

HEWITT TEXAS

CITY COUNCIL MEETING AGENDA

August 12, 2019
Special Called Meeting - 6:30 PM
CITY HALL, 200 PATRIOT COURT
HEWITT, TX 76643

MAYOR AND CITY COUNCIL

Charlie Turner – Mayor, Ward 1
Wilbert Wachtendorf – Mayor Pro Tem, Ward 1
Bill Fuller – Council Member, Ward 2
Matthew Mevis – Council Member, Ward 2
Steve Fortenberry – Council Member, Ward 3
Erica Bruce – Council Member, Ward 3
Michael S. Bancale – Council Member, At-Large

CITY STAFF

Bo Thomas, City Manager	
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	Tracy Lankford, Community Dev. Director
Kevin Reinke, Utilities Director	Tuck Saunders, Assistant Police Chief

HEWITT TEXAS

NOTICE OF MEETING OF THE GOVERNING BODY

Notice is hereby given that a **Special Called** meeting of the governing body of the City of Hewitt will be held on the **12th day of August, 2019, at 6:30 PM** in **Hewitt City Hall, 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. Special presentation in recognition of outstanding service.
4. Consider approval of minutes of the Council Workshop/Regular Meeting of July 15, 2019, Special Called Workshop Meeting of July 22, 2019, and Special Called Meeting of July 29, 2019.
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.*
6. Conduct public hearing on the Fiscal Year 2019-2020 Proposed Budget.
7. Conduct first of two public hearings on 2019 tax rate.
8. Motion to announce that August 26, 2019, at 6:30 p.m. at the Hewitt City Hall, 200 Patriot Court, as the date to vote on the 2019 tax rate.
9. Public hearing and action on **Ordinance No. 2019-15**; granting a variance to the drainage ordinance for Moonlight Park subdivision. **NOTE: This public hearing must be held at 7:00 PM as published.**
10. Declaring Fire Department's 1993 International E-1 Aerial-1 Truck as surplus equipment to allow for the sale of this apparatus.
11. Authorize the City Manager to execute an Interlocal Cooperation Act Agreement with McLennan County for slurry seal of selected public roads in McLennan County Road System, Precinct 4.
12. Authorize the City Manager to execute an Interlocal Cooperation Agreement between Midway Independent School District to provide School Resource Officers (SROs).
13. Consideration and action on **Resolution No. 2019-11**; 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 City Manager to execute any documents necessary in connection therewith.
14. Consideration and action on **Ordinance No. 2019-16**; authorizing an Interlocal Cooperation Agreement with Waco Metropolitan Area Regional Sewerage System (WMARSS) including a Bill of Sale, Blanket Conveyance and a Quit Claim Deed in order to convey WMARSS and most of its assets to the City of Waco and including a Quit Claim Deed in order to convey the remainder of WMARSS assets (easements) to the City of Waco. In addition, authorize the City Manager to execute a Wholesale Wastewater Contract with the City of Waco.
15. 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 2:00 AM/PM on August 7, 2019.

CITY OF HEWITT



Lydia Lopez, TRMC/CMC
City Secretary

In compliance with the American with Disabilities Act, the City of Hewitt will provide reasonable accommodations for persons attending and/or participating in this Council Meeting. To better serve you, request must be made at least 24 hours prior to the meeting. Contact the City Secretary at 254.666.6171 or by fax at 254.666.6014. The building is wheelchair accessible, with handicap parking available at the front of the building.

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: August 12, 2019

AGENDA ITEM #: 4

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Consider approval of minutes of the Council Workshop/Regular Meeting of July 15, 2019, Special Called Workshop of July 22, 2019, and Special Called Meeting of July 29, 2019.

STAFF RECOMMENDATION/ITEM SUMMARY:

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

SUGGESTED MOTION:

"I move approval of the minutes as presented but allow for corrections."

ATTACHMENTS:

Draft minutes

HEWITT TEXAS

MINUTES OF A CITY COUNCIL WORKSHOP/REGULAR MEETING HEWITT CITY HALL – 200 PATRIOT COURT July 15, 2019 – 6:30 PM/7:00 PM

Members present: Mayor Charlie Turner (presiding), Mayor Pro Tem Wilbert “Walky” Wachtendorf, Council Members Michael S. Bancale, and Steve Fortenberry

Members absent: Council Members Bill Fuller, Matthew Mevis, and Erica Bruce

Staff present: City Manager Bo Thomas, City Attorney Mike Dixon, City Engineer Miles Whitney, Police Chief Jim Devlin, Assistant Police Chief Tuck Saunders, Fire Chief Lance Bracco, Community Development Director Tracy Lankford, Finance Director Lee Garcia, Library Director Waynette Ditto, Utilities Director Kevin Reinke, and City Secretary Lydia Lopez

