interest;

WHEREAS, the Planning & Zoning Commission met on Tuesday, April 3, 2018, and recommended approval of these changes by a vote of 5 to 0.

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

Section 1: That Article VII. – Use and Occupancy of City’s Rights-of-way of the Ordinance of the City of Hewitt is hereby amended and shall be read as set forth in Exhibit “A,” attached hereto and incorporated by reference herein the regulations contained in Chapter 78, Utilities of the City of Hewitt Code of Ordinances.

Section 2: This ordinance shall be cumulative of all provisions of ordinances of the City of Hewitt, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

Section 3: It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 4: Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed Two Thousand and No/100 Dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

Section 5: The City Secretary of the City of Hewitt is hereby directed to publish the ordinance or its caption and penalty together in the official City newspaper one time within ten days after passage of this ordinance, as required by the Charter of the City of Hewitt.

Section 6: This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

Section 7: That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED this 7th day of May, 2018.

CITY OF HEWITT, TEXAS

Travis Bailey, Mayor

ATTEST:

Lydia Lopez, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Charlie Buenger, City Attorney

EXHIBIT "A"

ARTICLE VII. USE AND OCCUPANCY OF CITY'S RIGHTS-OF-WAY FOR PROVISION OF UTILITY, TELECOMMUNICATIONS AND CABLE SERVICES

(additions/deletions)

Sec. 78-351. - Definitions.

Whenever used in this article, the following words and terms, as well as their singulars, plurals, and possessives, shall have the following definitions and meanings, unless the context of the sentence in which they are used indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive.

City means the City of Hewitt, Texas, a home-rule municipal corporation.

Collocate and collocation mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a right-of-way on or adjacent to a pole.

~~*Department* means the public works department of the city.~~

~~*Director* means the director of the public works department of the city, or his/her designee.~~

Emergency means a reasonably unforeseen situation presenting an imminent hazard to personal or public health or safety or to property.

Facilities means personal property, owned by a provider of utility, telecommunications, or cable television services, including, but not limited to conduit, ducts, cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, any associated converters, and all equipment used to provide such services within the city.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(a) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(b) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower.

Network provider means:

- (a) a wireless service provider; or
- (b) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
 - (i) network nodes; or
 - (ii) node support poles or any other structure that supports or is capable of supporting a network node.

Permittee means a person to whom a construction permit has been granted hereunder.

Person means any natural person (individual), corporation, partnership, association, joint venture, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof.

Public nuisance means a condition dangerous to the health, safety, peace, comfort or convenience of the general public.

~~*Registered user* means a person who has complied with the registration provisions of this article.~~

Right-of-way means the area on, below, or above public roadways, streets, avenues, highways, alleys, sidewalks, boulevards, drives, tunnels, easements, bridges, and other such similar passageways, thoroughfares, and public ways in the city in which the city has an interest. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications.

Use and occupancy means the acquisition, installation, construction, reconstruction, maintenance, repair, or utilization of any facilities within the rights-of-way for any purpose whatsoever.

User means a person who commences, facilitates, or performs construction upon a facility above, upon, or beneath the right-of-way in a manner governed by this chapter and includes user's representatives, designated agents, contractors and subcontractors, if applicable, unless otherwise indicated.

~~Sec. 78-352. — General provisions.~~

~~(a) — No person shall use or occupy the rights-of-way in the city for the provision of utility, telecommunications, cable television, and similar services except in compliance with the provisions of this article.~~

~~(b) — The provisions of this article shall apply to the use and/or occupancy of the rights-of-way by a person under the authority granted by a franchise agreement or ordinance as if fully set forth in the franchise agreement or ordinance. The express terms of this article will prevail over conflicting or inconsistent provisions in a franchise agreement unless such franchise agreement expresses an explicit intent to waive a requirement of this article.~~

~~(c) — The provisions of this article shall be liberally construed in favor of the city in order to effectuate the purposes and objectives of this article and to promote the public interest.~~

Sec. 78-352. Purpose. The purposes of this Chapter include, but are not limited to:

- a) management and keeping track of facilities placed in, on, over, or under the rights-of-way of the city to provide for the orderly maintenance of such rights-of-way, avoid interruptions of utility services, minimize congestion of facilities in the rights-of-way, minimize unsightly visual impacts or other adverse effects, and assure that the rights-of-way are available to serve their paramount public purpose;
- b) govern use and occupancy of the rights-of-way;
- c) serve the interests of public health, safety, and welfare;
- d) conserve the limited physical capacity of the rights-of-way held in public trust by the city;
- e) preserve the integrity of sidewalks, municipal streets and other public thoroughfares;
- f) assist in preventing uses of the rights-of-way that interfere with the city's paramount right to use of the rights-of-way;
- g) comply with the requirements of federal and state law; and
- h) attempt to avoid the unconstitutional grant of public rights and resources to private entities to the extent possible under state law

Sec. 78-353. - Registration of users and occupants of rights-of-way.

(a) *Registration required.* All users and occupants of the rights-of-way shall register with the city pursuant to this section. For existing users and occupants, such registration shall be accomplished within 30 calendar days following the date of final adoption of this article. Persons seeking to use or occupy the rights-of-way after adoption of this article shall register with the city prior to initiating any such use or occupancy. All registrations must be renewed annually on or before January 31 of each calendar year. Registration forms shall be provided by the city. For persons with a current franchise from the city, the franchise will be evidence of renewal. If a registration is not renewed, the facilities will be deemed to have been abandoned. Persons that are not certificated telecommunications providers providing access lines, as defined in V.T.C.A., Local Government Code ch. 283 are also required to obtain a franchise or license from the city in accordance with city ordinances in addition to registering under the provisions of this article prior to entering into the right-of-way.

(b) Purpose of registration. The purpose of registration under this section is to:

- (1) Provide the city with accurate and current information concerning the users and occupants of the rights-of-way;
- (2) Assist the city in enforcement of this article; and
- (3) Assist the city in monitoring compliance with applicable laws.

(c) Contents of registration. The registration shall include:

- (1) The name of the user and occupant of the right-of-way;
- (2) The name, address, and telephone number of people who will be contact person(s) for the user and occupant;
- (3) The name, address and telephone number of any contractor or subcontractor who will be working in the right-of-way on behalf of the user and occupant;
- (4) The name(s) and telephone number of an emergency contact who shall be available 24 hours a day;
- (5) Proof of insurance as required in section 8 hereof; and
- (6) A description of the type of facilities in the rights-of-way, for example, electric conduit, telecommunications cables, natural gas pipelines and the like. This description shall include a statement of whether the applicant is a certificated telecommunications provider as defined in V.T.C.A., Local Government Code § 283.002(2), and, if so, whether the applicant is providing access lines as defined in V.T.C.A., Local Government Code § 283.002(1).

Sec. 78-354. - Use and occupancy of rights-of-way—Regulation by city.

- (a) *Temporary rearrangement or removal of aerial facilities.* At the request of any person holding a valid building moving permit and upon not less than five business days advance notice, the registered user shall temporarily raise, lower, or remove its facilities as necessary to permit the moving of a building. The expense of such temporary changes, including standby time, shall be paid by the moving permit holder, and the registered user may require payment in advance.
- (b) *Right to trim trees.* The registered user, its contractors and agents have the right, permission and license to trim trees upon and overhanging the *rights-of-way* to prevent trees from coming in contact with the registered user's facilities. All trimming shall be done in consideration of the health of the trees. When directed by the city, tree trimming shall be ~~done~~performed in late fall or winter months, or as directed by a certified arborist, under the supervision and direction of the city or under the supervision of the city's delegated representative. Any tree trimmings generated by the registered user, its contractors or agents, shall be removed within 24 hours. Should the registered user, its contractors or agents, fail to timely remove such trimmings, the city may remove same or have them removed, and shall bill registered user for all costs incurred, which costs shall be promptly paid by the registered user. Nothing herein shall be construed to grant to a registered user the right of access to private property.
- (c) *City work.* The city shall have right at all times to lay, and to permit to be laid, sewer, gas, water and other pipelines or cables and conduits, as well as drainage pipes and channels and streets and to do and permit to be done any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the city, in, across, along, over or under any right-of-way occupied by a registered user, and to change any curb or sidewalk or the grade of any street and to maintain all of the city's facilities. In permitting such work to be done, the city shall not be liable to permittee for any damages not directly and solely caused by the willful misconduct or negligence of the city; provided, however, nothing herein shall relieve any other person or entity, including any contractor, subcontractor, or agent, from liability for damage to permittee's facilities.
- (d) *Removal of facilities.*
 - (1) Whenever it shall be necessary to require a registered user to relocate its facilities to permit the widening or straightening of a street, the city shall give the registered user 30 calendar days notice of such requirement, and such relocation shall be made by the registered user promptly, with consideration given to the magnitude of such alterations or changes, without claim for reimbursement or damages against the city. If any such requirements impose a financial hardship upon the registered user, the registered user shall have the right to promptly present alternative proposals to the city, and the city shall give due consideration to any such alternative proposals.

If the city determines that the preservation and protection of the public health and safety require removal of facilities from the rights-of-way that are being abandoned, the city shall require registered user to remove its facilities entirely from the abandoned rights-of-way at no cost to the city. If the city requests the registered user to adapt or conform its facilities to enable any other entity or person, except the city, to use, or to use with greater convenience, any rights-of-way, registered user shall not be required to make any such changes until such other entity or person shall reimburse or make arrangements satisfactory to registered user to reimburse the registered user for any loss and expense caused by or arising out of such change; provided, however, that the city shall never be liable for such reimbursement.

(2) For public improvement projects where, after notification that facility relocation is required, the registered user has not, prior to the beginning of construction by the city, relocated its affected facilities within the rights-of-way, the following procedure will be followed:

- a. The city shall provide the registered user with reasonable notice of failure to act and request relocation.
- b. If the registered user continues to delay, the city manager and the registered user will jointly review the relocation request in an expeditious manner to establish a mutually acceptable completion date for the relocation.
- c. If the registered user continues to delay or does not meet the revised completion date, the city manager shall provide not less than five calendar days written notice to registered user advising of the city's intent to perform the public improvement project without relocating the affected facilities.
- d. If after expiration of the written notice required by the preceding sentence, the registered user continues to delay, the city shall have the right to perform the public improvements without relocating or removing registered user's facilities. The city shall not be liable to the registered user for any damage to such facilities, and shall not be liable in any event for any consequential damages relating to service interruptions. If the public improvements performed by the city involve the construction or improvement of base or pavement of rights-of-way, registered user shall not thereafter disturb such improved roadways and/or rights-of-way for a period of ~~three~~ five years after completion of such improvements, except when necessary in the event of an emergency.

- (e.) *Public safety.* The city retains the right to move any facilities within the rights-of-way to cure or otherwise address a public health or safety emergency. The city shall cooperate to the extent possible with the registered user in such instances to assure continuity of service and to afford to the registered user the opportunity to make such relocation itself.
- (f.) *Third party convenience.* If the city requires a registered user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other person, except the city, to use, or to use with greater convenience, any right-of-way, a registered user shall not be required to make any such changes until such other person shall have undertaken with solvent bond, to reimburse the registered user for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of the registered user's facilities; provided, however, that the city shall never be liable for such reimbursement.
- (g.) *Abandonment of facilities.* Whenever a registered user intends to abandon any of its facilities within the rights-of-way, it shall submit to the director or appointed representative an application requesting permission to abandon the facility, describing the facility to be abandoned, and the date of the proposed abandonment. City may require the registered user, at the registered user's expense:
 - (1) To remove the facility from the rights-of-way; or
 - (2) To modify the facility in order to protect the public health and safety or otherwise serve the public interest.

Unless such permission is granted or unless otherwise provided in this article, a registered user shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from the city and shall restore any affected rights-of-way to their former state at the time such facilities and equipment were installed, so as not to impair their usefulness. In removing its plant, structures, and equipment, a registered user shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any other facilities or city-owned utility facilities. The city shall have the right to inspect and approve the condition of the rights-of-way, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this article shall continue in full force and effect during the period of removal and until full compliance by a registered user with the terms and conditions of this section. Upon abandonment of any facilities in place, a registered user, if required by the city, shall submit to the city a written instrument, satisfactory in form to the city, transferring to the city the ownership of the abandoned facilities. Notwithstanding anything to the contrary set forth in this article, a registered user may abandon any underground facilities in place so long as it

does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator, or other registered users.

