

HEWITT TEXAS

CITY COUNCIL MEETING AGENDA

November 19, 2018
Workshop/Regular Meeting – 5:30 PM/7:00 PM
CITY HALL, 200 PATRIOT COURT
HEWITT, TX 76643

MAYOR AND CITY COUNCIL

Ed Passalugo – Mayor, Ward 3

Steve Fortenberry – Mayor Pro Tem, Ward 3

Travis Bailey – Council Member, Ward 1

Wilbert Wachtendorf – Council Member, Ward 1

Bill Fuller – Council Member, Ward 2

James Vidrine – Council Member, Ward 2

Vacant – Council Member At-Large

CITY STAFF

Michael W. Dixon, 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 **19th day of November 2018, at 5:30 PM in Hewitt City Hall, City Council Chambers, 200 Patriot Court, Hewitt, Texas**, at which time the following subjects will be discussed:

1. Call meeting to order
2. Presentation of Engineer's Report
 - Update on pending utility projects.
 - Discuss "2017 - L.S. No. 5 Removal / I-35 Waterline Replacement; Phase 1" Bid Opening and Council's consideration of award.
 - Update on pending street projects.
 - Update on pending drainage projects.
3. Briefing and discussion concerning upcoming events:
 - Thanksgiving Holiday – City offices closed – November 22-23, 2018
 - Christmas Tree Lighting – December 8, 2018, 5:00-7:30 PM
4. Special Presentation by Executive Director Alissa Cady, Greater Hewitt Chamber of Commerce.
5. Briefing and discussion concerning Dropcountr – Citizens Portal.
6. Briefing and discussion concerning financial reports.
7. Briefing and discussion concerning Public Safety operations – Police & Fire.
 - Activity Reports
8. Review of the Regular Meeting Agenda.
9. **EXECUTIVE SESSION** pursuant to §551.074 of the *Texas Government Code* so that the City Council can deliberate the duties, employment, or appointment of a public officer or employee: potential candidates for Interim City Manager and/or City Manager.
10. Adjourn

I, the undersigned authority, do hereby certify that the above notice of meeting of the governing body of the City of Hewitt, Texas was posted on the Public Notice Board located in front of City Hall at 4:00 AM/PM on November 16, 2018.

CITY OF HEWITT



Lydia Lopez, TRMC/CMC
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 **19th day of November 2018, at 7:00 PM** in **Hewitt City Hall, Council Workshop Room/Council Chambers, 200 Patriot Court**, Hewitt, Texas, at which time the following subjects will be discussed and upon which action may be taken:

1. Call meeting to order.
2. Pledge of Allegiance to the U.S. Flag
3. Consider approval of minutes of the City Council Workshop/Regular Meeting of November 5, 2018.
4. Canvass election returns of the City's Special Election.
5. Discussion and possible action on Resolution No. 2018-10 declaring the results of the City's Special Election of November 6, 2018.
6. Discussion and possible action on Resolution No. 2018-11 ordering a Runoff Election to be held on December 15, 2018, and other matters related thereto.
7. 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.*
8. Consider award of bid for 2017 - L.S. No. 5 Removal/I-35 Waterline Replacement; Phase 1 to Bell Contractors, Inc. in the amount of \$550,134.48.
9. Public hearing, discussion and possible action on Ordinance No. 2018-18 amending Appendix "B" to the Code of Ordinances of the City of Hewitt, Texas, "Subdivisions" to delegate to the Community Development Director as the Building Official the authority to approve and sign amending plats, minor plats, or replats subject to the terms and restrictions of Section 212.0065 of the Texas Local Government Code; making changes to provisions of the Subdivision Ordinance to carry out this delegation; providing for a severability clause, repealing provisions in direct conflict; finding that the meeting at which this amendment was adopted complied with the Texas Opening Acts; and establishing an effective date.
10. Discussion and possible action on a Resolution No. 2018-12 of the City Council authorizing the acquisition of vehicles and equipment, conditional on the Director of Finance seeking quotes for financing and the City Council approving a quote for the financing of the acquisition.
11. Discussion and possible action on Resolution No. 2018-13 approving the renewal of an existing Interlocal Agreement between the City of Waco and the Cities of Bellmead, Hewitt and McGregor for the purpose of regional tourism marketing through the Waco Convention & Visitors Bureau's Regional Marketing Program and authorizing the Acting City Manager to execute any documents necessary in connection therewith.
12. Discussion and possible action on approval of Publicity and Tourism Agreement between the City of Hewitt and the Greater Hewitt Chamber of Commerce.

13. Discussion and possible action on approval of services agreement with DROPCOUNTR HOME and CLEAR products, a software that allows utility customers access to their accounts.
14. Adjourn

I, the undersigned authority, do hereby certify that the above notice of meeting of the governing body of the City of Hewitt, Texas was posted on the Public Notice Board located in front of City Hall at 4:00 AM/PM on November 16, 2018.

CITY OF HEWITT

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

Lydia Lopez, TRMC
City Secretary

HEWITT TEXAS

COUNCIL WORKSHOP AGENDA ITEM #2



CITY ENGINEER'S REPORT

November 15, 2018

Utility Projects

Lift Station No. 5 Removal

Bids were opened 11/15/18. Within your packet you should find both the Project's Bid Tabulations and my letter of recommendation for the Council's consideration or award.

IH - 35 Waterline

- Sun Valley to Flat Rock Trailers
 - Bids were opened 11/15/18. Within your packet you should find both the Project's Bid Tabulations and my letter of recommendation for the Council's consideration or award.
- Castleman Creek to Glenleigh
 - Working on plans and acquiring easements. Investigating existing waterline locations for tie in locations.

Sun Valley Rd.; Waterline

City's crews are stock piling materials to begin their portion. They have pulled off this project and have been working on the road crossings on Attaway to get that one complete.

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

I have discussed the project with TCEQ. Will be putting together the Bid packet for the project shortly.

Waco Water Contract

We have begun putting the data together to provide Waco with the needed information for the new water contract. Working on three different scenarios for the City's consideration.

FM 2113; Spring Valley Rd.

This has been discussed in the past, but TxDOT has plans on widening the roadway. Just last week I had a discussion with TxDOT about the expected timeline, and at that time it was thought that it would not be funded until 2023, however on 11/12/18, we have received word that the project is now funded, and they are asking for our plans and completion dates to have all our conflicts resolved.

At this time, I have requested project files from TxDOT to begin our design and to prepare cost estimates for our portion of the required utility relocations.

HEWITT TEXAS

CITY ENGINEER'S REPORT

November 15, 2018

Street Projects

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

We have held a preconstruction for this project. Estimated start date is First part of 2019 and to be completed around October of 2020.

Old Temple Rd. / Attaway Rd; Street Improvements

City has installed their crossings and all that lacks to finish up these plans is the proposed grading plan for the Briarfield St. Additive Alternate.

Boleman Dr. Reclaim

Topo has been ordered.

April/December; Mill and Overlay

Topo has been ordered.

Drainage Projects

920/924 Oakmont Dr.; 36" RCP Storm Sewer

We have been monitoring a 36" RCP storm sewer pipe, at the addresses of 920 and 924 Oakmont, that looks to be raising in elevation. On October 19th, we took some elevation shots and at this time the data shows that since Sept. 20th the top of the pipe has risen around 1". Shots were taken again 11/9/18 showing that the elevation of the pipe had gone back down 0.3 to 0.6". I have been discussing this with others and we are still investigating possible causes.

By:



Note: All dates are approximate and subject to change.

HEWITT TEXAS

COUNCIL WORKSHOP AGENDA ITEM #4.



2017-2018 ACTIVITY SNAPSHOT REPORT

- Annual Banquet (485 guests)
- Nacho Daddy's Car Show & Concert (2500+ attendance annually)
- Express Golf Classic (sell out/annual) and met Scholarship Fund goal of \$10,000 (annually)
- Established Quarterly Member Orientations (average attendance of 35/quarter)
- Enhanced Marketing Plan with video, increased exposure and media outlet relationships
- Targeted visitors through greater Hewitt's Rack Card production and enhanced website searchability and SEO
- Tripled Nacho Daddy event attendance
- Doubled Creekside Spooktacular event attendance (over 2,400)
- Provided \$10,000 in Scholarships (2017 and 2018)

MEMBERSHIP AND COMMUNITY

- Represent over 19,500 families and jobs in the local workforce (17% of the county's workforce)
- Hosted over 70 business networking events including six business educational programs
- Grew membership from 427 Jan 1, 2017 to 505 as of 10.10.18
- Maintained 90% retention (as of Oct. 10, 2018)
- Provided over 350 volunteer hours and supported five partnered events in the community
- Revenues of \$238,000 raised annually through community development & membership activity
- Established Member Orientation and Coffee with The President events
- Implemented Webinars and Operation Thank You
- 70% New Member Engagement through event attendance

SUPPORTED PUBLIC POLICY ISSUES TO STRENGTHEN OUR REGION

- State of the City of Hewitt, State of the State and State of the Nation representation
- Quarterly roundtable representation
- Tax reform budget resolution support

PUBLICITY

- Annual Community Guide & Member Directory won first place in the Texas Chamber of Commerce Media Contest (based on organization revenues generated, 2nd year in a row)
- 3000 Hewitt Rack Card project showcasing strengths of safety, affordability, schools and location, distributed to I-35 Visitor Centers
- Strengthened relationships and event reach through TV/Radio outlets and social media platforms
- Doubled circulation of Hewitt Express Magazine due to increased demand
- Website traffic averages over 2,000 views per month
- Partnered with Spring valley Elementary – Business Leadership Speaking

EVENT GOALS

- Banquet – determine speaker immediately after banquet for following year
- Golf – Change up raffle prizes, increase sales and continue to grow scholarship program
- Nacho Daddy – Increase attendance through effective promotion
- Spooktacular – Continue to work with Mars Chocolate to secure main event sponsor

SHORT TERM GOALS

- Increase social media engagement by 5%/quarter (likes/followers)
- Use more video and webinars
- Interview sponsors at events/Facebook live) to engage with digital crowds
- Offer content online for members that are unable to attend monthly lunch events

GROW AMABASSADOR PROGRAM

- Organize welcoming committee through Ambassadors vs. membership committee
- Strong communication of support and engagement expectations
- Visit all inactive members
- Continue to increase retention rate

CONTINUITY

- Create plans of work for each committee
- Staff detailed operations workbooks complete
- Visited members on an accelerated scale (Operation Thank You – visited over 360 members in one day!)

BUILD RELATIONSHIPS WITH LARGE EMPLOYERS

- Determine industry and company-specific needs
- Provide opportunities for community engagement/volunteering and host job fair
- Double large companies' involvement to increase revenue and positive corporate relationships
- Increase growth, status in the larger business community and reduce member turnover
- Create more visibility and continue attracting visitors to the greater Hewitt area
- Open a brown bag luncheon to larger companies' employees – targeted message to benefit staff
- Add dollars to Hewitt by building large employer relationships

LONG TERM GOALS

- 5 Years: 10% growth in membership; 700 total members in 5 years (currently at 505 – 10.10.18)
- Will add revenues, increase business committee involvement and scholarships
- Allow us to re-invest back into our community
- Continue researching and communicated value offered by chamber services

HEWITT TEXAS

COUNCIL WORKSHOP AGENDA ITEM #7.