1. Mayor Charlie Turner called the meeting to order at 6:30 PM.
2. **Briefing and discussion concerning FY 2019-2020 Proposed Budget.**
City Manager Bo Thomas offered Council the opportunity to raise questions, voice concerns or discuss information that was sent electronically. General discussion was held concerning setting tax rate and deadline, salary increases, salary survey, and health insurance premiums.
Council Member Steve Fortenberry inquired whether six (6%) percent increase could be considered rather than five (5%) percent for employee raises.
City Manager Bo Thomas advised that the additional one (1%) percent was not included in the proposed budget.
A special called workshop meeting will be held on July 22, 2019.
3. **Adjourn.**
MOTION: Council Member Steve Fortenberry moved to adjourn the meeting at 6:58 PM.
SECOND: Council Member Michael Bancale
AYES: Bancale, Wachtendorf, Fortenberry, Turner
NAYES: None
ABSENT: Fuller, Mevis, Bruce
MOTION PASSED.

REGULAR MEETING – 7:00 PM

1. **CALL TO ORDER.** Mayor Charlie Turner called the meeting to order at 7:00 PM.

2. **PLEDGE OF ALLEGIANCE TO THE U.S. FLAG.** Mayor Charlie Turner asked Fire Chief Lance Bracco to lead the Pledge of Allegiance.
3. **CONSIDER APPROVAL OF MINUTES OF THE COUNCIL WORKSHOP/REGULAR MEETING OF JULY 1, 2019, AND SPECIAL CALLED MEETING OF JULY 8, 2019.**
MOTION: Mayor Pro Tem Wilbert “Walky” Wachtendorf moved approval of the minutes as presented but to allow for corrections.
SECOND: Council Member Michael Bancale
AYES: Bancale, Wachtendorf, Fortenberry, Turner
NAYES: None
ABSENT: Fuller, Mevis, Bruce
MOTION PASSED.
4. **SPECIAL PRESENTATION OF NEWLY HIRED POLICE OFFICER JARED SCOTT.** Police Chief Jim Devlin presented a brief bio and introduced Officer Jared Scott. Mayor and Council welcomed Officer Jared Scott.

ADDENDUM ITEM

- 4a. **BRIEFING AND DISCUSSION CONCERNING HEWITT FIRE DEPARTMENT’S MEMBERSHIP TO THE INTRASTATE FIRE MUTUAL AID SYSTEM (TIFMAS).** Lieutenant Cody Richardson briefed the Council on the Fire Department’s participation in TIFMAS which is a system that mobilizes local resources to respond to statewide disasters including wildfires, floods and other hazardous situation. This system allows for reimbursements of expenses in the event of mobilization of the city’s resources for a statewide disaster.
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. **None**
6. **PUBLIC HEARING AND ACTION ON ORDINANCE NO. 2019-14; ON A VARIANCE REQUEST TO THE SIGN ORDINANCE FOR A POLE SIGN.**
Mayor Charlie Turner opened the public hearing at 7:13 PM and called for those wishing to speak for or against. No one appeared. Mayor Turner closed the public hearing at 7:14 PM. City Manager Bo Thomas presented request.
MOTION: Council Member Michael Bancale moved approval of Ordinance No. 2019-14; granting a variance request to the sign ordinance.
SECOND: Mayor Pro Tem Wilbert “Walky” Wachtendorf
AYES: Bancale, Wachtendorf, Fortenberry, Turner
NAYES: None
ABSENT: Fuller, Mevis, Bruce
MOTION PASSED.

7. Presentation of report from City Engineer

City Engineer Miles Whitney presented the following updates:

- **Update on pending utility projects.**
- **Update on pending street projects.**
- **Update on pending drainage projects.**

8. BRIEFING AND DISCUSSION CONCERNING FINANCIAL STATEMENTS ENDING JUNE 30, 2019.

City Manager Bo Thomas stated that staff would respond to any questions regarding the Financial Statements. General discussion was held concerning legal expenses.

9. CONSIDERATION AND ACTION ON APPROVAL OF QUARTERLY INVESTMENT REPORT ENDING JUNE 30, 2019.

City Manager Bo Thomas presented a summary of report prepared by Valley View Consulting, LLC.

MOTION: Council Member Steve Fortenberry moved approval of the Quarterly Investment Report ending June 30, 2019.