- (h.) *Public nuisance abatement.* The city may require the removal or abatement of any facility determined by the city to cause a public nuisance. The city shall give registered user written notice of the required removal or abatement. No later than 30 calendar days after the registered user receives such written notice, the registered user shall remove such facility or abate the public nuisance to the satisfaction of the city. If the registered user notifies the city manager in writing within such 30-day period requesting additional time for such removal or abatement, or that the registered user is unable to remove or abate such facility for specified reasons, the city manager may, but is not required to, grant additional time to the registered user or negotiate alternate arrangements with the registered user. If the registered user does not so notify the city and fails or refuses to act, the city may remove or abate the facility, at the sole cost and expense of the registered user, all without compensation or liability for damages to the registered user.
- (i.) Network nodes. Adoption of Design Manual. The city council hereby adopts the most recent administratively approved Design Manual for the Installation of Network Nodes, Transport Facilities and Node Support Poles pursuant to V.T.C.A., Local Government Code Chapter 284 ("Design Manual") which is attached for referenced to this ordinance as Exhibit A. The installation and construction of network nodes, transport facilities, and new node support poles in the rights-of-way is subject to this chapter and the Design Manual.

Sec. 78-355. - Construction permits.

- (a) *Permit required.* No person shall perform any construction, repairs, maintenance, or installation of facilities in the rights-of-way without obtaining a construction permit from the city hereunder. The permit will be in the name of the person who will own the facilities to be constructed. The permit application must be completed and signed by a representative of the owner of the facilities to be constructed. During the term of the permit, the permittee shall be liable for the acts or omissions of any entity used by the permittee, when such entity is involved directly or indirectly in the construction and installation of the permittee's facilities to the same extent as if the acts or omissions of such entity were the acts or omissions of the permittee.
- (b) *Emergency exception.* Emergency responses related to existing facilities may be undertaken without first obtaining a permit; however, ~~the department~~ the City shall be notified within two business days of any construction related to an emergency response, including the provision of a reasonably detailed description of the work performed in the right-of-way and an updated map of any facilities that were relocated, if applicable.

- (c) *Other exceptions.* The phrase "construction or installation of facilities" does not include repair or maintenance of existing facilities or the installation of facilities necessary to initiate service to a customer's property, unless such installation, repair or maintenance requires the breaking of pavement, the closure of a nonresidential traffic lane, excavation, or boring.
- (d) *Permit Application, Process and Use Compensation*
 - (1) A written application shall be filed with the city for a permit pursuant to this article. An applicant has the burden to demonstrate in its application compliance with all requirements of this article and with all applicable laws.
 - (2) To be acceptable for filing, a signed original of the application shall be submitted to the appropriate city official and contain all required information. The permit fee shall be submitted with the application. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.
 - (3) All applications accepted for filing shall be made available by the city for public inspection.
- (e) *Information in application.* An application for a construction permit shall contain the following information:
 - (1) The proposed, approximate location and route of all facilities to be constructed or installed and the applicant's plan for right-of-way construction.
 - (2) Engineering plans on a scale of one inch equals 50 feet unless otherwise approved by ~~the department~~ the City.
 - (3) Detail of the location of all right-of-way and utility easements that applicant plans to use.
 - (4) Detail of all existing ~~city~~ utilities in relationship to applicant's proposed route.
 - (5) Detail of what applicant proposes to install, such as pipe size, number of interducts, valves, and similar information.
 - (6) Detail of plans to remove and replace asphalt or concrete in streets (include standard construction details).
 - (7) Drawings of any bores, trenches, handholes, manholes, switch gear, transformers, pedestals, etc., including depth.
 - (8) Handhole and/or manhole typicals of type of manholes and/or handholes applicant plans to use or access.
 - (9) Complete legend of drawings submitted by applicant.

- (10) Five sets of engineering plans must be submitted with permit application.
 - (11) The name, address, and phone numbers of the contractor or subcontractor who will perform the actual construction, including the name and telephone number of an individual with the contractor who will be available at all times during the construction.
 - (12) A description of the construction and installation methods to be employed for the protection of existing structures, fixtures, and facilities within or adjacent to the rights-of-way and the dates and times work will occur, all of which (methods, dates, times, etc.) are subject to the approval of the director.
 - (13) A statement that the insurance and bonding requirements contained herein are met.
- (f) Permit fee. To be acceptable for filing, an application shall be accompanied by a permit fee in the amount established in the most recently approved Master Fee Schedule following amount, as appropriate:
- (1) ~~For certificated telecommunications providers providing access lines (as defined in V.T.C.A., Local Government Code ch. 283): No fee.~~
 - (2) ~~For persons occupying the rights-of-way of the city under a franchise ordinance or agreement: No fee.~~
 - (3) ~~For all other applicants: \$200.00.~~
- (g) Construction bond. The applicant shall file a construction surety bond that will be valid prior to the commencement of any construction through one full year after the completion of the construction from a surety company authorized to do business in the state. The bond shall be in the amount of the estimated amount of the value of the work to be performed that year and shall guarantee the restoration of the right-of-way in the event the applicant leaves a job site in the right-of-way unfinished, incomplete, or unsafe. Permittees constructing facilities for cable television systems shall comply with the provisions of Ordinance No. 03-06-2000A [chapter 71, article II of this Code].
- (h) Processing of application. Within 15 calendar days after receipt of a complete application and permit fee, if applicable, the city shall issue a construction permit.

Sec. 78-356. - Construction work—Regulation by city.

- (a) *Existing facilities.* It is the policy of the city to encourage the joint use of facilities to avoid proliferation of poles and other overhead facilities. Permittees are strongly encouraged to co-locate facilities where economically and technically feasible. Toward that end, permittees shall investigate the availability of space on existing poles and shall demonstrate to the city that such investigation has been completed prior to the issuance of city approval for construction of new facilities. Nothing contained in this article shall be construed to require or permit the attachment on or

placement in a permittee's facilities of any electric light or power wires or facilities or other systems not owned by the permittee. If the city desires to attach or place electric light or power wires, communications facilities or other similar systems or facilities in or on the permittee's facilities, then a further separate, noncontingent agreement with the permittee shall be required. Nothing contained in this article shall obligate the permittee to exercise, or restrict the permittee from exercising, its right to enter voluntarily into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with any person authorized to operate in the rights-of-way of the city.

- (b) *Traffic disruptions.* The permittee shall endeavor to minimize disruptions to the efficient use of the rights-of-way by pedestrian and vehicular traffic, and rights-of-way shall not be blocked for a longer period than shall be reasonably necessary to execute all construction, maintenance and/or repair work. The permittee shall also provide the City with a traffic control plan per the Texas Manual on Uniform Traffic Control Devices (TMUTCD).
- (c) *Pole placement.* All poles placed shall be of sound material and reasonably straight, and shall be set so that they will not interfere with the flow of water in any gutter, channel, pipe, or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location and route of all poles, stubs, guys, anchors, conduits, fiber, and cables placed and constructed by the permittee in the construction and maintenance of its facilities in the city shall be subject to the lawful, reasonable and proper control, direction and/or approval of the city.
- (d) *Work in accordance with permit.* All construction and installation in the rights-of-way shall be in accordance with the permit for the facilities. ~~The director~~City shall be provided access to the work and to such further information as he or she may reasonably require to ensure compliance with the permit. A copy of the construction permit and approved engineering plans shall be maintained at the construction site and made available for inspection by the city at all times when construction or installation work is occurring. Permittee shall produce and maintain a copy of "Record Drawings" for all projects with the City's R.O.W. or Public Utility Easements, and they shall be made available to the City upon request.
- (e) *Time for completion.* All construction or installation work authorized by permit must be completed in the time specified in the construction permit. If the work cannot be completed in the specified time periods, the permittee may request an extension from the director.
- (f) *Prior notification.* ~~The department~~ The City must be notified 24 hours in advance that construction is ready to proceed by either the permittee, its contractor, or other representative. All construction shall be in conformance with all city codes and applicable local, state, and federal laws.

- (g) *Signage.* Required information signs measuring a minimum of three feet by three feet, stating the identity of the person doing the work, telephone number and permittee's identity and telephone number shall be placed at the location where construction is to occur at least 48 hours prior to the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring. An information sign will be posted 100 feet before the construction location commences and each 100 feet thereafter, unless other posting arrangements are approved or required by the director.
- (h) *Erosion and stormwater controls.* Erosion control measures (e.g., silt fence) and advance warning signs, markers, cones, and barricades must be in place before work begins. Permittee shall be responsible for storm water management erosion control that complies with city, state, and federal guidelines. Requirements shall include, but not be limited to, silt fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and wire-backed silt fencing around high erosion areas. Upon request, permittee may be required to furnish documentation submitted or received from federal or state governments.
- (i) *Lane closures.* Lane closures on major thoroughfares will be limited to hours after 8:30 a.m. and before 4:00 p.m. unless the ~~department~~ City grants prior approval. Arrow boards will be required on lane closures, with all barricades, advanced warning signs and 36 inch reflector cones placed according to the ~~specifications of the department.~~ Texas Manual on Uniform Traffic Control Devices (TMUTCD).
- (j) *Responsibility of permittee.* Permittees are responsible for the workmanship of, and any damages caused by, contractors or subcontractors. A responsible representative of the permittee shall be available to the ~~department~~ City at all times during construction.
- (k) *Damage to utilities.* Permittee, contractor, or subcontractor shall notify the ~~department~~ City immediately of any damage to other utilities, either city or privately owned.
- (l) *Cuts.* When a street or sidewalk cut is required, prior approval must be obtained from the ~~department~~ City and all requirements of the ~~department~~ City shall be followed. Repair of all street and sidewalk removals shall be made promptly to avoid safety hazards to vehicle and pedestrian traffic.
- (m) *City utilities.* Installation of facilities must not interfere with city utilities, in particular gravity dependent facilities.
- (n) *Installed depth.* New non-municipal facilities must be installed to a depth approved by the ~~Department~~ City.

- (o) *Boring.* All directional boring shall have a locator place bore marks and depths while bore is in progress. The locator shall place a mark at each stem with a paint dot and shall mark the depth of at least every other stem. Existing utilities shall be potholed prior to work to avoid damage and confirm required depths.
- (p) *Working hours.* The working hours in the rights-of-way are 7:00 a.m. to 6:00 p.m., Monday through Friday. Work that needs to be performed after 6:00 p.m. Monday through Friday must be approved in advance by the City. Any work performed on Saturday or Sunday must be approved 24 hours in advance by the ~~department~~City. Directional boring is permitted only Monday through Friday, 7:00 a.m. to 6:00 p.m., unless approved in advance by the City. No work will be done, except for emergencies, on city holidays.

Worksite Safety. Permittee is responsible for following all applicable safety requirements and maintaining a safe worksite

- (q) *Line locations.* Permittees working in the right-of-way are responsible for obtaining line locates from all affected utilities or others with facilities in the rights-of-way prior to any excavation. Use of geographic information system or the plans or records does not satisfy this requirement. Permittee shall be responsible for verifying the location, both horizontal and vertical, of all affected facilities whether by pot-holing or hand-digging prior to any excavation or boring, with the exception of work involving lane closures, as set forth above. A permittee shall not place facilities where they will interfere with any gas, electric, telephone, water, cable television, or sewer facilities or obstruct or hinder in any manner the various utilities serving the residents of the city. All of permittee's facilities placed in the rights-of-way shall be placed as directed by the city in accordance with the established line-up of utility lines.
- (r) *Manholes.* Placement of all manholes and/or hand holes must be approved in advance by the ~~department~~City. Handholes or manholes will not be located in sidewalks, unless approved by the director.
- (s) *Pumping.* Construction that requires pumping of water or mud shall be contained in accordance with city ordinances and federal and state law and the directives of the City.
- (t) *Restoration.* Restoration of rights-of-way shall be to the reasonable satisfaction of the City and the property owner. Restoration shall be made in a timely manner as specified by approved department schedules and to the satisfaction of the director. Permittee shall warrant all pavement repairs for a period of three years after restoration has been complete. If restoration is not satisfactory or is not performed in a timely manner, all work in progress, except that related to the problem, including all work previously permitted but not complete may be halted and a hold may be

placed on any permits not approved until all restoration as required herein is complete. The restoration shall include, but not be limited to:

- (1) Replacing all ground cover with the type of ground cover damaged during work, or better, either by sodding or seeding, as directed by the ~~department~~City;
- (2) Installation of all manholes and handholes, as appropriate;
- (3) All bore pits, potholes, trenches or any other holes shall be filled in daily, unless other safety procedures area approved by the ~~department~~City;
- (4) Leveling of all trenches and backhoe lines; and
- (5) Restoration of all landscaping, ground cover, and sprinkler systems.