Hewitt Fire Department

Incident List by Alarm Time/Date

Alarm Date Between {11/01/2018} And {11/15/2018}

Incident-Exp#	Alm Date	Alm Time	Location	Incident Type
18-0000958-000	11/03/2018	00:17:18	942 Parkview CIR	311 Medical assist, assist EMS
18-0000967-000	11/06/2018	00:36:23	312 Ivy LN	321 EMS call, excluding vehicle
18-0000979-000	11/10/2018	00:37:04	201 Dakota DR	321 EMS call, excluding vehicle
18-0000997-000	11/15/2018	00:44:38	404 Park Place DR	321 EMS call, excluding vehicle
18-0000993-000	11/14/2018	01:07:03	MARS DR & HEWITT DR	611A Dispatched & cancelled by
18-0000968-000	11/06/2018	02:32:02	224 N Hewitt DR	321 EMS call, excluding vehicle
18-0000947-000	11/01/2018	02:36:36	311 Romana CIR /B/B	321 EMS call, excluding vehicle
18-0000980-000	11/10/2018	03:20:56	318 Romana CIR	311 Medical assist, assist EMS
18-0000973-000	11/08/2018	04:08:04	304 Travis LN	311 Medical assist, assist EMS
18-0000981-000	11/10/2018	04:37:54	132 Marylee DR	321 EMS call, excluding vehicle
18-0000959-000	11/03/2018	04:52:16	910 Vail Highlands DR	321 EMS call, excluding vehicle
18-0000969-000	11/06/2018	06:54:29	208 Sunset BLVD	321 EMS call, excluding vehicle
18-0000985-000	11/11/2018	07:19:04	212 Buckingham PL	531 Smoke or odor removal
18-0000987-000	11/12/2018	07:41:54	151 ROYAL LN /406/406	311 Medical assist, assist EMS
18-0000948-000	11/01/2018	08:11:51	500 Sun Valley BLVD /A/A	322 Motor vehicle accident with
18-0000965-000	11/04/2018	08:39:14	1017 Radisson DR	321 EMS call, excluding vehicle
18-0000960-000	11/03/2018	10:00:56	151 Royal LN /212	320 Emergency medical service,
18-0000966-000	11/05/2018	10:11:06	730 N 1st ST	321 EMS call, excluding vehicle
18-0000949-000	11/01/2018	10:11:51	521 Connie DR	622 No Incident found on arrival
18-0000961-000	11/03/2018	10:24:38	Sun Valley BLVD & Legacy	322 Motor vehicle accident with
18-0000994-000	11/14/2018	10:37:06	208 Lindenwood LN E	311 Medical assist, assist EMS
18-0000988-000	11/12/2018	11:39:42	636 Barton Creek DR	321 EMS call, excluding vehicle
18-0000962-000	11/03/2018	11:40:06	700 McLemore CIR	322 Motor vehicle accident with
18-0000975-000	11/09/2018	12:00:21	905 Crested Butte DR	321 EMS call, excluding vehicle
18-0000970-000	11/06/2018	13:22:31	412 W Wall ST	321 EMS call, excluding vehicle
18-0000982-000	11/10/2018	14:25:20	317 Crockett LN	320 Emergency medical service,
18-0000950-000	11/02/2018	14:45:45	305 Fannin DR	321 EMS call, excluding vehicle
18-0000951-000	11/02/2018	14:50:34	236 Monterrey DR	320 Emergency medical service,
18-0000963-000	11/03/2018	14:52:06	236 Monterrey DR	500 Service Call, other
18-0000989-000	11/12/2018	15:00:36	509 N HEWITT DR /118/118	500 Service Call, other
18-0000976-000	11/09/2018	16:12:09	124 Texas AVE	554 Assist invalid
18-0000977-000	11/09/2018	16:46:37	701 N Old Temple RD	745 Alarm system activation, no
18-0000991-000	11/13/2018	16:49:08	128 Bonham DR	622 No Incident found on arrival
18-0000995-000	11/14/2018	17:19:28	156 Lindenwood LN N	413 Oil or other combustible
18-0000952-000	11/02/2018	17:26:34	401 N 1st ST	321 EMS call, excluding vehicle
18-0000953-000	11/02/2018	17:46:31	725 N 1st ST	321 EMS call, excluding vehicle
18-0000992-000	11/13/2018	17:58:36	8836 Mars DR	611A Dispatched & cancelled by
18-0000954-000	11/02/2018	18:26:12	141 Travis LN	735 Alarm system sounded due to
18-0000955-000	11/02/2018	18:53:17	151 Royal LN	321 EMS call, excluding vehicle
18-0000972-000	11/07/2018	18:54:31	Fannin DR & W Warren ST	311 Medical assist, assist EMS
18-0000978-000	11/09/2018	18:59:41	208 Toluca TRL	321 EMS call, excluding vehicle
18-0000964-000	11/03/2018	19:16:08	688 Alliance PKY	611A Dispatched & cancelled by
18-0000956-000	11/02/2018	20:31:39	720 Park Meadows DR	321 EMS call, excluding vehicle
18-0000983-000	11/10/2018	20:55:06	151 Royal LN	321 EMS call, excluding vehicle
18-0000971-000	11/06/2018	21:08:50	210 Romana CIR	554 Assist invalid

Hewitt Fire Department

Incident List by Alarm Time/Date

Alarm Date Between {11/01/2018} And {11/15/2018}

Incident-Exp#	Alm Date	Alm Time	Location	Incident Type
18-0000990-000	11/12/2018	22:19:52	1201 Stonehill CIR	600 Good intent call, Other
18-0000986-000	11/11/2018	22:21:25	325 S Interstate I-35	551 Assist police or other
18-0000974-000	11/08/2018	22:43:08	509 N Hewitt DR	321 EMS call, excluding vehicle
18-0000957-000	11/02/2018	22:55:42	349 Oakwood LN	321 EMS call, excluding vehicle
18-0000996-000	11/14/2018	23:19:18	121 Fannin DR	321 EMS call, excluding vehicle
18-0000984-000	11/10/2018	23:56:49	E CHAPMAN RD & LILLARD ST	311 Medical assist, assist EMS

Total Incident Count 51



Food for Families - food drive ended 11/15 - great turn out!

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: November 19, 2018

AGENDA ITEM #: 3

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Consider approval of minutes of the City Council Workshop/Regular Meeting of November 5, 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 November 5, 2018 – 5:30 PM/7:00 PM

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

Staff present: City Attorney Mike Dixon, City Engineer Miles Whitney, Police Chief Jim Devlin, Assistant Police Chief Tuck Saunders; Fire Chief Lance Bracco, Managing Director Katie Allgood (arrived at 6:03 PM), Finance Director Lee Garcia, Library Director Waynette Ditto, Community Development Director Tracy Lankford (arrived at 7:00 PM), Utilities Director Kevin Reinke, and City Secretary Lydia Lopez

Staff absent: City Manager Adam Miles

WORKSHOP – 5:30 PM

1. Mayor Ed Passalugo called the meeting to order at 5:30 PM.
2. Open Meetings Act Training – City Attorney Mike Dixon made introductory remarks and introduced Associate Attorney Amy Thomas who presented the training.
3. Adjourn – *A motion was made by Council Member Bill Fuller and second by Council Member Mayor Pro Tem Travis Bailey to adjourn the Workshops at 6:45 PM.*

REGULAR MEETING - 7:00 PM

1. **CALL TO ORDER.** Mayor Ed Passalugo called the meeting to order at 7:00 PM.
2. **PLEDGE OF ALLEGIANCE TO THE U.S. FLAG** – Mayor Ed Passalugo asked Mr. Bob Potter to lead the Pledge of Allegiance.
3. **PRESENTATION OF REPORT FROM CITY ENGINEER.** This item was not presented due to improper posting.
4. **CONSIDER APPROVAL OF MINUTES OF THE CITY COUNCIL REGULAR MEETING OF OCTOBER 1, 2018.** Council Member Wilbert “Walky” Wachtendorf noted a correction to Item 3 of the meeting minutes. The street name discussed should be corrected to Briarfield as opposed to “Briarleaf”. *A motion was made by Council Member Wilbert “Walky” Wachtendorf and second by Council Member Travis Bailey to approve with the correction as noted; all voted in favor, motion passed.*

5. **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.*

Bob Potter, 409 W. Wall Street, appeared in support of City Manager Adam Miles and asked the Council to reconsider termination of his contract.

Michael Bancale, 909 Stoneridge Drive, requested Council table the subject of removal of city manager; wait until all investigations have been completed, and follow set procedures.

Ann Schiltz, 1220 Dendron, appeared in support of City Manager Adam Miles and expressed concern with what is happening in the community.

Kurt Krakowian, 804 Pebble Creek Circle, appeared support of terminating the City Manager's employment contract. No one else appeared.

6. **PUBLIC HEARING, DISCUSSION AND POSSIBLE ACTION ON ORDINANCE NO. 2018-16 AND ORDINANCE NO. 2018-17 REZONING OF LAND AND CHANGE IN DESIGNATION IN COMPREHENSIVE PLAN. THE LAND IS LOCATED AT THE SOUTHEAST CORNER OF PANTHER WAY AND EAST LINDENWOOD, O'CAMPO C A-32 TRACT 35, BEING 5.341 ACRES. OWNER: CASSANDRA NUNLEY. ZONING CHANGE: R-1 (SINGLE FAMILY RESIDENTIAL) TO P-R (PLANNED RESIDENTIAL). PLAN CHANGE: LOW DENSITY RESIDENTIAL TO MEDIUM DENSITY RESIDENTIAL.** Community Development Director Tracy Lankford presented and responded to Council inquiries. Mayor Ed Passalugo opened the public hearing at 7:28 PM and called for those who wish to speak in favor. Mark Bowles, Project Developer, appeared in support and responded to inquiries. Betty Orton, 912 Steamboat Circle, Stephen Rynerson, 809 Cheyenne Trail, and Al Parker, (address inaudible) appeared to ask questions. No one appeared in opposition. Public hearing closed. *A motion was made by Council Member James Vidrine and second by Mayor Pro Tem Steve Fortenberry to approve the Ordinance No. 2018-16 rezoning; all voted in favor, motion passed. A motion was made by Council Member James Vidrine and second by Council Member Travis Bailey to approve Ordinance No. 2018-17; all voted in favor, motion passed.*

7. **DISCUSSION AND POSSIBLE ACTION ON APPROVING AN INTERLOCAL AGREEMENT WITH DALLAS COUNTY FOR COOPERATIVE PURCHASING.** *A motion was made by Council Member Wilbert "Walky" Wachtendorf and second by Council Member Travis Bailey to approve; all voted in favor, motion passed.*

8. **Executive Session:** A closed meeting will be held pursuant to *Section 551.074 of the Government Code (V.C.T.A)* so that the City Council can deliberate the employment and duties of the City Manager; and pursuant to *Section 551.071 of the Government Code (V.C.T.A)* so that the City Council can seek and receive advice and counsel from their attorneys regarding actual or threatened litigation; settlement of claims; legal powers and restrictions, and possible legal exposure; and matters required to be kept confidential by the professional rules which govern the attorney. *A motion was made by Council Member*

Wilbert “Walky” Wachtendorf and second by Council Member Travis Bailey to convene the Executive Session at 7:44 PM on November 5, 2018; five in favor, Mayor Pro Tem Steve Fortenberry opposed, motion passed. Mayor Ed Passalugo reconvened the Regular Session at 9:04 PM.