SECOND: Council Member Michael Bancale

AYES: Bancale, Wachtendorf, Fortenberry, Turner

NAYES: None

ABSENT: Fuller, Mevis, Bruce

MOTION PASSED.

10. AUTHORIZE THE CITY MANAGER TO ACCEPT PROPOSAL FOR A TOPOGRAPHICAL SURVEY FOR A PROPOSED WATERLINE AND ROAD PROJECT ON E. WARREN TO 1519 SURVEYING & ENGINEERING IN THE AMOUNT OF \$22,680.

City Manager Bo Thomas explained the purpose and need for the survey.

MOTION: Council Member Michael Bancale moved approval to authorize the city manager to accept the proposal for a topographical survey as presented by 1519 Survey and Engineering in the amount of \$22,680.

SECOND: Council Member Steve Fortenberry

AYES: Bancale, Wachtendorf, Fortenberry, Turner

NAYES: None

ABSENT: Fuller, Mevis, Bruce

MOTION PASSED.

11. CONSIDERATION AND ACTION ON RESOLUTION NO. 2019-10; CASTING VOTES TO ELECT A MEMBER OF THE GOVERNING BODY TO THE MCLENNAN COUNTY RURAL TRANSIT DISTRICT.

City Manager Bo Thomas explained the voting process.

MOTION: Council Member Michael Bancale moved to cast the initial 10 votes for Hewitt's representative Mayor Charles D. "Charlie" Turner.

SECOND: Council Member Wilbert "Walky" Wachtendorf

AYES: Bancale, Wachtendorf, Fortenberry

NAYES: None

ABSENT: Fuller, Mevis, Bruce

ABSTAINED: Turner

MOTION PASSED.

MOTION: Mayor Pro Tem Wilbert “Walky” Wachtendorf moved to cast the remaining votes as follows: McGregor – Tony OCampo – 5; Woodway - Scott Giddings – 5

SECOND: Council Member Michael Bancale

AYES: Bancale, Wachtendorf, Fortenberry, Turner

NAYES: None

ABSENT: Fuller, Mevis, Bruce

MOTION PASSED.

12. ADJOURN.

MOTION: Mayor Pro Tem Wilbert “Walky” Wachtendorf moved to adjourn the meeting at 7:43 PM.

SECOND: Council Member Michael Bancale

AYES: Bancale, Wachtendorf, Fortenberry, Turner

NAYES: None

ABSENT: Fuller, Mevis, Bruce

MOTION PASSED.

Approved: _____

ATTEST:

Lydia Lopez, City Secretary

Charles D. Turner, Mayor

HEWITT TEXAS

MINUTES OF A CITY COUNCIL SPECIAL CALLED WORKSHOP MEETING HEWITT CITY HALL – 200 PATRIOT COURT July 22, 2019 – 6:00 PM

Members present: Mayor Charlie Turner (presiding), Mayor Pro Tem Wilbert “Walky” Wachtendorf, Council Members Bill Fuller, Michael S. Bancale, Matthew Mevis, Steve Fortenberry, and Erica Bruce

Staff present: City Manager Bo Thomas, Police Chief Jim Devlin, Assistant Police Chief Tuck Saunders, Fire Chief Lance Bracco, Community Development Director Tracy Lankford, Finance Director Lee Garcia, Library Director Waynette Ditto, Utilities Director Kevin Reinke, and City Secretary Lydia Lopez

Staff absent: City Attorney Mike Dixon and City Engineer Miles Whitney

1. Mayor Charlie Turner called the meeting to order at 6:00 PM.
2. **Briefing and discussion concerning FY 2019-2020 Proposed Budget.**

City Manager Bo Thomas prefaced the discussion by stating that he had responded to numerous emails with inquiries regarding the proposed budget and hopefully had responded to those inquiries adequately. Mr. Thomas further stated that the 2019 preliminary values for our ad valorem tax revenue had decreased by \$86,000. (Handout of summary of preliminary values provided.) The proposed budget had a positive balance of \$29,000; thus, staff had to make adjustments to the proposed budget to make up for the \$59,000 shortfall. He recommended the following adjustments to the FY 2019-2020 Proposed Budget: increase the sales tax revenues by \$15,000; reduce the Worker’s Compensation renewal rates by \$17,500; and reduce the Administration Personnel Services by \$27,000. He provided a response to discussions recommending a one percent increase in employee wages and possible impact of lowering the tax rate by two cents. City Manager Bo Thomas also distributed the 2019 Tax Rate Calculation Worksheet and provided an explanation of effective tax rate and roll back rate. He expressed concern that the proposed revenue caps might force a tax rate reduction in the FY 2020-2021 budget year.