Sec. 78-357. - Indemnification and surety bond.

In accordance with Section 284.302 of the Texas Local Government Code, a network provider must further indemnify and hold the city harmless. Furthermore, in accordance with Section 283.057 of the Texas Local Government Code, a certified telecommunications provider must further indemnify and hold the city harmless.

- (a) ~~General provisions. The registered user shall indemnify and hold the city and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the registered user, any agent, officer, director, representative, employee, affiliate, or subcontractor of the registered user, or its respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right of way. The indemnity provided by this section does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors, or subcontractors. If a registered user and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state law. This section is solely for the benefit of the city and the registered user and does not create or grant any rights, contractual or otherwise, to any other person or entity.~~

- (b) *Notice.* Registered user and the city shall promptly advise the other in writing of any known claim or demand against the registered user or the city related to or arising out of the registered user's activities or facilities in the rights-of-way.
- (c) *Corporate surety bond.*
- (1) Registered user shall obtain and maintain, at its sole cost and expense, and file with the city clerk, a corporate surety bond with a surety company authorized to do business in the state and found acceptable by the city attorney, in the amount of ~~\$50,000.00~~ \$100,000.00 to secure registered user's performance of its obligations and faithful adherence to all requirements of this article. Registered user shall provide this corporate surety bond within 30 days after issuance of the permit hereunder. In the alternative, registered user may provide an irrevocable letter of credit in the same amount in lieu of obtaining a bond.
 - (2) The rights reserved to the city with respect to the bond are in addition to all other rights of the city, whether reserved by this article, or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other rights the city may have.
 - (3) The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until 60 calendar days after receipt by the city, by registered mail, of written notice of such intent."
 - (4) If a registered user fails to pay the city any fees or taxes due to the city, liquidated damages, damages or costs or expenses incurred by the city by reason of any act or default of the registered user, or if the registered user fails to comply with any provision of this article or of its franchise agreement that the city determines can be remedied by a demand upon the corporate surety bond, the city may, after 30 calendar days notice to the registered user, make a demand for payment upon the corporate surety bond, including any interest or penalties. Such notice shall be given by city council resolution. Within 15 calendar days of such city council resolution, the registered user may file a written request for a city council hearing on the matter. Such hearing shall be held within 30 calendar days of the city council resolution authorizing the demand upon the corporate surety bond, unless the city wishes to extend the time period.

Sec. 78-358. - Insurance.

- (a) *Certificate of insurance.* In order to comply with the registration requirements of this article and prior to the issuance of a construction permit, the applicant shall furnish a completed certificate of insurance to the city attorney's office, which shall be completed by an agent authorized to bind the named underwriter(s) and their

company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. Neither the registration nor the construction permit shall be issued until such certification shall have been delivered to the city attorney, and no officer or employee shall have authority to waive this requirement.

- (b) *Coverage amounts.* A registered user and a permittee shall obtain and maintain in full force and effect for the duration of the use and occupancy of the rights-of-way, or of the work to be performed under the permit, respectively, at the registered user's or permittee's sole expense, insurance coverage written on an occurrence basis, issued by companies authorized to conduct business in the state and rated "A" or better by A.M. Best Company and/or otherwise acceptable to the city, in the following types and minimum amounts:

Type		Amount
Worker's Compensation and Statutory Employers Liability		\$100,000/\$500,000/\$100,000
Commercial General Liability—To include coverage for the following where the exposure exists:		<u>\$2,000,000</u>
(I)	Premises operation	Combined single limit for bodily injury and property damage 5,000,000 per occurrence or its equivalent
(II)	Independent contractors	
(III)	Products/completed operations	
(IV)	Personal injury	
(V)	Contractual liability	
(VI)	Explosion, collapse and underground property damage	
Comprehensive automobile insurance coverage for:		\$1,000,000
(I)	Owned/leased automobiles	Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent
(II)	Non-owned automobiles	
(III)	Hired automobiles	

(c) *Required provisions.* All insurance policies will name the city as an additional insured and shall provide that the city must be given 60 calendar days prior written notice of any change in coverage. All insurance policies shall be subject to the examination of and approval by the city for their adequacy as to form, content, form of protection, and insurance company. Permittee shall furnish to city's risk manager, for the city files, certificates plainly and clearly evidencing such insurance, with exclusions, exceptions, or limitations, prior to the execution of this agreement by all parties.

(d) *Self-insurance.* With respect to the registered user's and permittee's obligations to comply with the requirements for commercial general (public) liability insurance coverage, the city may allow the registered user or permittee to self-insure upon annual production of evidence that is satisfactory to the city's risk manager. With respect to the registered user's or permittee's obligations to comply with the requirements for automobile liability insurance and for workers' compensation insurance, the registered user or permittee may self-insure, provided the registered user or permittee tender satisfactory evidence of self-insurance as contemplated by the state motor vehicle financial responsibility law, Tex. Transp. Code § 601.124, and the Texas Workers' Compensation Act, Tex. Labor Code § 407.001, et. seq.

(e) *Franchise provisions.* Utilities with franchise agreements or licenses from the city may meet the above insurance and bonding requirements if their current franchise or license adequately provides for insurance or bonds and provides an indemnity in favor of the city.

Sec. 78-359. - Accounts, records, reports and investigations.

- (a) *Requests for information.* In addition to any requirements that may be contained in a franchise agreement, upon request the registered user shall provide the city information as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, and repair of its facilities performed by registered user in the rights-of-way.
- (b) *Provision of plans.* The permittee shall cooperate with the city at all times by providing timely and complete information regarding the location of its facilities, along with such maps, plats, construction documents and drawings as may exist or as may be created from time to time. The permittee shall at all times keep on file with the city a current map, in a digital format compatible with the city's Geographic Information System (G.I.S.), of the permittee's facilities within the rights-of-way. As extensions or modifications of the facilities are made from time to time, the permittee shall periodically file with the city updated digital maps showing those extensions or modifications so that the city will have current and accurate information regarding

the location of the facilities. The digital information shall include the location of the facilities, including the depth of any buried facilities, to the extent such information exists. If such information is not available in digital format, a hard copy shall be provided. A hard copy of the digital maps may be requested by the city and shall be provided by the permittee if requested. Permittee shall produce and maintain a copy of "Record Drawings" for all projects with the City's R.O.W. or Public Utility Easements, and they shall be made available to the City upon request.

- (c) Prior to disclosure of information clearly claimed in writing to be confidential or proprietary by registered user or permittee, the city shall give the registered user or permittee reasonable notice of any request for such information made to the city pursuant to the public information act, or other applicable law. The city will use the information provided by permittees and registered users pursuant to this section only for the purposes of protection and management of the public rights-of-way. The data base provided by permittees and registered users in its entirety will be treated as competitive information and will not be disclosed in whole or in part, except that portions of such data may be provided to third parties as necessary for efficient management of the public rights-of-way.

Sec. 78-360. - Transfer or assignment of facilities.

- (a) Within 30 calendar days after the effective date of a transfer of ownership or control of the facilities in the rights-of-way, the transferee shall register with the city in accordance with the provisions of this article.
- (b) The acceptance by the city of the registration of the transferee does not constitute a waiver or release of any of the rights of the city under this article, whether arising before or after the date of the transfer.
- (c) The notification required herein shall be in addition to any permission or notification required in franchise ordinances or agreements.

Sec 78- 361. -Certified Telecommunications Providers.

Certified Telecommunications Providers ("CTPs") must obtain a permit for installation or construction activities in the right-of-way just as other users. As part of the application a CTP must provide evidence of certification as a CTP with the right to use public right-of-way by the Texas Public Utilities Commission. CTP certification does not authorize the provision of wireless services using municipal rights-of-way. A CTP is subject to the city's police powers exercised to manage its rights-of-way, including the applicable provisions of this Chapter, except to the extent, if any, directly exempted therefrom by law. A permit to a CTP does not allow it to provide or allow anyone else to provide services beyond those of a CTP through its lines. Designation as a CTP does not except the user from compliance with Chapter 284 of the Texas Local Government Code if the CTP is in fact providing services covered by Chapter 284, unless otherwise directly and clearly provided by law.

Installations on Private Property. Installation of facilities on private property are governed by the city's zoning ordinance (for wireless facilities the 60 day deadline set by FCC regulations applies).

Compensation for Right-of-Way Use. Any compensation for the use of rights-of-way is generally set by franchise, license agreement, or by law. Chapter 283 of the Local Government Code addresses compensation for lines of Certified Telephone Providers, and does not apply to wireless services.

Sec 78-362. -Chapter 284 Facilities.

The construction and installation of facilities covered by Chapter 284 of the Texas Local Government code must comply with the Design Manual, this chapter, Chapter 284 of the Texas Local Government Code, and other law which is applicable and is not in conflict with Chapter 284 of the Texas Local Government Code. Under Chapter 284 of the Local Government Code, permittees operating or maintaining facilities in the City's rights-of-way must adhere to adjacent regulations and fees established by Chapter 284 of the Texas Local Government Code.

No collocation of a network node on a city service pole may occur unless the network provider enters into a pole attachment agreement with the city in the form approved by the city manager.

Sec. 78- 363. Prohibition of Installation or Construction of Facilities in Certain Areas.

Areas where certain types of facilities are prohibited from being installed or constructed are generally addressed by other Chapters of this Code, or the city's zoning and subdivision regulations. However, as to municipal rights-of-way and facilities covered by Chapter 284 of the Local Government Code, Chapter 284 specifically controls restrictions on the locations where network nodes, node support poles and transport facilities may be installed.

A. Restrictions on Facilities Covered by Chapter 284 of the Texas Local Government Code.

- 1) No network provider may install, construct, or operate a new node support pole on public right-of-way that is in a municipal park without obtaining the written consent of the city manager before a permit application is submitted. In addition, any approvals required under applicable deed restrictions must be obtained. Municipal park as used herein specifically includes: Warren Park, Glaze Park, and Hewitt Park and/or other if applicable.

- 2) No network provider may install, construct, or operate a new node support pole on public right-of-way adjacent to a street of less than 50 feet in width that is adjacent to single family residential lots or multi-family uses, or is zoned for residential use or is restricted to residential use by deed restrictions without obtaining the written consent of the city manager before a permit application is submitted. In addition, any approvals required under applicable deed restrictions must be obtained.
- 3) In the event that a historic district or design district is developed and designated in the future having decorative poles, no network provider may install, construct, or operate a new node or node support pole on public right-of-way in the district without a permit from the city specifically for said location(s), and compliance with concealment and design requirements of the city for the district to minimize the impact on aesthetics.
- 4) If by zoning designation or deed restrictions/restrictive covenants an area has undergrounding requirements, the network provider shall comply with those requirements, but may seek a zoning change as provided for in the applicable regulations; approval of which is not guaranteed. In addition, any approvals required under applicable deed restrictions/restrictive covenants would have to be obtained.