9. **DISCUSSION AND ACTION ON SEPARATION AGREEMENT BETWEEN THE CITY MANAGER AND THE CITY OF HEWITT MUTUALLY TERMINATING THE CITY MANAGER’S EMPLOYMENT CONTRACT WITH THE CITY OF HEWITT, AUTHORIZING THE EXECUTION THEREOF BY THE MAYOR, AND AUTHORIZING ACTIONS BY STAFF NECESSARY TO CARRY OUT THE CITY’S OBLIGATIONS UNDER THE SEPARATION AGREEMENT.** Council Member Steve Fortenberry inquired whether the termination was effective immediately. He further inquired as to when the City Attorney receive authorization to begin negotiation with the City Manager and expressed concern that the Council was not informed or had any opportunity to provide input. City Attorney Mike Dixon responded that when he was hired he understood that there were issues that needed to be investigated and addressed. Mr. Dixon further noted that the agreement was mutual and was signed by Adam Miles. Council Member Wilbert “Walky” Wachtendorf noted that the City Attorney was hired to handle our legal matters. *A motion was made by Council Member James Vidrine and second by Council Member Wilbert “Walky” Wachtendorf to accept the separation agreement; four voted in favor (Bailey, Wachtendorf, Vidrine, Passalugo), two opposed (Fortenberry and Fuller) motion passed.*
10. **DISCUSSION AND ACTION ON APPOINTING AN ACTING CITY MANAGER.** *A motion was made by Council Member Wilbert “Walky” Wachtendorf and second by Mayor Pro Tem Steve Fortenberry to appoint Police Chief James Devlin as acting city manager in the absence of full time city manager; all voted in favor, motion passed.*
11. **Executive Session:** A closed meeting will be held pursuant to *Section 551.071 of the Government Code (V.C.T.A)* so that the City Council can seek and receive advice and counsel from their attorneys regarding actual or threatened litigation; settlement of claims; legal powers and restrictions, and possible legal exposure; and matters required to be kept confidential by the professional rules which govern the attorney: Texas Workforce Commission charges. Mayor Ed Passalugo announced the Council would go back into Executive Session at 9:13 PM on November 5, 2018. *A motion was made by Council Member Bill Fuller and second by Council Member Travis Bailey, to close the Executive Session at 10:13 PM; all voted in favor, motion passed.*
12. **ADJOURN.** *A motion was made by Council Member Bill Fuller and second by Council Member Travis Bailey, to adjourn the meeting at 10:14 PM; all voted in favor, meeting was adjourned.*

Approved: November 19, 2018

Lydia Lopez, City Secretary

Ed Passalugo, Mayor



COUNCIL AGENDA ITEM FORM

MEETING DATE: November 19, 2018

AGENDA ITEM #: 4

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Canvass election returns of the City Special Election of November 6, 2018.

STAFF RECOMMENDATION/ITEM SUMMARY:

Texas Election Code Section 67.003 – Time for Local Canvass – Each local canvassing authority shall convene to conduct the local canvass not earlier than the 3rd day or later than the 11th day after election day. Therefore the canvass must be conducted between November 9-20, 2018.

The Mayor will appoint a Canvassing Committee of two council members and the City Attorney along with the City Secretary. They will review the election paperwork and report to Council.

ATTACHMENTS:

Official Election Reports provided by McLennan County Elections Administrator



KATHY E. VAN WOLFE
Elections Administrator

I, Kathy E. Van Wolfe, McLennan County Elections Administrator do hereby confirm that the November 6, 2018 Joint General Election is completed. I hereby certify that all of the ballots for this election have been counted by the Hart Intercivic tabulating equipment. The tallies are a true and correct accounting of the results.




Kathy E. Van Wolfe
McLennan County Elections Administrator
November 14, 2018

City of Hewitt Cumulative Report — Official McLennan County — Joint General Election — November 06, 2018

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11/15/2018 08:12 AM

Total Number of Voters : 75,787 of 139,837 = 54.20%
Number of District Voters: 6,021 of 9,783 = 61.55%

Precincts Reporting 91 of 91 = 100.00%
District Precincts Reporting 3 of 3 = 100.00%

Party	Candidate	Early	Election	Total
	A. C. "Tony" Martinez	330	179	509
	Betty Orton	640	166	806
	Lisa Hepple-Martinez	214	85	299
	Erica Bruce	1,147	261	1,408
	Paula R. Smith	242	79	321
	Royal Bradley	68	27	95
	Kathy Krakowian	298	100	398
	Lloyd L. Coffman	376	92	468
		3,315	989	4,304
		2	0	2
Cast Votes:		3,315	989	4,304
Over Votes:		2	0	2
Under Votes:		1,281	434	1,715

**City of Hewitt District Report — Total Voters — Official
McLennan County — Joint General Election — November 06, 2018**

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11/15/2018 08:12 AM
Precincts Reporting 91 of 91 = 100.00%
District Precincts Reporting 3 of 3 = 100.00%

Total Number of Voters : 75,787 of 139,837 = 54.20%
Number of District Voters: 6,021 of 9,783 = 61.55%

City Council Member - Unexpired Term (Expires May 4, 2019) Hewitt

Precinct	Early Ballots Cast	Election Ballots Cast	Total Ballots Cast	Registered Voters	Percent Turnout	Totals
019	1474	397	1871	2921	64.05%	1393
061	1509	500	2009	3266	61.51%	1418
062	1615	526	2141	3596	59.54%	1493
Totals	4598	1423	6021	9783		4304

**City of Hewitt District Report — Total Voters — Official
McLennan County — Joint General Election — November 06, 2018**

Page 1 of 2

11/15/2018 08:12 AM
Precincts Reporting 91 of 91 = 100.00%
District Precincts Reporting 3 of 3 = 100.00%

Total Number of Voters : 75,787 of 139,837 = 54.20%
Number of District Voters: 6,021 of 9,783 = 61.55%

City Council Member - Unexpired Term (Expires May 4, 2019) Hewitt

Precinct	Early Ballots Cast	Election Ballots Cast	Total Ballots Cast	Registered Voters	Percent Turnout	A. C. "Tony" Martinez	Betty Orton	Lisa Hepple-Martinez	Erica Bruce	Paula R. Smith	Royal Bradley	Kathy Krakowian	Lloyd L. Coffman
019	1474	397	1871	2921	64.05%	145	191	77	575	87	36	111	171
061	1509	500	2009	3266	61.51%	173	303	101	426	103	25	134	153
062	1615	526	2141	3596	59.54%	191	312	121	407	131	34	153	144
Totals	4598	1423	6021	9783		509	806	299	1408	321	95	398	468

Continued

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Total Number of Voters : 75,787 of 139,837 = 54.20%

Precincts Reporting 91 of 91 = 100.00%

Number of District Voters: 6,021 of 9,783 = 61.55%

District Precincts Reporting 3 of 3 = 100.00%

Party	Candidate	Early	Election	Total
Precinct 019 (Ballots Cast: 1,871)				
City Council Member - Unexpired Term (Expires May 4, 2019) Hewitt, Vote For 1				
	A. C. "Tony" Martinez	101		
	Betty Orton	147		
	Lisa Hepple-Martinez	56		
	Erica Bruce	485		
	Paula R. Smith	69		
	Royal Bradley	26		
	Kathy Krakowian	85		
	Lloyd L. Coffman	135		
	Cast Votes:	1,104	74.90%	1,393
	Over Votes:	0	0.00%	0
	Under Votes:	370	25.10%	478

City of Hewitt Precinct Report — Official McLennan County — Joint General Election — November 06, 2018

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Total Number of Voters : 75,787 of 139,837 = 54.20%

Precincts Reporting 91 of 91 = 100.00%

Number of District Voters: 6,021 of 9,783 = 61.55%

District Precincts Reporting 3 of 3 = 100.00%

Party	Candidate	Early	Election	Total
Precinct 061 (Ballots Cast: 2,009)				
City Council Member - Unexpired Term (Expires May 4, 2019) Hewitt, Vote For 1				
	A. C. "Tony" Martinez	109		
	Betty Orton	239		
	Lisa Hepple-Martinez	78		
	Erica Bruce	336		
	Paula R. Smith	78		
	Royal Bradley	19		
	Kathy Krakowian	94		
	Lloyd L. Coffman	122		
		1,075	343	1,418
	Cast Votes:	71.24%	68.60%	70.58%
	Over Votes:	0	0	0
		0.00%	0.00%	0.00%
	Under Votes:	434	157	591
		28.76%	31.40%	29.42%

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Total Number of Voters : 75,787 of 139,837 = 54.20%

Number of District Voters: 6,021 of 9,783 = 61.55%

Party	Candidate	Early	Election	Total

City Council Member - Unexpired Term (Expires May 4, 2019) Hewitt, Vote For 1

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HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: November 19, 2018

AGENDA ITEM #: 5

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Discussion and possible action on Resolution No. 2018-10 declaring the results of the City's Special Election of November 6, 2018.

STAFF RECOMMENDATION/ITEM SUMMARY:

On November 6, 2018, the City of Hewitt conducted a Special Election to elect a Council Member to fill the At-Large vacancy. State and local laws require the results be declared in an official form. Attached is a draft resolution declaring the results of the election.

ATTACHMENTS:

Resolution

RESOLUTION NO. 2018-10

CITY OF HEWITT	§	AN ORDER DECLARING THE RESULTS OF
COUNTY OF MCLENNAN	§	THE CITY OF HEWITT, TEXAS, SPECIAL
STATE OF TEXAS	§	ELECTION HELD NOVEMBER 6, 2018

Whereas, the City Council of the City of Hewitt, Texas, resolved (through Resolution No. 2018-) and ordered that a Special Election be held on November 6, 2018, in the City of Hewitt for the purpose of electing one person for a position to serve the unexpired term ending May 2019, those being:

SPECIAL ELECTION

One Council Member, At-Large (unexpired term)

Whereas, said election was conducted in accordance with the Texas Election Code and there came on to be considered the returns of said election.