General discussion concerning revenue caps, employee raises, replacing vehicles, grants, legal expenses and tax rate.

Mayor Charlie Turner expressed appreciation for the hard work and dedication to presenting a balanced budget.

3. **Adjourn.**
MOTION: Council Member Bill Fuller moved to adjourn the meeting at 6:46 PM.
SECOND: Council Member Steve Fortenberry
AYES: Bancale, Wachtendorf, Fortenberry, Turner
NAYES: None
ABSENT: Fuller, Mevis, Bruce
MOTION PASSED.

Approved: _____

ATTEST:

Lydia Lopez, City Secretary

Charles D. Turner, Mayor

HEWITT TEXAS

**MINUTES OF A CITY COUNCIL
SPECIAL CALLED MEETING
HEWITT CITY HALL – 200 PATRIOT COURT
July 29, 2019 – 6:30 PM**

Members present: Mayor Charlie Turner (presiding), Mayor Pro Tem Wilbert “Walky” Wachtendorf, Council Members Bill Fuller, Michael S. Bancale, Matthew Mevis, Steve Fortenberry, and Erica Bruce

Staff present: City Manager Bo Thomas, Police Chief Jim Devlin, Assistant Police Chief Tuck Saunders, Fire Chief Lance Bracco, Community Development Director Tracy Lankford, Finance Director Lee Garcia, Library Director Waynette Ditto, Utilities Director Kevin Reinke, and City Secretary Lydia Lopez

Staff absent: City Attorney Mike Dixon and City Engineer Miles Whitney

1. Mayor Charlie Turner called the meeting to order at 6:30 PM.
2. **CONSIDERATION AND ACTION ON SETTING DATE OF AUGUST 12, 2019, FOR A PUBLIC HEARING ON THE PROPOSED FISCAL YEAR 2019-2020 PROPOSED ANNUAL BUDGET TO BE HELD ON MONDAY, AUGUST 12, 2019, HEWITT CITY HALL, COUNCIL CHAMBERS, 200 PATRIOT COURT, HEWITT, TX 76643.**

City Manager Bo Thomas prefaced discussion by advising Council that replacement pages for their budget books were placed before them and noted that these pages included the changes that were discussed at the last meeting needed to address the reduction in preliminary tax revenue. Those changes included an increase the sales tax revenues by \$15,000; reduction in the Worker’s Compensation renewal rates by \$17,500; and reduction in Administration Personnel Services by \$27,000. He also noted that the FY 2019-2020 Proposed Budget with additional information will be posted on the city’s website.

MOTION: Council Member Michael Bancale moved to set the date of August 12, 2019, for a public hearing on the proposed Fiscal Year 2019-2020 Proposed Annual Budget.

SECOND: Council Member Bill Fuller

AYES: Fuller, Bancale, Mevis, Wachtendorf, Fortenberry, Bruce, Turner

NAYES: None

ABSENT: None

MOTION PASSED.

3. **CONSIDERATION AND ACTION ON A VOTE TO PLACE ADOPTION OF THE PROPOSED 2019 TAX RATE ON A FUTURE AGENDA AND TO SET DATES FOR TWO PUBLIC HEARINGS TO BE HELD ON MONDAY, AUGUST 12, 2019, AND MONDAY, AUGUST 19, 2019, AT 6:30 P.M. AT HEWITT CITY HALL, COUNCIL CHAMBERS, 200 PATRIOT COURT, HEWITT, TX 76643.**

General discussion was held concerning tax rate. City Manager confirmed that the proposed tax rate is the same as last year's tax rate.

MOTION: Council Member Steve Fortenberry moved to vote to place the adoption of a tax rate of \$.539677 cents for \$100 valuation, equaling \$.22309 cents for debt service and \$.316587 cents for maintenance and operations, as an action item for the August 26, 2019 council meeting to be held at 6:30 p.m. at the Hewitt City Hall, Council Chambers, 200 Patriot Court, Hewitt, Texas, and to set two public hearings as required by law, to be held on Monday, August 12, 2019, at 6:30 p.m. and Monday, August 19, 2019, at 6:30 p.m. at Hewitt City Hall, Council Chambers, 200 Patriot Court, Hewitt, Texas.

SECOND: Council Member Mathew Mevis

AYES: Fuller, Bancalé, Mevis, Wachtendorf, Fortenberry, Bruce, Turner

NAYES: None

ABSENT: None

MOTION PASSED.

4. **ADJOURN.**

MOTION: Council Member Bill Fuller moved to adjourn the meeting at 6:38 PM.