Sec 78-364. -Damage to other Facilities

- A. Without intending to affect or determine the legal relationship between a user and any third party, a user shall be liable for any property damage or destruction caused by the user, or by any contractor or subcontractor of the user, as a result of the user or any contractor or subcontractor of the user constructing in the right-of-way. A designated agent or representative of a user shall be available to the city engineer for contact purposes in the event of damage or destruction.
- B. A user shall immediately notify the city engineer upon occurrence of any damage or destruction to any facility or other property owned or leased by a third party or by the city, in connection with construction occurring in the right-of-way, if such occurrence happens during a city business day. If the occurrence happens on a day other than a city business day, notification must be given by 9 a.m. on the first city business day following the occurrence---unless the damage is causing a leak or disruption of water or sewer service---in which case the user must immediately contact the city.

Sec. 78- 365. -Abandonment

User shall remove its facilities when such facilities are abandoned regardless of whether or not it receives notice from the city to do so. Unless the city sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be

completed within the earlier of 90 days of the facilities being abandoned or within 90 days of receipt of written notice from the city. When user removes or abandons permanent structures in the right-of-way, the user shall notify the city engineer in writing of such removal or abandonment and shall file with the city engineer the location and description of each facility removed or abandoned. The city engineer may require the user to complete additional remedial measures necessary for public safety and the integrity of the right-of-way.

Sec. 78-366. -Electrical Supply

Users are responsible for obtaining any required electrical power services to their facilities. The city shall not be liable for any stoppages or shortages of electrical power furnished to the facilities, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the facilities or the act or omission of any other tenant of the structure or user of the right-of-way, or for any other cause beyond the control of the city. Generators and back-up generators are prohibited in the right-of-way.

Sec. 78-367. - Notices.

All notices required herein shall be in writing and shall be delivered in person to the respective parties or sent by certified mail at the addresses set forth in the registration or the permit application.

Sec. 78-368. - Violations.

- (a) If the city has reason to believe that the registered user/permittee is in violation of this article, the city shall notify the registered user/permittee in writing of the violation setting forth the nature of such violation. ~~Within 30 calendar days of receipt of such notice, the registered user/permittee shall respond in writing to provide explanation or documentation to support that the violation did not occur.~~ Registered user/permittee shall be allowed 30 calendar days to cure violations after written notice is received from the city, by taking appropriate steps to comply with the terms of this article and any lawful regulations. If the nature of the violation is such that it cannot be fully cured within 30 calendar days, the period of time in which the registered user/permittee must cure the violation shall be extended for such additional time necessary to complete the cure, provided that:
 - (1) Registered user/permittee shall have promptly commenced to cure; and
 - (2) Registered user/permittee is diligently pursuing its efforts to cure.
- (b) Upon evidence being received by the city that violations of this article, any City Charter provisions or any ordinances lawfully regulating registered user/permittee in the construction and operation of its facilities have occurred, or continue to occur after the 30 calendar day cure period, and any additional time necessary to cure, the city may cause an investigation to be made. If the city finds that such a violation

continues to exist or has occurred, then the city may take any action authorized by law, including making a demand upon the corporate surety bond as provided in section 78-357(c) of this article, termination of the permit, and a suit in court to compel compliance.

- (c) Failure by the city to enforce any rights under this article does not constitute a waiver of such rights.
- (d) If the city revokes a permit, if the permit expires because of the expiration of the permittee's franchise, or if for any other reason a permittee abandons its facilities in the rights-of-way, then to protect the public health and safety, and to the extent authorized by law, the city may require the former permittee to remove its facilities and equipment at the former permittee's expense. If the former permittee fails to do so within a reasonable period of time, the city may have the removal done at the former permittee's expense.

Sec. 78-369. - Miscellaneous.

- (a) The obligations and undertakings of both parties hereto shall be performed at Hewitt, McLennan County, Texas. Venue of any suits arising hereunder shall be McLennan County, Texas.
- (b) The city manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this article. The city manager shall be empowered to take all administrative actions on behalf of the city, except for those actions specified in this article that are reserved to the city council. The city manager may recommend that the council take certain actions with respect to the permit.
- (c) A registered user/permittee shall have the right to appeal to the city council or Board of Adjustments any decision of the city manager relating to such registration or permit. Such appeal must be made by written request within 15 calendar days of receipt of written notice of the city manager's decision that the registered user/permittee seeks to appeal.

Sec. 78-370. - Reservation of rights.

- (a) The city reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) Any additional regulations adopted by the city shall be incorporated into this article and complied with by all permittees within 30 calendar days of the date of adoption of such additional regulations.

Secs. 78-371—78-400. – Reserved.

CITY OF HEWITT DESIGN MANUAL FOR THE INSTALLATION OF
NETWORK NODES, TRANSPORT FACILITIES, AND NODE SUPPORT POLES

1. Introduction. The city has an important public interest in: protecting municipal rights-of-way for their paramount public purposes; managing the rights-of-way to protect its own utilities; protection of public health, safety and welfare; and maintaining the image and aesthetics of the city for the benefit of its citizens. At the same time, network providers are seeking to implement new technologies that will create significant gains in the coverage and speed of wireless data and voice services. The hope is that the city and network providers can cooperate to serve both important interests. Chapter 284 of the Texas Local Government Code has created a need for the city to have in place certain design requirements (and in many cases, requests) in order to maintain a level of management control over its rights-of-way. Due to its lack of history with network provider facilities and the impending nature of the new legislation, this Design Manual may not cover every possible issue that may arise, and it is certainly expected that there will be multiple amendments, additions, and clarifications made over time. However, the goal is to provide basic guidelines and preferences to aid network providers in this process.

2. Incorporation of Chapter 284 of the Texas Local Government Code. Chapter 284 of the Local Government Code itself contains many of the rules regarding the size, type, and location of facilities, and is incorporated by reference herein. These restrictions apply in the city regardless of whether expressly addressed in this Design Manual. Likewise, Chapter 78 of the Code of Ordinances of the city contains many provisions applicable to installation and construction in rights-of-way; some of general application and some specific to network providers and their facilities. To the extent not in violation of Chapter 284, the provisions of Chapter 78 of the Code of Ordinances are incorporated by reference herein as part of this Design Manual. Although most of the applicable provisions relating to design of network provider facilities contained in Chapter 78 will be re-addressed herein, applicable and lawful design requirements of Chapter 78 shall apply whether or not specifically addressed herein.

BASIC RULES AND REQUIREMENTS

4. General Requirements.

A. *Basic Location Rules.* In accordance with Chapter 284.102, a Network Provider shall construct and maintain Network Nodes and Node Support Poles in a manner that does not:

1. obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
2. obstruct the legal use of a public right-of-way by other utility providers;
3. violate nondiscriminatory applicable codes;

4. violate or conflict with the municipality's publicly disclosed public right-of-way management ordinance or this Design Manual.
5. violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

B. *Size of Facilities.* Network Providers, as part of their permit application, shall provide detailed drawings, with calculations to show strict conformity to the size limitations as set forth in Chapter 284, in accordance with, but not limited to Chapter 284, Sec. 284.002, size of a Micro Network Node, Sec. 284.003, Size of Network Nodes, and Sec. 284.103, Max. pole height, with each application and with each request for a permit for each location.

C. *Other Jurisdictions.* If the project lies within a Highway Right-of-Way, the applicant must provide evidence of a permit from the State or Federal Government.

D. *Confirmation of non-interference with City Safety Communication Networks.* The Network Provider needs to provide analysis that the proposed network node shall not cause any interference with City public safety radio system, traffic signal light system, or other city safety communications components in accordance with Chapter 284, Sec. 284.304. It shall be the responsibility of the Network Provider to evaluate, prior to making application for permit, the compatibility between the existing City infrastructure and Provider's proposed Network Node. A Network Node shall not be installed in a location that causes any interference. Network Nodes shall not be allowed on City's public safety radio infrastructure.

5. One Network Node per Pole. The city desires to prevent the cluttering of network nodes on any one pole; therefore, there can be no more than one network node on any one pole, and this includes, beyond node support poles, utility poles under an agreement with the applicable utility or a service pole of the city under an agreement with the city.

6. Network Node facilities placement.

A. *Height above ground.* Network Node attachments to a pole shall be installed at least eight (8) feet above the ground in accordance with Chapter 284, Sec. 284.108. Although Chapter 284 refers to a minimum height of 8 feet for attachment of network nodes, network providers must be aware that to the extent of any protrusion into the street, nodes not set at least 16 feet high are likely to be hit by service trucks, such as garbage trucks.

B. *Protrusions.* In accordance with Chapter 284, Sec. 284.003 (a) (1) (C), Sec. 284.003 (a) (2) (C) and Sec. 284.003 (a) (3) (B) no protrusion from the outer circumference of the existing structure or pole shall be more than two (2) feet.

C. *Pole Attachment Agreement.* No network node may be placed on a city service pole unless a Pole Attachment Agreement exists for that service pole between the city and the network provider.

7. New Network Node Support Poles.

A. *New Node Support Poles Spacing.* New node support poles should generally be spaced apart from existing utility poles or Node Support poles at the same as the spacing between utility poles in the immediate proximity. This is a preference of the City and not a requirement.

B. *Height of Node Support Poles or modified Utility Pole.* In accordance with Chapter 284, Sec. 284.103 a Node support pole or modified Utility Pole may not exceed the lesser of:

(1) 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or

(2) 55 feet above ground level.

8. Municipal Service Poles.

A. *In accordance with Agreement:* Installations on all Service Poles shall be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b).

B. *Required industry standard pole load analysis:* Installations on all Service Poles shall have an industry standard pole load analysis completed and submitted to the City with each permit application indicating that the Service Pole to which the Network Node is to be attached will safely support the load, in accordance with Chapter 284.108.

C. *Height of attachments:* All attachments on all Service Poles shall be at least 8 feet above grade, in accordance with Chapter 284, Sec. 285.108 (a) (1) - (2).

D. *Installations on Traffic Signals:* Installations on all Traffic signal structures must not interfere with the integrity of the facility in any way that may compromise the safety of the public and must be in accordance with an agreement as allowed by Chapter 284, Sec. 285.056 and Sec. 284.101 (a) (3), and (b). Installation of Network Node facilities on any traffic signal structures shall:

- i. Be encased in a separate conduit than the traffic light electronics;
- ii. Have a separate electric power connection than the traffic signal structure; and
- iii. Have a separate access point than the traffic signal structure.

Any installation on a traffic signal controlled by the Texas Department of Transportation will require the approval of TxDOT.

E. *Installations on Street signage:* Installations on street signage structures must not interfere with the integrity of the facility in any way that may compromise the

safety of the public. Installation of Network Node facilities on any street signage structures that has electrics shall:

- i. Be encased in a separate conduit than any City signage electronics;
- ii. Have a separate electric power connection than the signage structure;
- iii. Have a separate access point than the signage structure.

9. Ground Equipment.

A. *Size.* Ground equipment shall not exceed any size or height limitations applicable to ground equipment contained in Chapter 284.

B. *Ground Equipment near street corners and intersections:* In accordance with Chapter 284.102 (1), ground equipment shall be located to minimize any obstruction, impediment, or hindrance to the usual travel or public safety on a public right-of-way. Ground equipment of more than three (3') feet in height may not be located within the sight triangle of any intersection, which generally will require the ground equipment to be located at least twenty-five (25') from the intersection if it exceeds three foot in height. Furthermore, ground equipment shall be subject to any sight-distance restrictions of the city's ordinances and standards that are applicable to all ground equipment in the rights-of-way.

C. *Minimize Ground equipment density.* It is requested that network providers avoid creating a density of ground equipment in an area to avoid the appearance of clutter. It is requested that applicants be mindful of other options, whether such be a new location, reducing the footprint of the ground equipment, and/or concealment or camouflaging. These are City preferences and not requirements.

10. Electrical Supply. Network providers are responsible for obtaining any required electrical power services to their facilities. The city shall not be liable for any stoppages or shortages of electrical power furnished to the facilities, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the facilities or the act or omission of any other tenant of the structure or user of the right-of-way, or for any other cause beyond the control of the city. **Generators and back-up generators are prohibited in the right-of-way.**

11. Prohibited or Restricted Areas.

A. *Municipal Parks.* No network provider may install, construct, or operate a new node support pole on public right-of-way that is in a municipal park without obtaining the written consent of the city manager before submission of a permit application. In addition, any approvals required under applicable deed restrictions must be obtained. Municipal parks include: Warren Park; Hewitt Park; and Glaze Park.