Whereas, the returns of said special election have been duly canvassed by the City Council, and such returns reflect that at said election a total of 6021 votes were cast by the registered voters of the municipality; and each of the candidates in said election received the following votes:

SPECIAL ELECTION

COUNCIL MEMBER, AT-LARGE (Unexpired term)

A.C. "Tony" Martinez –	509
Betty Orton –	806
Lisa Hepple-Martinez –	299
Erica Bruce –	1,408
Paula R. Smith –	321
Royal Bradley –	95
Kathy Krakowian –	398
Lloyd Coffman -	468

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HEWITT, TEXAS:

That said election was duly called; that notice of said election was duly posted and published, and that said election was held in accordance with the requirements of the Texas Election Code.

That, at said election, **no** candidate for Council Member At-Large (unexpired term) received a majority of the votes cast at said election; to-wit a run-off election will be held of the following:

SPECIAL ELECTION

COUNCIL MEMBER, AT-LARGE (Unexpired term)

Erica Bruce

Betty Orton

That it is hereby officially found and determined that the meeting at which this resolution is adopted was noticed and has been open to the public as required by law.

PASSED, ADOPTED AND APPROVED this the 19th day of November 2018.

CITY OF HEWITT

Ed Passalugo, Mayor

ATTEST:

Lydia Lopez, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Michael W. Dixon, City Attorney

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: November 19, 2018

AGENDA ITEM #: 6

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Discussion and possible action on Resolution No. 2018-11 ordering a Runoff Election to be held on December 15, 2018, and other matters related thereto.

STAFF RECOMMENDATION/ITEM SUMMARY:

The Charter requires a runoff election to be held whenever no candidate receives a majority of the legal votes cast for the place for which he/she is a candidate. No one candidate received a majority vote for the Special Election held on November 6, 2018. The top two candidates receiving the highest votes were Erica Bruce and Betty Orton. This draft resolution orders a runoff election to be held on December 15, 2018, for the purpose of electing a Council Member, At-Large to fill the vacancy, establishes the dates and hours of said runoff election and early voting for the same, and other matters relating to the subject.

ATTACHMENTS:

Certification of Runoff Candidates
Resolution

HEWITT TEXAS

To: Lydia Lopez, City Secretary

CERTIFICATION OF RUNOFF CANDIDATES

I, Mayor Ed Passalugo, hereby certify that the following office title and names of candidates are to be placed on the ballot for the runoff election to be held on December 15, 2018:

Council Member, At-Large

Erica Bruce

Betty Orton

Dated this 19th day of November, 2018.

Ed Passalugo, Mayor
City of Hewitt, Texas

RESOLUTION 2018-11

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF HEWITT, TEXAS, ORDERING A RUNOFF ELECTION IN THE CITY OF HEWITT ON SATURDAY, DECEMBER 15, 2018; DESIGNATING THE POLLING PLACE; PROVIDING OTHER MATTERS RELATING TO THE RUNOFF ELECTION; AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, at a regular meeting held on November 19, 2018, for the purpose of canvassing the special election of November 6, 2018, it was declared that a runoff election would be required for Council Member – At-Large (unexpired term); and

WHEREAS, Council Member At-Large will be determined between Erica Bruce and Betty Orton; and

WHEREAS, the laws of the State of Texas and the Charter of the City of Hewitt, Texas provide that on December 15, 2018, there will be an election held to consider a runoff election; and

WHEREAS, the laws of the State of Texas and the Charter of the City of Hewitt, Texas, further provide that the Election Code of the State of Texas is applicable to said election and in order to comply with said Code, a Resolution and Order of Election should be passed establishing the procedure to be followed in said election as outlined below:

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

1. That a Runoff Election will be held on December 15, 2018, at Hewitt Public Safety Facility, 100 Patriot Court, Hewitt, Texas, with the polls open from 7:00 a.m. to 7:00 p.m.
2. That the order in which the names of the candidates are to be printed on the ballot will be determined on November 20, 2018, by a drawing in the Council Chambers of the City of Hewitt at 8:00 a.m. at Hewitt City Hall, 200 Patriot Court, Hewitt, Texas.
3. That only resident qualified voters of said City shall be eligible to vote.
4. That Francesca Nyquist shall be appointed Presiding Election Judge and Timothy Howard shall be appointed as Alternate Presiding Election Judge. The clerks for the election will be appointed by the Presiding Election Judge in a number not to exceed two (2) clerks for Election Day. Presiding Election Judge and Alternate Presiding Election

Judge will be paid \$12.00 per hour and an overtime rate of \$18.00 per hour. The clerks will be paid \$10.00 per hour with an overtime rate of \$15.00.

5. That Francesca Nyquist shall be appointed to serve as the Early Voting Ballot Board Presiding Officer.
6. That the County Elections Administrator Kathy E. Van Wolfe will serve as Clerk for Early Voting and conduct early voting. Early voting for the above designated election shall be held in the Hewitt Public Safety Facility, 100 Patriot Court, within said City.

Early voting days and hours will be:

Wednesday	November 28, 2018	8:00 AM - 5:00 PM
Thursday	November 29, 2018	8:00 AM - 5:00 PM
Friday	November 30, 2018	8:00 AM - 5:00 PM

Monday	December 3, 2018	8:00 AM – 5:00 PM
Tuesday	December 4, 2018	8:00 AM - 5:00 PM
Wednesday	December 5, 2018	8:00 AM - 5:00 PM
Thursday	December 6, 2018	8:00 AM – 5:00 PM
Friday	December 7, 2018	8:00 AM – 5:00 PM

Monday	December 10, 2018	7:00 AM – 7:00 PM
Tuesday	December 11, 2018	7:00 AM - 7:00 PM

7. That applications for ballot by mail shall be mailed to Kathy E. Van Wolfe, McLennan County Elections Administrator, P.O. Box 2450, Waco, Texas 76703-2450. Applications may be received until the close of business on December 4, 2018.
8. That all ballots shall be prepared in accordance with Texas Election Code. Paper ballots shall be used only for early voting by mail. The eSlate Direct Recording Electronic (DRE) Voting System shall be used for early voting by personal appearance and voting on Election Day.
9. That a copy of this order attached as Exhibit “A” shall also serve as a Writ of Election, which shall be delivered to the above-appointed Presiding Election Judge for said elections in accordance with State Law.
10. That said election shall be held in accordance with the Elections Code and the State of Texas. Notice of said elections shall be given in accordance with the terms and provisions of the Elections Code and the City Secretary is hereby instructed to have said notice attached as Exhibit “B” published.

PASSED, APPROVED, AND ADOPTED on this 19th day of November 2018, at a Regular Called meeting of the City Council of the City of Hewitt, Texas which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't. Code, §551.001, et.seq.* at which meeting a quorum was present and voting.

THE CITY OF HEWITT

Ed Passalugo, Mayor

ATTEST:

Lydia Lopez, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Michael W. Dixon, City Attorney

**ORDER OF HEWITT'S RUNOFF ELECTION
(ORDEN DE LA ELECCIÓN DE DESEMPATE DE HEWITT)**

An election is hereby ordered to be held on December 15, 2018, for voting in Hewitt's Runoff Election to elect one (1) person for a position to serve the unexpired term of office ending May 4, 2019 for the City of Hewitt.

(En términos de lo establecido, se llevará a cabo una elección desempate de Hewitt el 15 de diciembre de 2018 para elegir a una (1) persona para cada puesto para servir el término no vencido que finaliza en 4 de mayo, 2019 para la ciudad de Hewitt.)

**LOCATION OF POLLING PLACE
(UBICACION DE LA LUGAR ELECTORAL)**

Hewitt Public Safety Facility
100 Patriot Court
Hewitt, Texas 76643

Early Voting by personal appearance will be conducted at:
(La votación adelantada en persona se llevará a cabo todos los días en:)

**Main Early Voting Site:
(Lugar principal de votación adelantada)**

Hewitt Public Safety Facility
100 Patriot Court
Hewitt, Texas 76643

The dates and times of Early Voting are:
(Los días y horas de votación adelantada son:)

Wednesday (miércoles)	November 28, 2018 (28 de noviembre, 2018)	8:00 AM - 5:00 PM
Thursday (jueves)	November 29, 2018 (29 de noviembre, 2018)	8:00 AM - 5:00 PM
Friday (viernes)	November 30, 2018 (30 de noviembre, 2018)	8:00 AM - 5:00 PM
Monday (lunes)	December 3, 2018 (3 de diciembre, 2018)	8:00 AM - 5:00 PM
Tuesday (martes)	December 4, 2018 (4 de diciembre, 2018)	8:00 AM - 5:00 PM
Wednesday (miércoles)	December 5, 2018 (5 de diciembre, 2018)	8:00 AM - 5:00 PM
Thursday (jueves)	December 6, 2018 (6 de diciembre, 2018)	8:00 AM - 5:00 PM
Friday (viernes)	December 7, 2018 (7 de diciembre, 2018)	8:00 AM - 5:00 PM
Monday (lunes)	December 10, 2018 (10 de diciembre, 2018)	7:00 AM - 7:00 PM
Tuesday (martes)	December 11, 2018 (11 de diciembre, 2018)	7:00 AM - 7:00 PM

Applications to vote by mail should be mailed to:
(Las solicitudes para poder votar por deben ser enviadas a:)

Kathy E. Van Wolfe
McLennan County Elections Administrator
P.O. Box 2450
Waco, Texas 76703-2450
kathy.vanwolfe@co.mclennan.tx.us

Applications for ballot by mail must be received no later than the close of business on December 4, 2018:
(Las solicitudes para votar por correo tendrán que ser recibidas antes del fin del día laboral el 4th de diciembre 2018:)

Issued this the _____ day of November, 2018.
(Emitada el día _____ de noviembre 2018.)

Mayor, City of Hewitt
(alcalde, ciudad de Hewitt)

HEWITT TEXAS

ITEM #7 – 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.
3. 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.**
4. 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.
5. As a general rule, citizens may not participate or address the council or staff during the workshop session.

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.



COUNCIL AGENDA ITEM FORM

MEETING DATE: November 19, 2018

AGENDA ITEM #: 8

SUBMITTED BY: Miles Whitney, City Engineer

ITEM DESCRIPTION:

Consider award of bid for 2017 - L.S. No. 5 Removal / I-35 Waterline Replacement;
Phase 1 to Bell Contractors, Inc. in the amount of \$550,134.48.

STAFF RECOMMENDATION/ITEM SUMMARY:

After bid solicitation, three bids were received and opened on November 15, 2018. Waco Paving Inc. provided the lowest bid in the amount of \$550,134.48. City staff recommends award of this project as recommended by City Engineer.