SECOND: Council Member Matthew Mevis

AYES: Fuller, Bancalé, Mevis, Wachtendorf, Fortenberry, Bruce, Turner

NAYES: None

ABSENT: None

MOTION PASSED.

Approved: _____

ATTEST:

Lydia Lopez, City Secretary

Charles D. Turner, Mayor

HEWITT TEXAS

AGENDA ITEM #5 – 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.

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: August 12, 2019

AGENDA ITEM #: 6

SUBMITTED BY: Lee Garcia, Finance Director

ITEM DESCRIPTION:

Conduct public hearing on the Fiscal Year 2019-2020 Proposed Budget.

STAFF RECOMMENDATION/ITEM SUMMARY:

Article VII, Section 7.4 of the City Charter and Section 102.006(a) of Chapter 102 of the Local Government Code require a public hearing on the proposed budget. Please see the following Notice of Public Hearing on the budget as required by Section 102.006(c) which was published in the Waco Tribune Herald on July 26th, 2019. The Mayor will open the public hearing to receive any comments and then close the hearing. Members of the public are encouraged to attend the hearing and express their views. The adoption of the budget is scheduled for the meeting on August 26th, 2019 at 6:30 p.m. in City Hall, 200 Patriot Court. No action is required of the Council.

ATTACHMENTS:

Notice of Public Hearing on the Budget

Waco Tribune-Herald

Waco, McLennan County,
Texas
Affidavit of Publication

Account Number

1025238

CITY OF HEWITT-CLASSFD
200 PATRIOT COURT
HEWITT, TX 76643

Date	Category	Description	Ad Size	Total Cost
08/01/2019	Legal Notices	PUBLIC HEARING - FISCAL YEAR 2019-2020 FUNDING	1 x 21.00 CL	86.42

**LEGAL NOTICE
CITY OF HEWITT****NOTICE OF PUBLIC HEARING**

The City Council of Hewitt, Texas will hold a public hearing for consideration of the Fiscal Year 2019-2020 General Fund, Utility Fund, Drainage Fund, Hotel Fund and Capital Improvement Fund Budgets on 8-12-19 at 6:30 p.m. in the Hewitt City Hall, 200 Patriot Court. **This budget will raise more total property taxes than last year's budget by \$381,654 (7.6%) and of that amount \$150,382 is tax revenue to be raised from new property added to the roll this year.** A copy of the budget may be examined at the City Hall and on the city website.

**Publisher of the
Waco Tribune-Herald**

Before me, a notary public, on this day personally appeared Ana Lozano-Harper and after being duly sworn, states that she is a Multi Media Sales Manager of the Waco Tribune Herald, a newspaper published in Waco, McLennan County, Texas, and that the Notice, a copy of which is hereto attached, was published in said newspaper on the following named dates, to-wit:

07/26/2019

The First insertion being given ... 07/26/2019

Newspaper reference: 0000583454

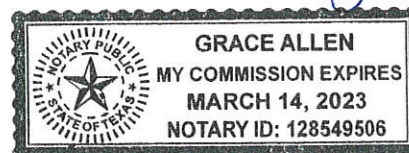
Sworn to and subscribed before me this day: 7/26/19

Notary Public



Multi Media Sales Manager

State of Texas
Waco, McLennan County
My Commission expires _____





COUNCIL AGENDA ITEM FORM

MEETING DATE: August 12, 2019

AGENDA ITEM #: 7

SUBMITTED BY: Lee Garcia, Finance Director

ITEM DESCRIPTION:

Conduct first of two public hearings on 2019 tax rate.

STAFF RECOMMENDATION/ITEM SUMMARY:

Chapter 26, Section 26.05(d) of the State of Texas Tax Code requires that a municipality hold two public hearings on the proposed tax rate. This will be the first public hearing. The second public hearing is on August 19th, 2019. Following is a copy of the Notice that was published in the Waco Tribune Herald on August 2nd, 2019. The Mayor will open the public hearing to receive any comments and then close the hearing. Members of the public are encouraged to attend the hearings and express their views. No action is required of the Council.

ATTACHMENTS:

Notice of 2019 Tax Year Proposed Property Tax Rate for City of Hewitt

NOTICE OF 2019 TAX YEAR PROPOSED PROPERTY TAX RATE FOR CITY OF HEWITT

A tax rate of \$0.539677 per \$100 valuation has been proposed for adoption by the governing body of City of Hewitt. This rate exceeds the lower of the effective or rollback tax rate, and state law requires that two public hearings be held by the governing body before adopting the proposed tax rate.