B. *Certain Residential Areas.* No network provider may install, construct, or operate a new node support pole on public right-of-way adjacent to a street of less than 50 feet in width that is adjacent to single family residential lots or multi-family uses, or is

zoned for residential use or is restricted to residential use by deed restrictions without obtaining the written consent of the of the city manager before submission of a permit application. In addition, any approvals required under applicable deed restrictions must be obtained. [Street width measurement is the actual travel surface of the street]

C. *Historic Districts.* In the event that a historic district or design district is developed and designated in the future having decorative poles, no network provider may install, construct, or operate a new node or node support pole on public right-of-way in the district without a permit from the city specifically for said location(s), and complying with concealment and design requirements of the city to minimize the impact on aesthetics.

D. *Undergrounding.* If by zoning designation or deed restrictions/restrictive covenants an area has undergrounding requirements, the network provider shall comply with those requirements, but may seek a zoning change as provided for in the applicable regulations; approval of which is not guaranteed. In addition, any approvals required under applicable deed restrictions/restrictive covenants would have to be obtained.

12. Transport Facilities. A permit is required for transport facilities, although no application fee will be charged. Transport facilities must comply with all applicable requirements of the city's right-of-way management ordinance (Chapter 78, Hewitt Code of Ordinances). This includes minimum depth requirements, horizontal and vertical spacing, identifying all other users, backfilling, street/sidewalk cuts, and restoration. Improperly buried lines will not be tolerated.

13. Cooperation with City. Water and sewer service is of paramount importance to citizens. Citizens will find a way to survive a cable or internet outage; but water and sewer service are basic necessities for public health, safety, and welfare—including fire protection. Therefore, it is very important that network providers cooperate with the city in providing full information as to the location, type of installation, excavation work, types of equipment to be used, where the equipment will be operated, etc. Network providers shall follow reasonable directives of the city meant to safeguard the city's water and sewer utilities.

14. Line Locates and Avoiding Damage to other Users. The network provider is responsible for requesting and obtaining all line locates and avoiding causing damage to the facilities of other users in the right-of-way.

15. Insurance and Bonding. To the extent not in conflict with state or federal law, the network provider shall comply with the insurance and bond requirements of the right-of-way management ordinance.

16. Indemnification. As provided for in Section 284.302 of the Texas Local Government Code, the network provider indemnifies the city.

17. Inspections. The city shall be allowed to inspect the installation work at any reasonable time as provided for in the right-of-way management ordinance.

Matters Exempted from Permitting but Requiring Notice

18. Permit Not Required, Notice Required. For facilities covered by Chapter 284 of the Local Government Code, an application and permit are not required for replacing or upgrading of facilities that are substantially the same size and appearance, which is determined as set out in Section 284.157 of the Texas Local Government Code. However, advance notice of the work to the city is required. Also, an application and permit are not required for micro network nodes if the installation is strung on lines between poles or node support poles. However, advance notice of the work to the city is required.

Application for Permit Format and Content

19. Format, Content and Submission. The form, content and submission of applications for permit is set forth in Chapter 78 of the Hewitt Code of Ordinances.

City Preferences Stated

20. Location.

A. *The city's least preferred locations for facilities are:*

1. Residential areas or locations immediately adjacent to residential areas;
2. Municipal park and recreation areas, or locations immediately adjacent thereto;
3. Areas where there is already a proliferation of poles, ground equipment, utility boxes, and the like.

B. *The city's more preferred locations for facilities are:*

1. federal or state highway right-of-way that is not adjacent to a "least preferred" area;
2. areas zoned for industrial or heavy commercial use;
3. retail areas with the use of concealment or camouflaging.

21. Attachment Points.

A. *The city's least preferred attachment points are:*

1. New node support poles;
2. city service poles

B. *The city's more preferred attachment points are:*

1. existing utility poles;
2. federal and state service poles.

22. Aesthetics. It is preferred that all facilities be concealed or camouflaged to the greatest extent possible; but of particular concern are facilities that involve locations described in Section 21 (A) above or attachment points described Section 21 (A) above. Any cooperation with the city in this regard will be appreciated.

Time for Completion

23. Rules relating to time for completion of facility installations are as provided in the right-of-way management ordinance and Chapter 284.

Relocation or Removal

24. Relocation or Removal of Facilities. Facilities are subject to relocation or removal in accordance with the provisions of the right-of-way management ordinance and Chapter 284 of the Texas Local Government Code.

For additional information contact the city engineer. This Manual is subject to amendment or change by the city engineer with the approval of the city manager.

RIGHT-OF-WAY PERMIT APPLICATION

1. **Proposed Permittee:** _____
2. **Address:** _____
3. **Telephone:** _____
4. **Contact Person:** _____
 - a. Office telephone: _____
 - b. Mobile telephone: _____
 - c. E-mail: _____
5. **Identification of any contractors or subcontractors to be used for the work:**
6. **Applicant is (check one):**

A gas utility _____

Municipal water utility _____

A non-municipal sewer utility _____

A certified telecommunications provider _____

A cable television and/or cable internet provider _____

A network provider _____
7. **Identification of right-of-way areas to be affected** (attach maps or other information to assist in identification):
8. **General Description of Construction/Installation Sought to be conducted in the right-of-way** (provide three (3) sets of construction and/or installation plans. Plans should include: identification of the location within the right-of-way where each facility will be located and the location of existing city and third-party facilities in the right-of-way area for which the permit is sought; the dimensions from the proposed facilities to permanent reference points; identification of the type, size, and number of facilities to be constructed or installed, with drawings and specifications; the construction methods and materials to be employed by the applicant for the protection of existing facilities within, above, beneath, or adjacent to the right-of-way and, as applicable, the depth, height, separation from other facilities, and structure to which proposed to be affixed):

9. Will the work require the cutting of, breaking of, or boring under any street or sidewalk? _____ If "yes" please explain in detail:

10. Will the work require the closure of any street travel lanes or sidewalks? _____ If "yes" please explain in detail:

11. Identify in detail the Applicant's right-of-way restoration plan (details and specifications must be provided):

12. What is the estimated time for completion of the work, including restoration (as part of this estimate, if any travel lane of a street or any sidewalk will need to be closed, provide a separate estimate of the start and end dates of closure)?

13. Proof of Insurance or qualifying self-insurance as required by the city's right-of-way regulations is being provided herewith. _____ yes _____ no. If "no" please explain:

14. Proof of performance bond or financial responsibility in accordance with the city's right-of-way regulations is being provided herewith. _____ yes _____ no. If "no" please explain:

Additional Information to be provided by Network Providers:

Does the size of all facilities that Applicant intends to construct/install comply with the requirements of Chapter 284 of the Texas Local Government Code? _____ If "no" please explain in detail:

Have you verified that the facilities, and the operation of the facilities, will not interfere with emergency communications systems of the city? _____yes _____no.

Have you provided herewith a certificate that any network nodes to be installed comply with applicable FCC regulations? _____yes _____no.

Do you certify that the proposed network nodes will be placed into active commercial service not later than the 60th day after the date of completion of construction/installation and final testing of each network node? _____yes _____no.

Number of network nodes to be installed: _____

Number of node support poles to be installed: _____

Are seeking to locate facilities on a city service pole? _____yes _____no. If "yes" have you provided an industry standard pole load analysis with this application for each service pole showing that each pole will safely support the load of the facilities? _____yes _____no.

Identify any concealment or camouflaging methods that you intend to employ, if any:

APPLICANT: _____

BY: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

POLE ATTACHMENT AGREEMENT

This Pole Attachment Agreement is entered into by and between the City of Hewitt, Texas (hereinafter "City") and _____ (hereinafter "Network Provider").

1. Permit. Network Provider has been issued a permit for the installation of one or more network nodes at specified locations in the municipal right-of-way; one or more of which are on service poles of the City as that term is defined in Chapter 284 of the *Texas Local Government Code*.
2. Agreement Required. As provided by Chapter 284 of the *Texas Local Government Code*, the Network Provider cannot proceed with installation of a network node or nodes on a city service pole or service poles without entering into a Pole Attachment Agreement with the City.
3. Location and Identification of Service Poles to which network nodes to be attached:
4. Service Pole Rental. The City hereby agrees to the attachment of network nodes by the network provider to the identified service poles. In consideration thereof, the network provider agrees to pay the City an annual service pole rental of \$_____ per year, per service pole.
5. Compliance with Regulations. Network provider must comply with all applicable requirements of Chapter 78 of the City's Code of Ordinances, the City's Design Manual, and Chapter 284 of the *Texas Local Government Code* in the installation and operation of the network nodes.
6. Termination. The City may terminate this Agreement at any time:
 - a) upon removal of the node as provided for in Chapter 78 of the City's Code of Ordinances and/or Chapter 284 of the *Texas Local Government Code*;
 - b) if a City project requires the node to be relocated (in which instance an alternate location will be determined, which, if it involves a service pole, will be under a separate agreement);
 - c) on the network provider's abandonment of the facilities;

d) on failure of the network provider to pay rentals due under this Agreement on 30 days written notice and opportunity to cure; or

e) on revocation of the permit for the node.

The Network Provider must remove the node upon termination of this Agreement at its sole cost and expense.

Network Provider may terminate this Agreement if it determines to abandon and remove the subject node or nodes.

7. Term. The term of this Agreement is five (5) years, commencing on the date this Agreement is signed by the City. This Agreement shall automatically renew for successive one (1) year terms unless one of the parties gives a notice of intent not to renew to the other party at least 60 days prior to the ending of the primary term or applicable renewal term. If this Agreement has terminated either by expiration of its term or early termination, and the Network Provider seeks to re-establish the subject node at the location, the Network Provider will be required to obtain a new permit before a new Pole Attachment Agreement will be entered into with the Network Provider for the subject location/service pole.

8. Additional Terms.

8.1 No more than one network node can be attached on a service pole.

8.2 Chapter 284 of the *Texas Local Government Code* is incorporated herein.

8.3 Network provider indemnifies and holds the City harmless as provided for in Chapter 284, *Texas Local Government Code*.

8.4 The laws of the State of Texas shall govern this Agreement and all matters related hereto.

8.5 Venue of any action about, arising from, or related to this Agreement, or the subject matter hereof, or in any way related to the Network Provider's use or claimed right to use the City's rights-of-way shall be in a court of competent jurisdiction in McLennan County, Texas.

8.6 The signature pages to this Agreement may be executed by the parties hereto, as the case may be, in separate counterparts. Facsimile signatures and signature pages provided in the form of a ".pdf" or similar imaged document transmitted by electronic mail shall be deemed original signatures for all purposes hereunder.

8.7 By his or her signature below, each signatory individual certifies that he or she is the properly authorized agent or officer of the applicable party hereto and has the requisite authority necessary to execute this Agreement on behalf of such party, and each party hereby certifies to the others that any resolutions necessary

to create such authority have been duly passed and are now in full force and effect.

Network Provider: _____

By: _____
(signature)

Printed Name: _____

Its: _____

Date: _____

City of Hewitt, Texas

By: _____
Adam Miles, City Manager



COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 15

SUBMITTED BY: Adam Miles, City Manager

ITEM DESCRIPTION:

Consider an amendment to the City's Master Fee Schedule related to small cell nodes.

STAFF RECOMMENDATION/ITEM SUMMARY:

This item concerns adoption of new city franchise fees related to small cell nodes in city owned right-of-way. S.B. 1004 out of the 85th Texas Legislature mandates permitting fees and annual lease payments to cities by small cell node operators and cellular service providers.

In essence, the State passed legislation granting wireless providers the use of the public right-of-way for a gratuitously-small fraction of the market rate. In fact, the City of McAllen Texas, et al, is suing the State of Texas challenging the constitutionality of this gift of public property to private corporations.