ATTACHMENTS:

Letter from City Engineer
Bid Tabulation

NOVEMBER 15, 2018

CITY COUNCIL

CITY OF HEWITT, TEXAS

VIA: E-MAIL

RE: 2017 - L.S. NO. 5 REMOVAL / I-35 WATERLINE REPLACEMENT; PHASE 1

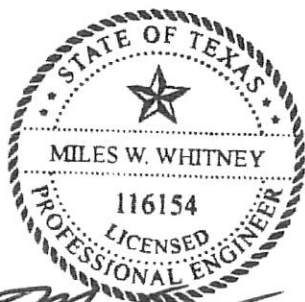
COUNCIL:

BIDS WERE OPENED ON THE ABOVE CAPTIONED PROJECT ON NOVEMBER 15, 2018. THREE BIDS WERE SUBMITTED. THE LOWEST BID WAS SUBMITTED BY BELL CONTRACTORS, INC. IN THE AMOUNT OF \$550,134.48. THE BID TABULATION FOR THIS PROJECT SHOULD BE INCLUDED WITHIN YOUR COUNCIL PACKET.

WHILE I DO NOT BELIEVE THAT BELL CONTRACTORS, INC. HAS WORKED WITH THE CITY OF HEWITT BEFORE, I HAVE HAD PROJECTS WITH THEM FOR OTHER ENTITIES, AND ALL HAVE BEEN COMPLETED TO THE SATISFACTION OF THEIR RESPECTIVE OWNERS.

IT IS MY RECOMMENDATION THAT THIS CONTRACT BE AWARDED TO BELL CONTRACTORS, INC..

SINCERELY:



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

Base Bid Tabulation

Project 2017 - L.S. No. 5 Removal / I-35 Waterline Replacement, Phase 1
 Owner City of Hewitt
 Component Bid Tabulation
 Prepared By MWW
 Date 11/15/2018
 Reviewed By MWW

BASE BID TOTALS				Contractor 1		Contractor 2		Contractor 3	
				\$ 550,134.48		\$ 576,047.90		\$ 599,160.00	
				Bell Contractors, Inc.		TTG Utilities, LP		Barnett Contracting, Inc.	
Bid Item		Qty.	Unit	Unit Price	Bid Price	Unit Price	Bid Price	Unit Price	Bid Price
1	12" ASTM D2241, SDR-26, PVC Sewer Pipe (7' to 9' Cut), Including Excavation, Bedding and Select Material Backfill	25	L.F.	\$ 41.36	\$ 1,034.00	\$ 63.00	\$ 1,575.00	\$ 60.00	\$ 1,500.00
2	12" ASTM D2241, SDR-26, PVC6 Sewer Pipe (9' to 11' Cut), Including Excavation, Bedding and Select Material Backfill	180	L.F.	\$ 42.40	\$ 7,632.00	\$ 71.60	\$ 12,888.00	\$ 75.00	\$ 13,500.00
3	12" ASTM D2241, SDR-26, PVC Sewer Pipe (11' to 13' Cut), Including Excavation, Bedding and Select Material Backfill	163	L.F.	\$ 45.98	\$ 7,494.74	\$ 85.95	\$ 14,009.85	\$ 90.00	\$ 14,670.00
4	10" ASTM D2241, SDR-26, PVC Sewer Pipe (0' to 5' Cut), Including Excavation, Bedding and Select Material Backfill	61	L.F.	\$ 26.38	\$ 1,609.18	\$ 49.75	\$ 3,034.75	\$ 60.00	\$ 3,660.00
5	10" ASTM D2241, SDR-26, PVC Sewer Pipe (5' to 7' Cut), Including Excavation, Bedding and Select Material Backfill	324	L.F.	\$ 47.92	\$ 15,526.08	\$ 53.75	\$ 17,415.00	\$ 75.00	\$ 24,300.00
6	10" ASTM D2241, SDR-26, PVC Sewer Pipe (7' to 9' Cut), Including Excavation, Bedding and Select Material Backfill	182	L.F.	\$ 53.24	\$ 9,689.68	\$ 59.40	\$ 10,810.80	\$ 85.00	\$ 15,470.00
7	10" ASTM D2241, SDR-26, PVC6 Sewer Pipe (9' to 11' Cut), Including Excavation, Bedding and Select Material Backfill	121	L.F.	\$ 56.92	\$ 6,887.32	\$ 68.20	\$ 8,252.20	\$ 95.00	\$ 11,495.00
8	10" ASTM D2241, SDR-26, PVC Sewer Pipe (11' to 13' Cut), Including Excavation, Bedding and Select Material Backfill	59	L.F.	\$ 35.64	\$ 2,102.76	\$ 82.35	\$ 4,858.65	\$ 105.00	\$ 6,195.00
9	8" ASTM D2241, SDR-26, PVC Sewer Pipe (5' to 7' Cut), Including Excavation, Bedding and Select Material Backfill	18	L.F.	\$ 25.38	\$ 456.84	\$ 50.75	\$ 913.50	\$ 55.00	\$ 990.00
10	8" ASTM D2241, SDR-26, PVC Sewer Pipe (7' to 9' Cut), Including Excavation, Bedding and Select Material Backfill	39	L.F.	\$ 25.22	\$ 983.58	\$ 56.50	\$ 2,203.50	\$ 65.00	\$ 2,535.00
11	8" ASTM D2241, SDR-26, PVC6 Sewer Pipe (9' to 11' Cut), Including Excavation, Bedding and Select Material Backfill	20	L.F.	\$ 29.08	\$ 581.60	\$ 65.05	\$ 1,301.00	\$ 80.00	\$ 1,600.00
12	4' Dia. Standard Concrete Manhole, including Interior Coating, Excavation and Backfill - (5' to 7' Depth)	1	Ea.	\$ 3,659.47	\$ 3,659.47	\$ 5,540.00	\$ 5,540.00	\$ 5,000.00	\$ 5,000.00
13	4' Dia. Standard Concrete Manhole, including Interior Coating, Excavation and Backfill - (7' to 9' Depth)	2	Ea.	\$ 5,936.71	\$ 11,873.42	\$ 6,300.00	\$ 12,600.00	\$ 6,000.00	\$ 12,000.00
14	4' Dia. Standard Concrete Manhole, including Interior Coating, Excavation and Backfill - (9' to 11' Depth)	2	Ea.	\$ 6,287.57	\$ 12,575.14	\$ 7,115.00	\$ 14,230.00	\$ 7,000.00	\$ 14,000.00
15	4' Dia. Standard Concrete Manhole, including Interior Coating, Excavation and Backfill - (11' to 13' Depth)	2	Ea.	\$ 7,537.78	\$ 15,075.56	\$ 8,160.00	\$ 16,320.00	\$ 10,000.00	\$ 20,000.00
16	Sewer Service Reconnections; Installed	2	Ea.	\$ 678.69	\$ 1,357.38	\$ 1,400.00	\$ 2,800.00	\$ 1,000.00	\$ 2,000.00
17	Decommissioning and Removal of Existing Lift Station; Complete	1	L.S.	\$ 12,880.00	\$ 12,880.00	\$ 11,500.00	\$ 11,500.00	\$ 7,500.00	\$ 7,500.00
18	16" C-905; DR18; PVC Pipe with Tracer Wire; Installed	2,461	L.F.	\$ 71.07	\$ 174,903.27	\$ 66.50	\$ 163,656.50	\$ 60.00	\$ 147,660.00
19	8" C-900; DR18; PVC Pipe with Tracer Wire; Installed	10	L.F.	\$ 76.47	\$ 764.70	\$ 40.00	\$ 400.00	\$ 60.00	\$ 600.00
20	Open Cut and Install; 24" Steel Encasement, Concrete Encased Creek Crossing with 16" C-900 DR18 PVC RJ Carrier Pipe; Installed	120	L.F.	\$ 202.75	\$ 24,330.00	\$ 325.00	\$ 39,000.00	\$ 225.00	\$ 27,000.00
21	Open Cut and Install; 24" Steel Encasement, Including 16" C-900 DR18 PVC RJ Carrier Pipe; Installed	92	L.F.	\$ 179.24	\$ 16,490.08	\$ 205.00	\$ 18,860.00	\$ 225.00	\$ 20,700.00
22	Dry Bore and Install; 24" Steel Encasement, Including 16" C-900 DR18 PVC RJ Carrier Pipe; Installed	108	L.F.	\$ 561.62	\$ 60,654.96	\$ 410.00	\$ 44,280.00	\$ 350.00	\$ 37,800.00
23	New Fire Hydrant Assembly; Installed	4	Ea.	\$ 4,532.06	\$ 18,128.24	\$ 4,995.00	\$ 19,980.00	\$ 5,100.00	\$ 20,400.00
24	Cap Existing 6" Water Line; Complete	2	Ea.	\$ 317.59	\$ 635.18	\$ 990.00	\$ 1,980.00	\$ 1,000.00	\$ 2,000.00
25	Cap Existing 8" Water Line; Complete	1	Ea.	\$ 403.32	\$ 403.32	\$ 990.00	\$ 990.00	\$ 1,200.00	\$ 1,200.00
26	16" Gate Valve and Box; Installed	5	Ea.	\$ 6,200.44	\$ 31,002.20	\$ 7,300.00	\$ 36,500.00	\$ 6,800.00	\$ 34,000.00
27	Remove Existing Fire Hydrant Assembly; Complete	3	Ea.	\$ 280.00	\$ 840.00	\$ 3,475.00	\$ 10,425.00	\$ 2,000.00	\$ 6,000.00
28	New Short Single Water Service, Installed and Connected to Existing Service	5	Ea.	\$ 849.85	\$ 4,249.25	\$ 1,125.00	\$ 5,625.00	\$ 1,000.00	\$ 5,000.00
29	Provide and Install 1" Double Check Valve Assembly and Box; Installed	1	Ea.	\$ 657.38	\$ 657.38	\$ 875.00	\$ 875.00	\$ 1,200.00	\$ 1,200.00
30	Connect Proposed 16" to Existing 16"; Complete	4	Ea.	\$ 4,555.60	\$ 18,222.40	\$ 2,750.00	\$ 11,000.00	\$ 5,000.00	\$ 20,000.00
31	Connect Proposed 8" to Existing 8"; Complete	1	Ea.	\$ 1,297.07	\$ 1,297.07	\$ 2,000.00	\$ 2,000.00	\$ 2,500.00	\$ 2,500.00
32	Install Air / Vacuum Relief Valve Assembly and Vault; Installed	1	Ea.	\$ 7,002.25	\$ 7,002.25	\$ 4,950.00	\$ 4,950.00	\$ 6,000.00	\$ 6,000.00
33	Concrete Drive Replacement; Installed	1,125	S.F.	\$ 13.91	\$ 15,648.75	\$ 22.50	\$ 25,312.50	\$ 10.00	\$ 11,250.00
34	Compacted Gravel Drive Replacement; Installed	902	S.F.	\$ 11.25	\$ 10,147.50	\$ 4.30	\$ 3,878.60	\$ 6.00	\$ 5,412.00
35	Compacted HMAc Replacement; Installed	33	S.F.	\$ 50.45	\$ 1,664.85	\$ 32.20	\$ 1,062.60	\$ 12.00	\$ 396.00
36	Hydro-Mulch Seeding Project; Complete	3,876	S.Y.	\$ 0.44	\$ 1,705.44	\$ 1.70	\$ 6,589.20	\$ 2.00	\$ 7,752.00
37	Trench Safety System Design and Implementation	3,875	L.F.	\$ 3.42	\$ 13,252.50	\$ 1.55	\$ 6,006.25	\$ 5.00	\$ 19,375.00
38	SWPPP Design and Implementation	1	L.S.	\$ 8,895.00	\$ 8,895.00	\$ 6,200.00	\$ 6,200.00	\$ 6,500.00	\$ 6,500.00
39	Traffic Control Plan Development and Implementation	1	L.S.	\$ 8,120.00	\$ 8,120.00	\$ 3,725.00	\$ 3,725.00	\$ 10,000.00	\$ 10,000.00
40	Mobilization (Not to Exceed 10% of Total Contract)	1	L.S.	\$ 19,601.39	\$ 19,601.39	\$ 22,500.00	\$ 22,500.00	\$ 50,000.00	\$ 50,000.00

Denotes corrected Bid Price



Miles W. Whitney, P.E.