The governing body of City of Hewitt proposes to use revenue attributable to the tax rate increase for the purpose of increases in competitive wages for employees and upholding current service levels.

PROPOSED TAX RATE	\$0.539677 per \$100
PRECEDING YEAR'S TAX RATE	\$0.539677 per \$100
EFFECTIVE TAX RATE	\$0.510393 per \$100
ROLLBACK TAX RATE	\$0.546423 per \$100

The effective tax rate is the total tax rate needed to raise the same amount of property tax revenue for City of Hewitt from the same properties in both the 2018 tax year and the 2019 tax year.

The rollback tax rate is the highest tax rate that City of Hewitt may adopt before voters are entitled to petition for an election to limit the rate that may be approved to the rollback rate.

YOUR TAXES OWED UNDER ANY OF THE ABOVE RATES CAN BE CALCULATED AS
FOLLOWS:

$$\text{property tax amount} = (\text{rate}) \times (\text{taxable value of your property}) / 100$$

For assistance or detailed information about tax calculations, please contact:

Paul Graser
City of Hewitt tax assessor-collector
215 N 5th
Waco, TX 76701
254-757-5133
paul.graser@co.mclennan.tx.us

You are urged to attend and express your views at the following public hearings on the proposed tax rate:

First Hearing: August 12, 2019 at 6:30 PM at Hewitt City Hall, 200 Patriot Court, Hewitt, TX 76643.

Second Hearing: August 19, 2019 at 6:30 PM at Hewitt City Hall, 200 Patriot Court, Hewitt, TX 76643.

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: August 12, 2019

AGENDA ITEM #: 8

SUBMITTED BY: Lee Garcia, Finance Director

ITEM DESCRIPTION:

Motion to announce that August 26, 2019, at 6:30 p.m. at the Hewitt City Hall, 200 Patriot Court, as the date to vote on the 2019 tax rate.

STAFF RECOMMENDATION/ITEM SUMMARY:

Chapter 26, Section 26.06(d) of the Texas Tax Code states that "at the public hearings the governing body shall announce the date, time and place of the meeting at which it will vote on the proposed tax rate".

ATTACHMENTS:

None

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: August 12, 2019

AGENDA ITEM #: 9

SUBMITTED BY: Tracy Lankford, Community Development Director

ITEM DESCRIPTION:

Public hearing and action on **Ordinance No. 2019-15**; granting a variance to the drainage ordinance for Moonlight Park subdivision.

STAFF RECOMMENDATION/ITEM SUMMARY:

Mr. Justin Fuller submitted a request for a variance to the drainage ordinance. The property is located in the Moonlight Park Subdivision Phase 2. He is requesting variances to the City of Hewitt's, Code of Ordinances, Section 6.03, C, 1. If the development were to follow the requirements of the City's Ordinances, then they would be in violation of the Clean Water Act's Section 404. Under the requirements of the City's Ordinances, this development would be required to reconstruct the existing drainage channel utilizing reinforced concrete lining, however given the channels determination to be Jurisdictional Waters of the U.S., this concrete channel lining would be in conflict with the allowed improvements within the channel.

Staff is recommending approval of this request.

ATTACHMENTS:

Supporting documentation
Draft ordinance

HEWITT TEXAS

MINUTES OF THE PLANNING AND ZONING COMMISSION

August 6th, 2019 – 6:00PM

Members Present: John Baker, Bobby Drake, Jonathan Dulus, Michael Hix, Walt Peterson, Bobby Wolske

Members Absent: Jim Pless

Staff Present: Tracy Lankford, Community Development Director
Brittney Cantu, Zoning Secretary

- 1) **Call of Planning & Zoning Commission Meeting to Order.** *Walt Peterson called the meeting to order at 6:00PM.*
- 2) **Consider approval of minutes for the June 25, 2019 Planning and Zoning Commission special called meeting.** *A motion was made by John Baker, seconded by Michael Hix, to approve the minutes as submitted but allow for corrections. All six in favor, motion passed.*
- 3) **Discussion, consideration, and action on designating a new Chairman for the Planning & Zoning Commission due to former Chairman Charlie Turner winning the May 4, 2019 election for Councilman of Ward 1 for the City of Hewitt.** *Walt Peterson opened the discussion up for any nominations. No one stepped forward, Peterson said he would take the Chairman position if no one objects. John Baker motioned for nomination, seconded by Bobby Wolske, to designate Walt Peterson as the new Chairman for the Planning and Zoning Commission. All six in favor, motion passed. Walt Peterson is the new chairman effective immediately.*
- 4) **Public Hearing: Consider a request of Clark & Fuller for a variance to Section 6.03.C.1 on Moonlight Park Addition Phase 2. The variance request is to drainage requirements of the Subdivision Ordinance.** *Public hearing opened at 6:03PM. Speaking in favor: Justin Fuller, Clark & Fuller, 215 N Main Street, Temple, Texas, 76501. The subdivision of Moonlight Park Phase 2 has an existing drainage channel*