In this item, the City Council will consider and take appropriate action concerning establishment of fees related to small cell nodes. There are two options for consideration. Option "A" is the fees established by the State Legislature related to small cell nodes. Option "B" is City "Market-Based" fees. **This item will only be required if the previous item on the City Council agenda is approved.**

ATTACHMENTS:

Option A/B

OPTION “A”

STATE MANDATED FEES FOR SMALL CELL NODES AS PER SB 1004

The following are proposed amendments or additions to Hewitt’s Master Fee Schedule related to Chapter 78 of Hewitt’s Code of Ordinances

Master Fee Schedule - Fees for use of City owned Right of Way:

- (1) For certificated telecommunications providers providing access lines (as defined in V.T.C.A., Local Government Code ch. 283): No fee.
- (2) For persons occupying the rights-of-way of the city under a franchise ordinance or agreement: No fee.
- (3) Application fees for network nodes, node support poles and transfer facilities are outlined in Sec 283.156 (b) of the TLGC and are as follows:

Network nodes:

- Application fee: Lesser of: actual cost or \$500 for up to 5 network nodes, and \$250 for each additional network node on a permit (up to 30, per Sec 284.152(b))
- Annual rental rate: \$250 per Network Node site, with annual CPI adjustment

Node Support Poles

- Application fee: Lesser of: actual cost or \$1,000 for each pole
- Annual rental rate: No separate rate from Sec. 284.053 of \$250 per Network node site, with annual CPI adjustment

Transfer facilities

- Application fee: lesser of: actual cost or \$500 for an application including up to 5 network node, and \$250 for each additional network node on a permit
- Rental rate: \$28 monthly for each network node site

- (4) For all other applicants: \$200.00.

OPTION “B”

CITY “MARKET-BASED” FEES

The following are proposed amendments or additions to Hewitt’s Master Fee Schedule related to Chapter 78 of Hewitt’s Code of Ordinances

Master Fee Schedule - Fees for use of City owned Right of Way:

- (1) For certificated telecommunications providers providing access lines (as defined in V.T.C.A., Local Government Code ch. 283): No fee.
- (2) For persons occupying the rights-of-way of the city under a franchise ordinance or agreement: No fee.
- (3) Application fees for network nodes, node support poles and transfer facilities:

Network nodes:

- Application fee: Lesser of: actual cost or \$500 for up to 5 network nodes, and \$250 for each additional network node on a permit (up to 30, per Sec 284.152(b))
- Annual rental rate: \$1,500 per Network Node site, with annual CPI adjustment

Node Support Poles

- Application fee: \$1,000 for each pole
- Annual rental rate: \$1,500 per Network node site, with annual CPI adjustment

Transfer facilities

- Application fee: \$500 for an application including up to 5 network node, and \$250 for each additional network node on a permit
- Rental rate: \$500 monthly for each network node site

- (4) For all other applicants: \$200.00.



COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 16

SUBMITTED BY: Adam Miles, City Manager

ITEM DESCRIPTION:

Authorize City Manager to negotiate and execute a memorandum of agreement concerning acquisition of land related to the Ritchie Road widening project.

STAFF RECOMMENDATION/ITEM SUMMARY:

The City of Hewitt, along with the City of Waco and McLennan County have worked to acquire land and easements related to the widening and reconstruction of Ritchie Road. If approved, the City Manager will be authorized to finalize negotiations related to this land acquisition.

ATTACHMENTS:



COUNCIL AGENDA ITEM FORM

MEETING DATE: May 7, 2018

AGENDA ITEM #: 17

SUBMITTED BY: Adam Miles, City Manager

ITEM DESCRIPTION:

Consider an ordinance of the City Council of the City of Hewitt, Texas approving and directing initiation and prosecution of eminent domain proceedings for land needed for the Ritchie Road Project, and additional authorizations and findings.

STAFF RECOMMENDATION/ITEM SUMMARY:

As part of the Ritchie Road project additional right-of-way and easements are required for utility relocation and road widening. This item is being considered to formally begin the Eminent Domain process related to acquisition of one parcel.

ATTACHMENTS:

Ordinance

ORDINANCE NO. 2018-

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEWITT,
TEXAS APPROVING AND DIRECTING INITIATION AND
PROSECUTION OF EMINENT DOMAIN PROCEEDINGS FOR LAND
NEEDED FOR THE RITCHIE ROAD PROJECT, AND ADDITIONAL
AUTHORIZATIONS AND FINDINGS**

WHEREAS, the Ritchie Road Project (“Project”) is for safety improvements, reconstruction and widening of Ritchie Road, a road located within the municipal boundaries of the City of Hewitt ; and

WHEREAS, due to road re-location and widening that is part of the Project, it is necessary to acquire certain parcels of land—which will involve acquiring only a portion or portions of privately-owned tracts of land; and

WHEREAS, the acquisition process will be carried out by City staff and professionals engaged by the City;

WHEREAS, the City of Hewitt City Council has found that the real property to be acquired for the Project is necessary to carry out the Project, and that the Project is necessary for protecting and serving the safety, welfare and convenience of the public, and serves a public purpose;

WHEREAS, fee title to certain land that is needed for the Project is owned by Carol Ann Kizer, Mary Katherine Ward, and Paige Elizabeth McKinney. Said land consists of three parcels, a .103 acre tract of land (Temporary Construction Easement), a 0.057 acre tract of land (Drainage Easement), and a 1.604 acre tract of land (Right-of-way) located in the Carlos O’ Campo Survey Abstract 32, in the City of Hewitt, McLennan County, Texas, and being out of a called 60.717 acre tract described in a deed to Jimmy P. Kizer recorded in McLennan County, Texas (O.P.R.M.C.T.). Said tract being more specifically described by metes and bounds in Exhibit “A” attached hereto and incorporated by reference herein (“Property”);

WHEREAS, The owners have rejected the final offer of the City, which was based on an appraisal conducted by a licensed appraiser, and is demanding an amount that is many times the offer made to them based on the appraisal;

WHEREAS, The owners are unwilling to reach a negotiated price that is a realistic valuation;
and

WHEREAS, due to the failed efforts to reach an agreed acquisition it has become necessary to acquire said property through the exercise of the power of eminent domain.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF HEWITT, TEXAS THAT:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein and made findings of fact.

2. Additional Findings. It is found, determined and decreed that the Project is a public project serving a public purpose. It is further found, determined and decreed that there is a public necessity for acquisition of the real property for the Project, and that the safety, welfare, and convenience of the public will be served thereby. Furthermore, it is found that the land consisting of three parcels, a .103 acre tract of land (Temporary Construction Easement), a 0.057 acre tract of land (Drainage Easement), and a 1.604 acre tract of land (Right-of-way) described herein and in Exhibit "A" hereto is needed for the Project, and such acquisition will serve a public purpose, and that such acquisition will assist in the construction of the Project for the protection of the safety, welfare, and convenience of the public.

3. Authorization. The law firm of Buenger & Associates is hereby authorized to initiate eminent domain proceedings against Carol Ann Kizer, Mary Katherine Ward, and Paige Elizabeth McKinney, to use the City of Hewitt's power of eminent domain to obtain fee title to the three parcels, a .103 acre tract of land (Temporary Construction Easement), a 0.057 acre tract of land (Drainage Easement), and a 1.604 acre tract of land (Right-of-way) for and on behalf of the City of Hewitt, and take such acts as are deemed appropriate by the attorneys to carry out the eminent domain authority of the City to acquire said property. Buenger & Associates and City staff are authorized to take all such actions necessary to initiate and prosecute to completion an eminent domain case to acquire the property described herein and in Exhibit "A" hereto.

PASSED this ____ day of MAY, 2018 on the Motion of _____

that:

"I move that the City of Hewitt authorizes the use of the power of eminent domain to acquire three parcels of land, a .103 acre tract of land (Temporary Construction Easement), a 0.057 acre tract of land (Drainage Easement), and a 1.604 acre tract of land (Right-of-way), owned by Carol Ann Kizer, Mary Katherine Ward, and Paige Elizabeth McKinney, and which is described in the Order and in Exhibit "A" attached thereto."

Said Motion was seconded by _____ and put to a vote, at which time the following record votes were cast:

Councilman Steve Fortenberry	____ Aye ____	____ Nay
Councilman Bill Fuller	____ Aye ____	____ Nay
Councilman James Vidrine	____ Aye ____	____ Nay
Councilman Kurt Krakowian	____ Aye ____	____ Nay
Mayor Pro-Tem Ed Passalugo	____ Aye ____	____ Nay
Mayor Travis Bailey	____ Aye ____	____ Nay

and passed by the affirmative vote of ____ Ayes to ____ Nays.

Travis Bailey, Mayor

Attest: _____
Lydia Lopez, City Secretary



600 Austin Ave., Suite 20
Waco, Texas 76701

**50 FEET WIDE (0.057 ACRE) DRAINAGE EASEMENT
LOCATED IN THE CARLOS O'CAMPO SURVEY, ABSTRACT 32
IN THE CITY OF HEWITT, McLENNAN COUNTY, TEXAS**

FIELD NOTES FOR A 50 FEET WIDE (0.057 ACRE) DRAINAGE EASEMENT LOCATED IN THE CARLOS O'CAMPO SURVEY, ABSTRACT 32, IN THE CITY OF HEWITT, McLENNAN COUNTY, TEXAS, AND BEING OUT OF A CALLED 60.717 ACRE TRACT DESCRIBED IN A DEED TO JIMMY P. KIZER RECORDED IN McLENNAN COUNTY CLERK'S DOCUMENT (M.C.C.D.) 2007027527 OF THE OFFICIAL PUBLIC RECORDS OF McLENNAN COUNTY, TEXAS (O.P.R.M.C.T.). SAID 0.057 ACRE TRACT BEING MORE PARTICULARLY SHOWN ON THE ATTACHED EXHIBIT DRAWING AND FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A BRIDGE NAIL FOUND IN THE NORTHEAST MARGIN OF RITCHIE ROAD (VARIABLE WIDTH RIGHT-OF-WAY) IN THE NORTHWEST LINE OF A CALLED 2.62 ACRE TRACT DESCRIBED IN A DEED TO THE CITY OF HEWITT, TEXAS RECORDED IN M.C.C.D. 2001008812 OF THE O.P.R.M.C.T., MARKING THE SOUTH CORNER OF SAID 60.717 ACRE TRACT, FROM WHICH A 1/2" IRON ROD WITH AN ILLEGIBLE CAP FOUND MARKING THE NORTH CORNER OF A CALLED 2.00 ACRE TRACT DESCRIBED IN A DEED TO THE CITY OF HEWITT RECORDED IN M.C.C.D. 2010037528 OF THE O.P.R.M.C.T. BEARS N 59°22'17" E – 660.76';

THENCE N 59°22'17" E – 68.17' WITH THE COMMON LINE OF SAID 60.717 ACRE TRACT AND SAID 2.62 ACRE TRACT TO A 1/2" IRON ROD WITH A CAP STAMPED "WALKER PARTNERS" SET FOR REFERENCE;

THENCE DEPARTING SAID COMMON LINE N 30°33'47" W – 586.99' TO THE **POINT OF BEGINNING** AND THE SOUTH CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 30°33'47" W – 50.00' TO A POINT FOR THE WEST CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A 1/2" IRON ROD WITH A CAP STAMPED "WALKER PARTNERS" SET FOR REFERENCE BEARS N 30°33'47" W – 44.51';

THENCE N 59°26'13" E – 50.00' TO A POINT FOR THE NORTH CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE S 30°33'47" E – 50.00' TO A POINT FOR THE EAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE S 59°26'13" W – 50.00' RETURNING TO THE **POINT OF BEGINNING** AND CONTAINING 0.057 ACRE OF LAND.

**THIS DESCRIPTION IS BASED ON THE ATTACHED EXHIBIT DRAWING MADE BY DANA B. SPIGENER
REGISTERED PROFESSIONAL LAND SURVEYOR, NO. 4809.**

BEARINGS CITED WITHIN THIS DESCRIPTION ARE BASED ON TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, TEXAS CENTRAL ZONE ACQUIRED FROM GLOBAL POSITIONING SYSTEM OBSERVATIONS.