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

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: November 19, 2018

AGENDA ITEM #: 9

SUBMITTED BY: Tracy Lankford, Community Development Director

ITEM DESCRIPTION:

Public hearing, discussion and possible action on Ordinance No. 2018-18 amending Appendix "B" to the Code of Ordinances of the City of Hewitt, Texas, "Subdivisions" to delegate to the Community Development Director as the Building Official the authority to approve and sign amending plats, minor plats, or replats subject to the terms and restrictions of Section 212.0065 of the Texas Local Government Code; making changes to provisions of the Subdivision Ordinance to carry out this delegation; providing for a severability clause, repealing provisions in direct conflict; finding that the meeting at which this amendment was adopted complied with the Texas Opening Acts; and establishing an effective date.

STAFF RECOMMENDATION/ITEM SUMMARY:

At the present time the City does not have an individual that has the authority to sign Administrative plats that are Minor or Amended Plats. Local Government Code 212.0065 gives the governing body of a municipality the ability to delegate to one or more officers or employees of the municipality, or of a utility owned or operated by the municipality, the ability to approve Minor, replats and amending plats.

ATTACHMENTS:

Draft ordinance

Ordinance No. 2018-18

ORDINANCE OF THE CITY OF HEWITT, TEXAS AMENDING APPENDIX "B" TO THE CODE OF ORDINANCES OF THE CITY OF HEWITT, TEXAS "SUBDIVISIONS" TO DELEGATE TO THE COMMUNITY DEVELOPMENT DIRECTOR AS THE BUILDING OFFICIAL THE AUTHORITY TO APPROVE AND SIGN AMENDING PLATS, MINOR PLATS, OR REPLATS SUBJECT TO THE TERMS AND RESTRICTIONS OF SECTION 212.0065 OF THE TEXAS LOCAL GOVERNMENT CODE; MAKING CHANGES TO PROVISIONS OF THE SUBDIVISION ORDINANCE TO CARRY OUT THIS DELEGATION; PROVIDING FOR A SEVERABILITY CLAUSE; REPEALING PROVISIONS IN DIRECT CONFLICT; FINDING THAT THE MEETING AT WHICH THIS AMENDMENT WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT, AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, §212.0065 of the Texas Local Government Code authorizes the City Council to delegate to a City Officer the ability to approve amending plats, minor plats or minor replats, and a replat that does not require creation of a new street or the extension of municipal facilities; and

WHEREAS, the City Officer would not be authorized to disapprove such submissions, and would refer such submissions to the Planning and Zoning Commission if he/she is unable to approve the submission;

WHEREAS, having an officer who may approve such submissions would benefit the public by diverting simple matters that should be approved from the planning and zoning process; and would benefit the City by reducing items that must be heard by the Planning and Zoning Commission and encouraging development.

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

1. Section 8 (b) of the Subdivision regulations contained in Appendix "B" to the Code of Ordinances of the City of Hewitt, Texas is amended to read as follows:
Sec. 8. – Final Plat.

b. Minor Plat or other plat authorized to be approved by the Building Official - Certificate of approval by Building Official (to be placed on plat):

Approved this _____ day of _____, 20_____, by the Building Official of the City of Hewitt, Texas.

Building Official

Zoning Secretary

2. Section 8.02 of the Subdivision regulations contained in Appendix "B" to the Code of Ordinances of the City of Hewitt, Texas is amended to read as follows:

Sec. 8.02. - Delegation of approval responsibility.

(a) The Building Official may approve plats that meet the following criteria without approval of the planning and zoning commission.

(1) Amending plats as described by Section 212.016 of the Texas Local Government Code.

(b) Minor plats or replats involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities; or

(c) A replat under Section 212.0145 that does not require the creation of any new street or the extension of municipal facilities.

(d) The Building Official may, for any reason, elect to present the plat for approval to the planning and zoning commission.

(e) The Building Official shall not disapprove the plat and shall be required to refer any plat which (s)he refuses to approve to the planning and zoning commission within the time period established by Section 212.009 of the Texas Local Government Code.

3. To the extent not identified and formally amended all provisions of Appendix "B" to the Code "Subdivisions", are to be construed to give effect to these amendments.

4. That all provisions of the ordinances of the City of Hewitt in direct conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Hewitt not in conflict with the provisions of this Ordinance shall remain in full force and effect.

5. Should any section, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

6. This Ordinance shall become effective when passed.

PASSED AND APPROVED this the ____ day of November, 2018 at a Regular Meeting of the City Council of the City of Hewitt, Texas.

CITY OF HEWITT

BY: _____
Ed Passalugo, Mayor

ATTEST:

Lydia Lopez, City Secretary

APPROVED:

Mike Dixon
City Attorney

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: November 19, 2018

AGENDA ITEM #: 10

SUBMITTED BY: Lee Garcia, Finance Director

ITEM DESCRIPTION:

Discussion and possible action on a Resolution No 2018-12 of the City Council authorizing the acquisition of vehicles and equipment, conditioned on the Finance Director seeking quotes for financing and the City Council approving a quote for the financing of the acquisition.

STAFF RECOMMENDATION/ITEM SUMMARY:

Staff requests approval to go forward with the bid process for acquisition of vehicles and equipment thru short term financing as in prior years. Please see attached resolution and schedule of vehicles and equipment being requested.

If approved, this item would primarily replace police patrol vehicles. Additionally, City crews are required to mow and maintain nearly 500 acres of right of way and drainage areas. Much of this acreage includes steep ditches which are difficult and unsafe to mow with the city's current equipment. Because of the safety hazards involved, city crews are often forced to weed eat large swaths of acreage. In order to reduce the staff time needed to effectively maintain these areas and mitigate significant safety concerns, staff is recommending the purchase of the John Deere 610E Tractor and the boom attachment.

The bids are requested with interest paid in arrears, i.e., the estimated payments would be made in the next budget year, FY 19/20. In the General Fund, there is a minimal effect on debt service in FY 19/20 as GO 2009 will be paid off July 1st, 2019 (this current budget year.) The additional debt in the Drainage Fund is estimated at \$29k or less for next year's, FY 19/20, budget.

ATTACHMENTS:

Resolution with Attachment

RESOLUTION NO. 2018-12

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEWITT,
TEXAS AUTHORIZING THE ACQUISITION OF VEHICLES AND
EQUIPMENT, CONDITIONED ON THE FINANCE DIRECTOR SEEKING
QUOTES FOR FINANCING AND THE CITY COUNCIL APPROVING A
QUOTE FOR THE FINANCING OF THE ACQUISITION**

WHEREAS, replacing fleet vehicles is necessary from time to time; and

WHEREAS, this is especially the case with police vehicles, but also applies to any department of the City relying on older and less-reliable vehicles; and

WHEREAS, from time to time the acquisition of new equipment is reasonable and prudent to expand the capabilities of City maintenance; increase efficiency and effectiveness; and for employee safety; and

WHEREAS, the City Council finds that the vehicle and equipment acquisitions proposed herein are appropriate and needed for the effective, efficient and safe delivery of public services by City employees; and

WHEREAS, bidding compliance will be achieved by acquiring the items through local government purchasing cooperatives (§271.102, *Texas Local Government Code*).

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

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

1. Subject to the approval of financing by the Council, the acquisition of the vehicles and equipment attached hereto as Appendix "A" from the vendors, through the cooperatives, and at the prices identified in Appendix "A" is APPROVED.
2. The Finance Director is directed to seek quotes for the financing of the Total Financed amount shown on Appendix "A."
3. The Finance Director is directed to bring the quotes received, along with her recommendation, back to the Council for approval of the financing. Once the financing has been approved and executed, the vehicles and equipment may be ordered.
4. The Finance Director is authorized to take all actions required to comply with the directives given herein.

PASSED AND APPROVED this the ____ day of November, 2018.

THE CITY OF HEWITT

Ed Passalugo, Mayor

ATTEST:

Lydia Lopez, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Michael W. Dixon, City Attorney

APPENDIX A

List of Vehicles/Equipment by Dept, Vendor and Co-Op

Dept	Description	Each	Total	Vendor	Co-Op
Police Dept	2019 Tahoes (3) w/Upfit	57,935	173,805	Freedom Chevrolet/Siddons-Martin	Dallas County ILA
Police Dept	2019 Dodge Chargers (3) w/Upfit	34,417	103,251	Freedom Chevrolet/Siddons-Martin	Dallas County ILA
		\$	277,056		
CH/Lib	2019 Ford Escape		22,937	Chastang Ford	HGAC
Comm Svcs	2019 Ford 150 Quad Cab		29,499	Chastang Ford	HGAC
		TOTAL GENERAL FUND \$	329,492		
Drainage	2019 Ford 150		23,385	Chastang Ford	HGAC
Drainage	JD 6105E Tractor		63,440	United Ag & Turf	Buyboard
Drainage	Boom Mower w/22' arm		60,693	Alamo Industrial	Buyboard
		TOTAL DRAINAGE FUND \$	147,518		
		TOTAL FINANCED \$	477,010		

Note: Older vehicles will be auctioned and revenue placed back into the funds.

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: November 19, 2018

AGENDA ITEM #: 11

SUBMITTED BY: Jim Devlin, Acting City Manager/Police Chief

ITEM DESCRIPTION:

Discussion and possible action on Resolution No. 2018-13 approving the renewal of an existing Interlocal Agreement between the City of Waco and the Cities of Bellmead, Hewitt and McGregor for the purpose of regional tourism marketing through the Waco Convention & Visitors Bureau's Regional Marketing Program and authorizing the Acting City Manager to execute any documents necessary in connection therewith.