that has been determined to be a jurisdictional waterway by the Waters of the U.S. Federal law states that they cannot disturb this existing waterway since it is a jurisdictional waterway. The City of Hewitt subdivision ordinance states that a drainage channel must be concreted, however, Mr. Fuller is asking for a variance since this is a Federally protected waterway. Jonathan Dulus asked if there are any other materials that can be used such as any rip-rap style; Fuller said that since it is Federally protected, it cannot be disturbed unless there is a nationwide permit with a really good reason needing to have up to 300' disturbed.

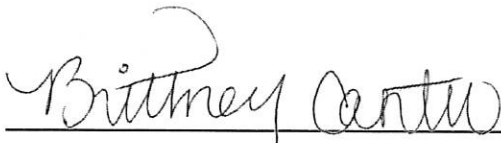
Speaking against: Diana Bracciale, 916 Stoneridge Dr, Hewitt, Texas, 76643. States her and her neighbors are concerned that this will cause drainage issues in the neighborhood; they do not want any additional runoff in their subdivision causing flooding issues. Asked for more insight as to what is being done. Tracy Lankford, Community Development Director, explains that the drainage on the new subdivision is being designed to drain to the south, and not towards the Stoneridge Subdivision that Bracciale is residing in. The drainage from the Stoneridge Subdivision actually goes through the new Moonlight Subdivision towards the south. Federal law states that they cannot concrete the drainage channel. Variance only being asked so that they are not in violation of Federal law. The drainage way that is there will be cleaned up, widened, and to allow for migration of this channel to handle the waterflow. Mr. Fuller shows where the existing drainage channel is on the new Moonlight Park Subdivision and where the Stoneridge Subdivision drains to that existing channel. Fred Clement, 504 Glenleigh, Hewitt, Texas 76643, asks if there has been a study done showing the impact of the drainage ditch. Mr. Lankford states that the engineers are looking into this. Mr. Fuller states they have done drainage calculations of the whole property, both as it is now, and how it is will be once developed. They do not foresee any drainage issues based on the calculations. Mr. Peterson asked if there were any others wishing to speak, no one came forward. Public hearing closed at 6:15PM.

- 5) **Discussion, consideration, action if any: Consider a request of Clark & Fuller for a variance to Section 6.03.C.1 on Moonlight Park Addition Phase 2. The variance request is to drainage requirements of the Subdivision Ordinance.** Motion was made by John Baker, seconded by Michael Hix, to recommend approval. All six in favor, motion to go before City Council August 12.

- 6) **Adjourn.** *Motion made by John Baker, seconded by Jonathan Dulus to adjourn the meeting. All six in favor, meeting adjourned at 6:17PM.*

Walt Peterson, Chairman

Date Approved



Brittney Cantu, Zoning Secretary

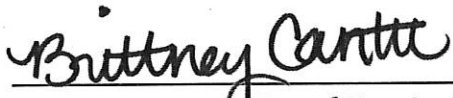
HEWITT TEXAS

NOTICE OF MEETING OF THE PLANNING AND ZONING COMMISSION

Notice is given that a **PUBLIC** meeting will be held before the Planning and Zoning Commission of the City of Hewitt on **Tuesday, August 6, 2019 at 6:00PM in the City Council Chambers at Hewitt City Hall, located at 200 Patriot Court, Hewitt, Texas** at which time the following subjects will be discussed:

1. Call Planning and Zoning Commission Meeting to order.
2. Consider approval of minutes for the June 25, 2019 Planning and Zoning Commission special called meeting.
3. Discussion, consideration, and action on designating a new Chairman for the Planning & Zoning Commission due to former Chairman Charlie Turner winning the May 4, 2019 election for Councilman of Ward 1 for the City of Hewitt.
4. **Public Hearing:** Consider a request of Clark & Fuller for a variance to Section 6.03.C.1 on Moonlight Park Addition Phase 2. The variance request is to drainage requirements of the Subdivision Ordinance.
5. Discussion, consideration, action if any: Consider a request of Clark & Fuller for a variance to Section 6.03.C.1 on Moonlight Park Addition Phase 2. The variance request is to drainage requirements of the Subdivision Ordinance.
6. Adjourn.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Planning and Zoning Commission of the City of Hewitt, Texas was posted on a Public Notice Board located in front of City Hall before 5:00PM on Friday, August 2, 2019.