SURVEYED: MAY, 2017
RELEASED: JANUARY 15, 2018

Dana B. Spigener
DANA B. SPIGENER, R.P.L.S. 4809



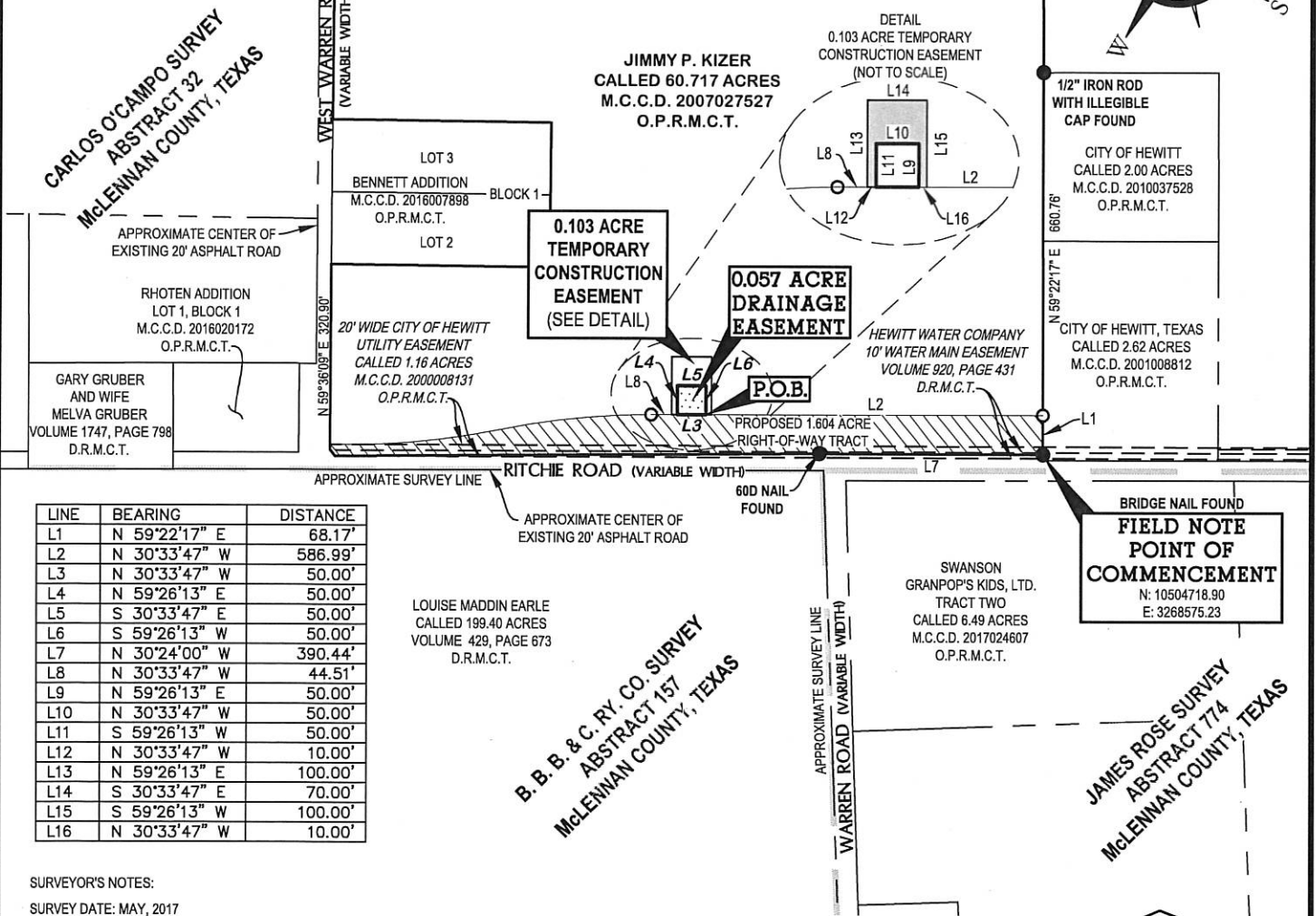
PROJ NO. 1-03018.01
PLAT NO. A1-1379
FIELD NOTE NO. 02E
MAP CHECKED 01-11-18 DBS

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D.R.M.C.T. = DEED RECORDS McLENNAN COUNTY, TEXAS
M.C.C.D. = McLENNAN COUNTY CLERK'S DOCUMENT
O.P.R.M.C.T. = OFFICIAL PUBLIC RECORDS McLENNAN COUNTY, TEXAS
○ = 1/2" IRON ROD WITH CAP STAMPED "WALKER PARTNERS" SET
P.O.B. = FIELD NOTE POINT OF BEGINNING

EXHIBIT "B"

OWNERS: CAROL ANN KIZER, MARY KATHRYN WARD
AND PAIGE ELIZABETH McKINNEY, EXECUTORS
DOCUMENT NO. 20130161-PRI
PROBATE COURT OF McLENNAN COUNTY, TEXAS



LINE	BEARING	DISTANCE
L1	N 59°22'17" E	68.17'
L2	N 30°33'47" W	586.99'
L3	N 30°33'47" W	50.00'
L4	N 59°26'13" E	50.00'
L5	S 30°33'47" E	50.00'
L6	S 59°26'13" W	50.00'
L7	N 30°24'00" W	390.44'
L8	N 30°33'47" W	44.51'
L9	N 59°26'13" E	50.00'
L10	N 30°33'47" W	50.00'
L11	S 59°26'13" W	50.00'
L12	N 30°33'47" W	10.00'
L13	N 59°26'13" E	100.00'
L14	S 30°33'47" E	70.00'
L15	S 59°26'13" W	100.00'
L16	N 30°33'47" W	10.00'

SURVEYOR'S NOTES:

SURVEY DATE: MAY, 2017
RELEASE DATE: JANUARY 19, 2018

FIELD NOTES ATTACHED HERETO, MADE A PART HEREOF AND TITLED:

50 FEET WIDE (0.057 ACRE) DRAINAGE EASEMENT LOCATED IN THE CARLOS O'CAMPO SURVEY, ABSTRACT 32, IN THE CITY OF HEWITT, McLENNAN COUNTY, TEXAS.
0.103 ACRE TEMPORARY CONSTRUCTION EASEMENT LOCATED IN THE CARLOS O'CAMPO SURVEY, ABSTRACT 32, IN THE CITY OF HEWITT, McLENNAN COUNTY, TEXAS.

THE SURVEYOR DID NOT ABSTRACT THE SUBJECT TRACT. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT.
THE SURVEYOR DOES NOT GUARANTEE THAT ALL EASEMENTS, RESTRICTIONS OR ENCUMBRANCES (EITHER OF RECORD OR NOT OF RECORD) WHICH MAY AFFECT THE SUBJECT TRACT ARE SHOWN HEREON.

THE BEARINGS AND GRID COORDINATES SHOWN HEREON ARE BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, TEXAS CENTRAL ZONE ACQUIRED FROM GLOBAL POSITIONING SYSTEM OBSERVATIONS.

EXHIBIT SHOWING

50 FEET WIDE (0.057 ACRE) DRAINAGE EASEMENT
0.103 ACRE TEMPORARY CONSTRUCTION EASEMENT

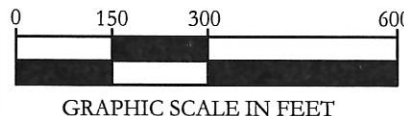
IN THE CARLOS O'CAMPO SURVEY, ABSTRACT 32, IN THE CITY OF HEWITT, McLENNAN COUNTY, TEXAS, BEING A PORTION OF
A CALLED 60.717 ACRE TRACT DESCRIBED IN A DEED TO JIMMY P. KIZER RECORDED IN McLENNAN COUNTY CLERK'S
DOCUMENT 2007027527 OF THE OFFICIAL PUBLIC RECORDS OF McLENNAN COUNTY, TEXAS

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Walker Partners
engineers ★ surveyors

600 Austin Avenue, Suite 20 • Waco, Texas 76701
Phone: 1-254-714-1402 • T.B.P.E. Registration No. 8053
T.B.P.L.S. Registration No. 10032500



REVISIONS

PLAT NO. A1-1379 DRAFT DATE 01-11-18 FB/PG 385/27
PROJ. NO. 1-03018.01 TAB NO. 8.5X11 FIELD NOTE NO. 02E & 02T
DWG. NAME 1-03018ESMT2 KIZER DRAWN BY DBS



600 Austin Ave., Suite 20
Waco, Texas 76701

**0.103 ACRE TEMPORARY CONSTRUCTION EASEMENT
LOCATED IN THE CARLOS O'CAMPO SURVEY, ABSTRACT 32
IN THE CITY OF HEWITT, McLENNAN COUNTY, TEXAS**

FIELD NOTES FOR A 0.103 ACRE TEMPORARY CONSTRUCTION EASEMENT LOCATED IN THE CARLOS O'CAMPO SURVEY, ABSTRACT 32, IN THE CITY OF HEWITT, McLENNAN COUNTY, TEXAS, AND BEING OUT OF A CALLED 60.717 ACRE TRACT DESCRIBED IN A DEED TO JIMMY P. KIZER RECORDED IN McLENNAN COUNTY CLERK'S DOCUMENT (M.C.C.D.) 2007027527 OF THE OFFICIAL PUBLIC RECORDS OF McLENNAN COUNTY, TEXAS (O.P.R.M.C.T.). SAID 0.103 ACRE TRACT BEING MORE PARTICULARLY SHOWN ON THE ATTACHED EXHIBIT DRAWING AND FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A BRIDGE NAIL FOUND IN THE NORTHEAST MARGIN OF RITCHIE ROAD (VARIABLE WIDTH RIGHT-OF-WAY) IN THE NORTHWEST LINE OF A CALLED 2.62 ACRE TRACT DESCRIBED IN A DEED TO THE CITY OF HEWITT, TEXAS RECORDED IN M.C.C.D. 2001008812 OF THE O.P.R.M.C.T., MARKING THE SOUTH CORNER OF SAID 60.717 ACRE TRACT, FROM WHICH A 1/2" IRON ROD WITH AN ILLEGIBLE CAP FOUND MARKING THE NORTH CORNER OF A CALLED 2.00 ACRE TRACT DESCRIBED IN A DEED TO THE CITY OF HEWITT RECORDED IN M.C.C.D. 2010037528 OF THE O.P.R.M.C.T. BEARS N 59°22'17" E – 660.76';

THENCE N 59°22'17" E – 68.17' WITH THE COMMON LINE OF SAID 60.717 ACRE TRACT AND SAID 2.62 ACRE TRACT TO A 1/2" IRON ROD WITH A CAP STAMPED "WALKER PARTNERS" SET FOR REFERENCE;

THENCE DEPARTING SAID COMMON LINE N 30°33'47" W – 586.99' TO THE **POINT OF BEGINNING**;

THENCE N 59°26'13" E – 50.00' TO A CORNER POINT;

THENCE N 30°33'47" W – 50.00' TO A CORNER POINT;

THENCE S 59°26'13" W – 50.00' TO A CORNER POINT;

THENCE N 30°33'47" W – 10.00' TO A POINT FOR THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 59°26'13" E – 100.00' TO A POINT FOR THE MOST NORTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE S 30°33'47" E – 70.00' TO A POINT FOR THE MOST EASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE S 59°26'13" W – 100.00' TO A POINT FOR THE MOST SOUTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 30°33'47" W – 10.00' RETURNING TO THE **POINT OF BEGINNING** AND CONTAINING 0.103 ACRE OF LAND.

**THIS DESCRIPTION IS BASED ON THE ATTACHED EXHIBIT DRAWING MADE BY DANA B. SPIGENER
REGISTERED PROFESSIONAL LAND SURVEYOR, NO. 4809.**

BEARINGS CITED WITHIN THIS DESCRIPTION ARE BASED ON TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, TEXAS CENTRAL ZONE ACQUIRED FROM GLOBAL POSITIONING SYSTEM OBSERVATIONS.