STAFF RECOMMENDATION/ITEM SUMMARY:

In 2012, the City of Hewitt joined a regional marketing program that was initiated through the Waco Convention & Visitors Bureau. This program allowed member cities to pay a portion of their estimated hotel/motel occupancy tax receipts to the City of Waco via the agreement. The Waco Convention & Visitors Bureau in turn promoted the city's hotels through a website at wacoheartoftexas.com and other various ways.

The agreement calls for 24% or \$15,000 whichever is greater. For FY 2018-2019, our costs will be \$36,898. Waco Convention and Visitors Bureau Tourism Manager Susan Morton will be present to respond to Council questions.

ATTACHMENTS:

Resolution and Agreement

RESOLUTION NO. 2018-13

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

That the renewal of an existing Interlocal Agreement between the City of Waco and the Cities of Bellmead, Hewitt, and McGregor for the purpose of regional tourism marketing through the Waco Convention & Visitors Bureau's Regional Marketing Program is hereby approved, and the Acting City Manager is authorized to execute any documents necessary in connection therewith.

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

PASSED AND APPROVED this 19th day of November, 2018.

CITY OF HEWITT, TEXAS

Ed Passalugo, Mayor

ATTEST:

Lydia Lopez, City Secretary

APPROVED AS TO FORM & LEGALITY:

Michael W. Dixon, City Attorney

the circumstances constituting a Force Majeure persist, and either the Cities or Operator are unable to perform hereunder for a continuous period of thirty (30) days or more, the Party seeking performance may terminate the Agreement by giving the other Party ten (10) days' notice of its intent to terminate the Agreement. If the other Party is still unable to perform after receiving said notice, the Agreement shall terminate without the necessity of further action by either Party.

7. No Waiver. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to any of the Parties nor to create any legal rights or claim on behalf of any third party. No Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas of the United States.

8. Notice.

To the City of Waco/Operator:

Wiley Stem III
City Manager of Waco
P.O. Box 2570
Waco, Texas 76702-2570
WileyS@wacotx.gov
Fax: (254) 750-5880

To the City of Bellmead:

Bo Thomas
City Manager of Bellmead
3015 Bellmead Drive
Waco, Texas 76705
bothomas@bellmead.com
Fax: (254) 799-5969

To the City of Hewitt:

Jim Devlin
Acting City Manager of Hewitt
200 Patriot Court
Hewitt, Texas 76643
jdevlin@cityofhewitt.com
Fax: (254) 666-6014

To the City of McGregor:

Kevin Evans
City Manager of McGregor
P.O. Box 192
McGregor, Texas 76657
kevans@mcgregor-texas.com
Fax (254) 840-2450

9. No Waiver. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to any of the Parties nor to create any legal rights or claim on behalf of any third party. No Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas of the United States.

10. Third Party Beneficiaries. Except as expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

11. Effective Date. This Agreement shall be in full force and effect as of the date the governing bodies of Bellmead, Hewitt, Waco and McGregor have authorized and approved this Agreement by Resolution duly adopted by each respective governing body.

12. Entire Agreement. This Agreement and any Exhibits hereto embody the entire agreement and understanding of the Parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any amendment, waiver or consent is sought. This Agreement may not be amended or modified except in writing executed by all Parties and authorized by their respective governing bodies.

13. Partial Invalidity. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed on such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

14. Survival: Any provisions that by their terms survive the termination of this contract shall bind its legal representatives, heirs, and assigns as set forth herein.

15. Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

16. Article and Section Headings. The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this contract.

17. Assignment. No Party hereto may assign its rights and obligations hereunder.

18. Benefits: This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their heirs, legal representative, executors, administrators, successors, and assigns.

19. Misspelled Words: Misspelling of one or more words in this contract shall not void this contract. Such misspelled words shall be read so as to have the meaning apparently intended by the Parties.

20. Multiple Copies. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date when all Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

[Remainder of page intentionally left blank]

THE CITY OF WACO, TEXAS

By: _____
Wiley Stem III, City Manager

ATTEST

Esmeralda Hudson, City Secretary

Date Signed

APPROVED AS TO FORM & LEGALITY:

Jennifer Richie, City Attorney

[Remainder of page intentionally left blank]

THE CITY OF BELLMEAD

By: _____
City Manager

ATTEST

City Secretary

Date Signed

[Remainder of page intentionally left blank]

THE CITY OF HEWITT

By: _____
Acting City Manager

ATTEST

City Secretary

Date Signed

[Remainder of page intentionally left blank]

THE CITY OF MCGREGOR

By: _____
City Manager

ATTEST

City Secretary

Date Signed

[Remainder of page intentionally left blank]

EXHIBIT A

The Interlocal Cooperation Agreement is a marketing program available to those cities in McLennan County with an ordinance addressing hotel occupancy tax.

The cost to each city is based on calculating 24% of 7% of the city's annual hotel revenues for the year prior, or \$15,000, whichever is higher.

Revenues are obtained from reports from Source Strategies, Inc., a company based in San Antonio, TX.

In return, the city's hotels and other lodging establishments are included in the following:

- Waco Visitors Guide, reprinted annually in July
- Regional map, reprinted quarterly or as needed
- The website at wacoheartoftexas.com
- Convention bids, for those hotels able to contract 30+ blocks of rooms for meeting planners
- Monthly sales and marketing meeting for hoteliers

Calculations

	FY 2017				Invoice
	<u>Hotel Revs*</u>	<u>x 7% tax</u>	<u>x 24%</u>	<u>Or</u> <u>Minimum</u>	<u>Total</u>
Bellmead	\$ 9,467,760	\$ 662,743.20	\$ 159,058.37		\$ 159,058
Hewitt	\$ 1,929,028	\$ 135,031.96	\$ 32,407.67		\$ 32,408
McGregor	\$ 524,036	\$ 36,682.52	\$ 8,803.80	\$ 15,000	\$ 15,000
<i>*From Source Strategies, Inc., calendar year 2017 report</i>					

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: November 19, 2018

AGENDA ITEM #: 12

SUBMITTED BY: Jim Devlin, Acting City Manager/Police Chief

ITEM DESCRIPTION:

Discussion and possible action on approval of Publicity and Tourism Agreement between the City of Hewitt and the Greater Hewitt Chamber of Commerce.

STAFF RECOMMENDATION/ITEM SUMMARY:

The City and Chamber have had a longstanding formalized relationship based on this agreement. This agreement is reviewed annually and adjusted as needed. The primary funding source of the Greater Hewitt Chamber of Commerce from the City of Hewitt is from the Hotel Occupancy Tax. These funds are set aside and must be used for specified purposes related to promoting Hewitt and attracting visitors to our City and our Hotels (Sleep Inn and Ramada). Our agreement is based on the Chamber's expenses related to promoting Hewitt which are enumerated within the agreement.

The Chamber is proposing to renew the same package and contribution for 2019-2020 (\$30,000/year, \$2,500/month). If approved, the agreement will be in effect from January 1, 2019, through December 31, 2020.

ATTACHMENTS:

Draft agreement and supporting documentation



**Publicity and Tourism Agreement Between the City of Hewitt, Texas
and The Greater Hewitt Chamber of Commerce**

This Agreement is made and effective on the 1st Day of January 2019 by and between the City of Hewitt, Texas ("City") and the Greater Hewitt Chamber of Commerce ("Chamber").

I.

The City of Hewitt, Texas, by authority of powers granted to it under the state statutes and its Home-Rule Charter has heretofore enacted a local hotel occupancy tax on occupants of hotels within the City of Hewitt.

II.

The revenue generated by the hotel occupancy tax within the city generally may be expended on endeavors that promote tourism and the convention and hotel industry (See: Texas Tax Code, Chapter 351 et. Seq.). In furtherance of these statutory requirements and the City's obligations concerning use of municipal hotel occupancy tax funds for attracting and promoting tourism and the convention and hotel industry and in consideration for the Chamber advertising and promoting tourism for the visitor market from which the City derives direct tourist income benefit, the City hereby agrees to pay the Chamber

\$2,500 per month, payable the first of each month during the term of this agreement. The term of this Agreement is effective January 1, 2019 thru December 31, 2020. The Chamber agrees that any local hotel occupancy tax funds paid into it by the City shall be used for purposes prescribed by State Statute which generally includes expenditures on items which promote tourism and the convention and hotel industry and are tied to the following:

- Convention center facilities and visitor information centers.
- Furnishing of facilities, personnel and materials for the registration of convention delegates.
- Advertising, conducting solicitations, and promotional activities which attract tourists and convention delegates.
- Advertising, conducting solicitations, and promotion of the arts; historical restoration and preservation projects or museums.
- Related administrative costs

The Chamber agrees to conduct a continuing program of advertising and promotion for the purpose of attracting visitors, tourists, and conventions to the local area and to the City of Hewitt by publishing and distributing brochures, community information packets, maps, by advertising in various tourists publications and general media publications which are appropriate, by representing the City at promotional events, by participating with state and regional agencies in tourist and visitor development programs to benefit the local area and to the City of Hewitt, and by using all appropriate means to increase the traveling public's awareness of the resort and recreational advantages of the local area and the City of Hewitt.

The Chamber of Commerce further agrees that it will seek to achieve economic benefit for the City of Hewitt through all of such activities, that it will provide tourist-related information about the City of Hewitt upon request, and that it will serve as an advisory body to the City, on request, in matters

related to expanding tourist and visitor derived economy.

The foregoing services as additionally described in Section IV and Attachment A serve a public purpose of the City as required by law. Also required by law is that a public purpose service contract contain a provision allowing for the recovery of government funding if the public purpose is not served. Therefore, if it is determined by the City Council, after notice to the Chamber and opportunity to be heard, that funds under this Agreement have been used for other than the City's public purpose, the Chamber must repay the amount of such funds found to be improperly used within 10 days of receipt of a written demand from the City. If the Chamber fails to timely repay to the City the demanded amount, the City may suspend further payments to the Chamber under this Agreement. If the default continues for more than 60 days after the written demand for repayment, the City may terminate this Agreement.

The foregoing is added for purposes of legal compliance and should not be viewed as any slight or concern regarding the Chamber, with which the City has had a productive relationship.

III.

It is expressly understood and agreed by and between the parties that the Chamber is engaged as an independent contractor and is not an officer, agent, or employee of the City.

IV.

The Chamber hereby agrees that it shall utilize all hotel occupancy tax funding in accordance with the General Promotional Program attached as Attachment "A" incorporated and herein made part of this agreement. The City agrees that the expenditures made by the Chamber pursuant to the General Promotional Program attached as Attachment "A" comply with the applicable Texas Tax Code provisions regarding the use of hotel occupancy tax funds.

The Chamber agrees to conduct activities in accordance with this agreement and applicable State Statute and shall maintain and make available to the City complete and accurate financial records of each expenditure of hotel occupancy tax. The Texas Tax Code authorizes the expenditure of hotel occupancy tax proceeds for the following administrative costs: day-to-day operations, supplies, salaries, office rental, travel expenses, and "other administrative costs only if" costs are incurred directly in the promotion and servicing of expenditures authorized under section 351.101 (a) of the Texas Tax Code.

V.

In furtherance of these purposes the City hereby authorizes the Chamber to utilize the Historic Hewitt Depot ("Depot") building and associated real property, located at 101 Third Street, Hewitt, Texas 76643.

The Chamber of Commerce shall secure sufficient numbers of employees to accomplish this Agreement. The Chamber of Commerce shall generally operate and be open to the public on a full-time basis during normal business hours during the term of this agreement.

The Chamber will operate Hewitt's Historic Depot Building as a Visitor Information Center, Chamber office, and public museum on a regular full-time basis and will generally operate during accepted business hours.

VI.

The Chamber shall not pay rent or any fee for use of the Depot. The Chamber will pay for operation and routine maintenance and lawn care of the Depot and grounds.

Chamber shall pay all charges for water, sewer, telephone and other services and utilities used by Chamber at the Depot during the term of this agreement unless otherwise expressly agreed in writing by City. Chamber shall pay such amounts within fifteen (15) days of invoice. The City will pay electricity costs. The City agrees that the expenditures made by the Chamber pursuant to this paragraph comply with the applicable Texas Tax Code provisions regarding the use of hotel occupancy tax funds. Chamber acknowledges that the Depot is designed to provide standard office use electrical facilities and standard office lighting. Chamber shall not use any equipment or devices that utilize excessive electrical energy or which may, in City's reasonable opinion, overload the wiring. City shall have the right to enter upon the Depot Premises at reasonable hours to inspect and maintain the same, provided City shall not thereby unreasonably interfere with Chamber's business in the Depot. Chamber shall have the right to reorganize and place office furniture into the Depot. The current decorations and railroad memorabilia shall not be removed from the Depot without the written consent of City. Decorations and memorabilia that are affixed to any wall shall not be moved without the written consent of City. Chamber shall not have the right to remodel or make additions to the Depot without the written consent of City. Chamber shall be responsible for the repair of any damages caused by any alterations that it makes to the Depot.

To the extent not covered by any policy of insurance maintained by City upon the Depot, the Chamber shall be liable for repair of any damages caused by the Chamber to Depot during the term of this agreement. During the term of this agreement, and to the extent not covered by any policy of insurance maintained by City upon the Depot, Chamber shall provide and make, at Chamber's expense, all necessary maintenance and repairs to the Depot and the Depot premises. Chamber shall keep and maintain such items as floors, walls, ceilings, toilets, sinks, landscaping and other parts of the Depot and Depot premises damaged or worn through normal occupancy, except major mechanical, electrical, plumbing systems or the roof, subject to the obligations of the parties otherwise set forth in this agreement.

The Chamber shall not have the right to assign this agreement to a corporation with which Chamber may merge or consolidate, to any subsidiary of Chamber, to any corporation under common control with Chamber, or to a purchaser of substantially all of Chamber's assets. Chamber shall not sublease all or any part of the Depot or property or assign this agreement in whole or in part.

Use of the Depot by the Chamber is on a year to year basis and is contingent upon an approved Publicity and Tourism Agreement between the City and the Chamber. Termination of this Agreement results in termination of the Chamber's right to use the Depot.

VII.

To the extent not covered by any policy of insurance maintained by City upon the Depot, should the Depot premises or any other part of the Depot is damaged by fire or other casualty that prevents Chamber from using the Depot, City shall have no responsibility to provide compensation for Chamber property or for another facility for the Chamber office.

If the Depot premises are damaged by fire or other casualty resulting from any act or negligence of Chamber or any of Chamber's agents, employees or invitees Chamber shall be responsible for the costs of repair not covered by insurance.

City shall maintain fire and extended coverage insurance on the Depot and the Depot premises in such amount as City shall deem appropriate. Chamber shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property located in the Depot. City shall not provide insurance coverage for any of the Chamber's personal property.

Chamber shall secure and carry at its own expense a general liability policy insuring Chamber and City against any claims based on bodily injury (including death) or property damage arising from the condition of the Depot premises or their use by Chamber, such policy to insure Chamber and City against any claim up to \$500,000 for bodily injury, property damage or combination thereof. This insurance shall be primary to and not contributory with any insurance carried by City, whose insurance shall be considered excess. City shall be included in such policy as additional insured. Chamber shall provide City with current Certificates of Insurance evidencing Chamber's compliance with this Paragraph within fifteen (15) days of the effective date of this agreement. Chamber shall obtain the agreement of Chamber's insurers to notify City that a policy is due to expire at least ten (10) days prior to such expiration.

VIII.

Any notice required or permitted under this agreement shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to City to:

City of Hewitt
Attn: City Manager
200 Patriot Court
Hewitt, TX 76643

If to Chamber to:

Greater Hewitt Chamber of Commerce
Attn: Executive Director
P.O. Box 661
Hewitt, TX 76643

City and Chamber shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

IX.

No waiver of any default of City or Chamber hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by City or Chamber shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

The provisions of this agreement shall extend to and be binding upon City and Chamber and their respective legal representatives, successors and assigns.

City shall not unreasonably withhold or delay its consent with respect to any matter for which City consent is required or desirable under this agreement.

This agreement terminates supersedes all prior understanding or agreements on the subject matter hereof. This agreement may be modified only by a further writing that is duly executed by both parties.

Chamber shall not have the right to renew this agreement for any term without the written consent of City. City may extend the term of this agreement for an additional twelve (12) month period with the written consent of Chamber. Attachment "A" is subject to change provided that any such change is agreed upon in writing by Chamber and City. Chamber's inability to provide services under this agreement for reasons outside of its control; including but not limited to termination of an event due to bad weather conditions, acts of God, or prospective financial loss, shall not void the agreement. Rather, Chamber shall replace City's promotion by alternate method agreeable to Chamber and City. The next review of this Agreement shall take place by the 1st day of October 2020 and renewal of this Agreement shall take place by the 1st day of January 2021.

This agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Texas.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

For the City

For the Chamber

James Devlin, Acting City Manager

Alissa Cady, Executive Director

DATE

DATE



COUNCIL AGENDA ITEM FORM

MEETING DATE: November 19, 2018

AGENDA ITEM #: 13

SUBMITTED BY: Kevin Reinke, Utilities Director

ITEM DESCRIPTION:

Discussion and possible action on approval of services agreement with DROPCOUNTR HOME and CLEAR products, a software that allows utility customers access to their accounts.

STAFF RECOMMENDATION/ITEM SUMMARY:

Hewitt's automated water meter reading (AMR) system monitors and tracks customer usage data throughout the month. This data is collected continuously and is typically transmitted to our system daily; with a 24-hour lag. Most of the time our Customer Service Representatives at Utility Billing can view customer usage in one (1) hour increments (for a variety of reasons, all data is not always available). At any time, a customer can view this data in person at the Utilities Department. This has been a valuable tool in trying to determine when usage occurred and often identify leaks or resolve other issues for our customers.

When the original system was established, one of the partners (Neptune) provided an online citizen access portal. We learned last year that Neptune would no longer provide the online citizen portal. City staff researched alternatives to the Neptune system so that utility customers could continue to view and analyze their data online. After discussion with Siemens, city staff conducted research which included actual hands-on testing and cost analysis of various options.

As you know, last year city staff asked Council for input and direction regarding the purchase of a new online citizen access portal. At the time, Council opted to forego this purchase until both staff and Council saw an increase in demand from utility customers. Since that time, city staff has received continual requests from utility customers for another online citizen access portal.

Because of this, city staff included Dropcountr, a new online citizen access portal, in the current Utility Budget. In order to again give utility customers the ability to view and analyze their data online, staff is recommending the purchase of Dropcountr and the approval of the \$9,000, one-year service agreement.

ATTACHMENTS:

Service Agreement



DROPCOUNTR SERVICES ORDER FORM

Customer: City of Hewitt	Contact: Karen Sexton Utility Analyst
Address: 103 N Hewitt Drive Hewitt, TX 76643	Phone: 254-666-3151 (Office) Email: ksexton@cityofhewitt.com
Services: Use of the Dropcountr HOME and CLEAR products and their access by up to 6,000 accounts served by the Customer (the "Service(s)").	
Services Fees: \$9,000 payable in advance, subject to the terms of Section 4 herein.	Initial Service Term: October 1, 2018 – September 30, 2019
Service Capacity: Up to 6,000 accounts served by the Customer	
Implementation Services: Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work ("SOW") attached as Exhibit A hereto ("Implementation Services"), and Customer shall pay Company the Implementation Fee in accordance with the terms herein. Implementation Fee (one-time): \$0 (waived)	

DROPCOUNTR SERVICES AGREEMENT

This Dropcountr Services Agreement ("Agreement") is entered into on this 1st day of October, 2018 (the "Effective Date") between Dropcountr, Inc. with a place of business at 155 9th Street San Francisco, CA 94103 ("Company"), and the Customer listed above ("Customer"). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

Dropcountr, Inc.:

City of Hewitt:

By: 
Name: Robb Barnitt
Title: Chief Executive Officer
Date: October 1, 2018

By: _____
Name: _____
Title: _____
Date: _____

TERMS AND CONDITIONS

1. SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services in accordance with the Service Level Terms attached hereto as Exhibit B. As part of the registration process, Customer will identify an administrative user name and password for Customer's Company account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the terms set forth in Exhibit C.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels.

2.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.3 Customer represents, covenants, and warrants that Customer will use the Services in compliance with all applicable laws and regulations. Although Company has no obligation to monitor Customer's use of the Services,

Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Customer shall own all right, title and interest in and to the Customer Data. Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, Company shall have the right collect and analyze data and other

information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

4. PAYMENT OF FEES

4.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein upon presentation of information justifying the charges. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). No annual increase may exceed 5%. If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term. This agreement is also terminated if the governing body of the Customer does not appropriate funds to make the payments hereunder in a

Customer fiscal year budget.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Company will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter Company may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of



this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws provisions. The parties shall work together in good faith to issue at least one mutually agreed upon press release within 90 days of the Effective Date, and Customer otherwise agrees to reasonably cooperate with Company to serve as a reference account upon request. This agreement is performable in the state and county of the Customer's principal offices.

EXHIBIT A

(see attached Scope of Work)

EXHIBIT B

Service Level Terms

The Services shall be available 99.9%, measured monthly, excluding holidays and weekends and scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than one hour, Company will credit Customer 5% of Service fees for each period of 30 or more consecutive minutes of downtime; provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Company) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Company in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred. Company's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Company to provide adequate service levels under this Agreement, unless such is determined to have been unjustified.



EXHIBIT C

Support Terms

Company will provide technical support to customers via email during weekdays between 9:00am and 5:00pm Pacific time, with the exclusion of Federal Holidays ("**Support Hours**").

Customer may initiate a helpdesk ticket during Support Hours by emailing support@dropcountr.com.

Company will use commercially reasonable efforts to respond to all Helpdesk tickets within two (2) business days.