SURVEYED: MAY, 2017
RELEASED: JANUARY 19, 2018

Dana B. Spigener
DANA B. SPIGENER, R.P.L.S. 4809
PROJ NO. 1-03018.01
PLAT NO. A1-1379
FIELD NOTE NO. 02T
MAP CHECKED 01-19-18 DBS



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P.O.B. = FIELD NOTE POINT OF BEGINNING



600 Austin Ave., Suite 20
Waco, Texas 76701

**1.604 ACRE RIGHT-OF-WAY TRACT
LOCATED IN THE CARLOS O'CAMPO SURVEY, ABSTRACT 32
IN THE CITY OF HEWITT, McLENNAN COUNTY, TEXAS**

FIELD NOTES FOR A 1.604 ACRE RIGHT-OF-WAY TRACT LOCATED IN THE CARLOS O'CAMPO SURVEY, ABSTRACT 32, IN THE CITY OF HEWITT, McLENNAN COUNTY, TEXAS, AND BEING OUT OF A CALLED 60.717 ACRE TRACT DESCRIBED IN A DEED TO JIMMY P. KIZER RECORDED IN McLENNAN COUNTY CLERK'S DOCUMENT (M.C.C.D.) 2007027527 OF THE OFFICIAL PUBLIC RECORDS OF McLENNAN COUNTY, TEXAS (O.P.R.M.C.T.). SAID 1.604 ACRE TRACT BEING MORE PARTICULARLY SHOWN ON THE ATTACHED EXHIBIT DRAWING AND FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A BRIDGE NAIL FOUND IN THE NORTHEAST MARGIN OF RITCHIE ROAD (VARIABLE WIDTH RIGHT-OF-WAY) IN THE NORTHWEST LINE OF A CALLED 2.62 ACRE TRACT DESCRIBED IN A DEED TO THE CITY OF HEWITT, TEXAS RECORDED IN M.C.C.D. 2001008812 OF THE O.P.R.M.C.T., MARKING THE SOUTH CORNER OF SAID 60.717 ACRE TRACT AND OF THE HEREIN DESCRIBED TRACT, FROM WHICH A 1/2" IRON ROD WITH AN ILLEGIBLE CAP FOUND MARKING THE NORTH CORNER OF A CALLED 2.00 ACRE TRACT DESCRIBED IN A DEED TO THE CITY OF HEWITT RECORDED IN M.C.C.D. 2010037528 OF THE O.P.R.M.C.T. BEARS N 59°22'17" E - 660.76';

THENCE WITH THE COMMON LINE OF SAID 60.717 ACRE TRACT AND RITCHIE ROAD THE FOLLOWING THREE CALLS:

- 1) **N 30°24'00" W - 390.44'** TO A 60D NAIL FOUND FOR AN ANGLE POINT,
- 2) **N 30°58'14" W - 834.93'** TO A CALCULATED ANGLE POINT,
- 3) **N 20°00'21" E - 14.24'** WITH A CUTBACK LINE TO A CALCULATED ANGLE POINT IN THE SOUTHEAST MARGIN OF WEST WARREN ROAD (VARIABLE WIDTH RIGHT-OF-WAY), FROM WHICH A 1/2" IRON ROD WITH A CAP STAMPED "VANNOY 1988" FOUND IN THE SOUTHEAST MARGIN OF WEST WARREN ROAD MARKING THE WEST CORNER OF LOT 2, BLOCK 1, BENNETT ADDITION ACCORDING TO THE PLAT THEREOF RECORDED IN M.C.C.D. 2016007898 OF THE O.P.R.M.C.T. BEARS N 59°36'09" E - 320.90';

THENCE N 59°36'09" - 9.01' WITH THE COMMON LINE OF SAID 60.717 ACRE TRACT AND SAID WEST WARREN ROAD TO A 1/2" IRON ROD WITH A CAP STAMPED "WALKER PARTNERS" SET FOR THE MOST NORTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE CROSSING THE INTERIOR OF SAID 60.717 ACRE TRACT THE FOLLOWING FOUR CALLS:

- 1) **S 30°29'38" E - 33.73'** TO A 1/2" IRON ROD WITH A CAP STAMPED "WALKER PARTNERS" SET FOR THE POINT OF CURVATURE OF A CURVE TO THE LEFT,
- 2) **262.11' WITH THE ARC** OF SAID CURVE HAVING A RADIUS OF 1276.00', A CENTRAL ANGLE OF 11°46'10" AND A CHORD WHICH BEARS S 36°22'42" E - 261.65' TO A 1/2" IRON ROD WITH A CAP STAMPED "WALKER PARTNERS" SET FOR THE POINT OF REVERSE CURVATURE OF A CURVE TO THE RIGHT,
- 3) **260.57' WITH THE ARC** OF SAID CURVE HAVING A RADIUS OF 1276.00', A CENTRAL ANGLE OF 11°42'00" AND A CHORD WHICH BEARS S 36°24'47" E - 260.11' TO A 1/2" IRON ROD WITH A CAP STAMPED "WALKER PARTNERS" SET FOR THE POINT OF TANGENCY OF SAID CURVE,
- 4) **S 30°33'47" E - 681.50'** TO A 1/2" IRON ROD WITH A CAP STAMPED "WALKER PARTNERS" SET IN THE NORTHWEST LINE OF SAID 2.62 ACRE TRACT, SAME BEING THE SOUTHEAST LINE OF THE 60.717 ACRE TRACT FOR THE EAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE S 59°22'17" W - 68.17' WITH THE COMMON LINE OF SAID 2.62 ACRE TRACT AND SAID 60.717 ACRE TRACT RETURNING TO THE **POINT OF BEGINNING** AND CONTAINING 1.604 ACRES OF LAND.

**THIS DESCRIPTION IS BASED ON THE ATTACHED EXHIBIT DRAWING MADE BY DANA B. SPIGENER
REGISTERED PROFESSIONAL LAND SURVEYOR, NO. 4809.**

**BEARINGS CITED WITHIN THIS DESCRIPTION ARE BASED ON TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, TEXAS
CENTRAL ZONE ACQUIRED FROM GLOBAL POSITIONING SYSTEM OBSERVATIONS.**

SURVEYED: MAY, 2017
RELEASED: JANUARY 15, 2018

Dana B. Spigener
DANA B. SPIGENER, R.P.L.S. 4809



PROJ NO. 1-03018.01
PLAT NO. A1-1377
FIELD NOTE NO. 02
MAP CHECKED 01-10-18 DBS

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EXHIBIT "B"

D.R.M.C.T. = DEED RECORDS McLENNAN COUNTY, TEXAS
M.C.C.D. = McLENNAN COUNTY CLERK'S DOCUMENT
O.P.R.M.C.T. = OFFICIAL PUBLIC RECORDS McLENNAN COUNTY, TEXAS
○ = 1/2" IRON ROD WITH CAP STAMPED "WALKER PARTNERS" SET

CARLOS O'CAMPO SURVEY
ABSTRACT 32
McLENNAN COUNTY, TEXAS



JIMMY P. KIZER
CALLED 60.717 ACRES
M.C.C.D. 2007027527
O.P.R.M.C.T.

OWNERS: CAROL ANN KIZER, MARY KATHRYN WARD
AND PAIGE ELIZABETH McKINNEY, EXECUTORS
DOCUMENT NO. 20130161-PRI
PROBATE COURT OF McLENNAN COUNTY, TEXAS

1/2" IRON ROD
WITH ILLEGIBLE
CAP FOUND

CITY OF HEWITT
CALLED 2.00 ACRES
M.C.C.D. 2010037528
O.P.R.M.C.T.

APPROXIMATE CENTER OF
EXISTING 20' ASPHALT ROAD

LOT 3
BENNETT ADDITION
M.C.C.D. 2016007898
O.P.R.M.C.T.
LOT 2

RHOTHEN ADDITION
LOT 1, BLOCK 1
M.C.C.D. 2016020172
O.P.R.M.C.T.

GARY GRUBER
AND WIFE
MELVA GRUBER
VOLUME 1747, PAGE 798
D.R.M.C.T.

20' WIDE CITY OF HEWITT
UTILITY EASEMENT
CALLED 1.16 ACRES
M.C.C.D. 2000008131
O.P.R.M.C.T.

1.604 ACRE
RIGHT-OF-WAY
TRACT

HEWITT WATER COMPANY, HEWITT, TEXAS
10' WATER MAIN EASEMENT
VOLUME 920, PAGE 431
D.R.M.C.T.

CITY OF HEWITT, TEXAS
CALLED 2.62 ACRES
M.C.C.D. 2001008812
O.P.R.M.C.T.

APPROXIMATE SURVEY LINE

APPROXIMATE CENTER OF
EXISTING 20' ASPHALT ROAD

60D NAIL
FOUND

BRIDGE NAIL FOUND
FIELD NOTE
POINT OF
BEGINNING
N: 10504718.90
E: 3268575.23

SWANSON
GRANPOP'S KIDS, LTD.
TRACT TWO
CALLED 6.49 ACRES
M.C.C.D. 2017024607
O.P.R.M.C.T.

B. B. B. & C. RY. CO. SURVEY
ABSTRACT 157
McLENNAN COUNTY, TEXAS

JAMES ROSE SURVEY
ABSTRACT 774
McLENNAN COUNTY, TEXAS

LINE	BEARING	DISTANCE
L1	N 30°24'00" W	390.44'
L2	N 30°58'14" W	834.93'
L3	N 20°00'21" E	14.24'
L4	N 59°36'09" E	9.01'
L5	S 30°29'38" E	33.73'
L6	S 30°33'47" E	681.50'
L7	S 59°22'17" W	68.17'

CURVE	DELTA	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	11°46'10"	1276.00'	262.11'	S 36°22'42" E	261.65'
C2	11°42'00"	1276.00'	260.57'	S 36°24'47" E	260.11'

SURVEYOR'S NOTES:

SURVEY DATE: MAY, 2017

RELEASE DATE: JANUARY 15, 2018

FIELD NOTES ATTACHED HERETO, MADE A PART HEREOF AND TITLED:

1.604 ACRE RIGHT-OF-WAY TRACT LOCATED IN THE CARLOS O'CAMPO SURVEY, ABSTRACT 32, IN THE CITY OF HEWITT, McLENNAN COUNTY, TEXAS.

THE SURVEYOR DID NOT ABSTRACT THE SUBJECT TRACT. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT.
THE SURVEYOR DOES NOT GUARANTEE THAT ALL EASEMENTS, RESTRICTIONS OR ENCUMBRANCES (EITHER OF RECORD OR NOT OF RECORD)
WHICH MAY AFFECT THE SUBJECT TRACT ARE SHOWN HEREON.

THE BEARINGS AND GRID COORDINATES SHOWN HEREON ARE BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, TEXAS
CENTRAL ZONE ACQUIRED FROM GLOBAL POSITIONING SYSTEM OBSERVATIONS.

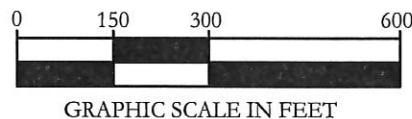
EXHIBIT SHOWING 1.604 ACRE RIGHT-OF-WAY TRACT

IN THE CARLOS O'CAMPO SURVEY, ABSTRACT 32, IN THE CITY OF HEWITT, McLENNAN COUNTY, TEXAS, BEING A PORTION OF
A CALLED 60.717 ACRE TRACT DESCRIBED IN A DEED TO JIMMY P. KIZER RECORDED IN McLENNAN COUNTY CLERK'S
DOCUMENT 2007027527 OF THE OFFICIAL PUBLIC RECORDS OF McLENNAN COUNTY, TEXAS

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Phone: 1-254-714-1402 • T.B.P.E. Registration No. 8053
T.B.P.L.S. Registration No. 10032500



REVISIONS

PLAT NO. A1-1377 DRAFT DATE 01-10-18 FB/PG 385/27
PROJ. NO. 1-03018.01 TAB NO. 8.5X11 FIELD NOTE NO. 02
DWG. NAME 1-03018ROW2 KIZER DRAWN BY DBS