Brittney Cantu, City of Hewitt Zoning Secretary

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print Braille, are requested to contact the Zoning Secretary at (254) 666-6173 at least 24 hours prior to the meeting, so that appropriate arrangements can be made.

HEWITT TEXAS

Application of Variance

Legal Description of Property: Moonlight Park Phase 2 Residential Subdivision

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

Northwest corner of the intersection of FM 1695 (S. Hewitt Dr.) and Old Temple Highway.

Number of Lots: 82 Number of Acres: 28.0 Flood Zone: X

Zoning Classification: R-1

Existing Building(s) on Property: No

Total Square footage of all buildings on Property: NA

I, the undersigned property owner or applicant of the following described real property located in the City of Hewitt, Texas hereby make this application by variance, by requesting approval for the following project: (Include how the project plans vary from the Subdivision Ordinance): Moonlight Park Phase 2. Project varies from the Subdivision Ordinance because of the identification of Jurisdictional Waters of the US and Wetlands on the subject property.

Indicated the number and give a brief description of the Section of the Subdivision Ordinance for which the variance is being requested. Section 6.03.C.1-Existing drainage channel has been determined to be Jurisdictional Waters of the US which will not allow construction of reinforced concrete lining.

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

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

Please provide the proposed meeting date for this application to be considered (See Meeting Schedule): August 2019

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

1. A notarized letter from the property owner authorizing applicant to present the request, if the property owner will not be presenting the request and stating reasons for request.
2. Submit one (1) copy of survey and one (1) copy of building plans.
3. Non-refundable application fee (see fee schedule).
4. Application, fee, documents, etc., in completed form must be submitted to the Planning Department before or no later than 12:00 noon on the deadline date (see schedule).

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

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

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

Name of Property Owner:

Cody Turner

Telephone Number:

254-640-2545

Mailing Address:

P.O. BOX 1818, WACO, TX 76703

Email Address:

cody@kunkelcustomhome.com

Signature of Property Owner:

[Signature]

Date:

7.17.19

Name of Applicant/Representative:

Justin Fuller, Clerk of the Board

Telephone Number:

254-899-0899

Mailing Address:

215 N. Main St. Temple TX 76780

Email Address:

jfuller@clark-filler.com

Signature of Applicant Representative:

[Signature]

Date:

7.17.19

APPOINTMENT OF AGENT/APPLICANT

As owner of the subject property, I hereby appoint the person/firm designated below to act for me, as my agent/applicant in this request.

Name of Agent: CLARK & FULLER, PLLC
Mailing Address: 215 N. Main Street
City: Temple State: Texas Zip: 76501
Phone: 254-899-0899
Email: jfuller@clark-fuller.com

I acknowledge and affirm that the agent/applicant will be an authorized representative at any board, commission, or City Council meetings.

Signature of Agent/Applicant: _____

Printed Name of Agent/Applicant: Justin Fuller, P.E.

Date: 7/17/19

Signature of Property Owner: _____

Printed Name of Property Owner: Cody Turner

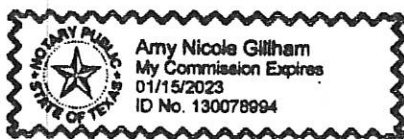
Date: 7/17/19

THE STATE OF Texas §

County of Marennan §

BEFORE ME, the undersigned authority, on this day personally appeared Cody Turner known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that (s)he executed same for the purpose and consideration therein expressed.

GIVEN under my hand and seal of office on this 17 day of July, 2019



Amy Gillham
NOTARY PUBLIC

Amy Gillham
Typed or Printed Name of Notary

MY COMMISSION EXPIRES: 1-15-2023

THE CITY OF MONTGOMERY

HIGHWAY 215

HIGHWAY 100

HIGHWAY 101

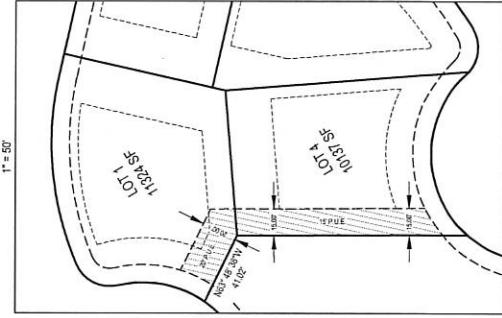
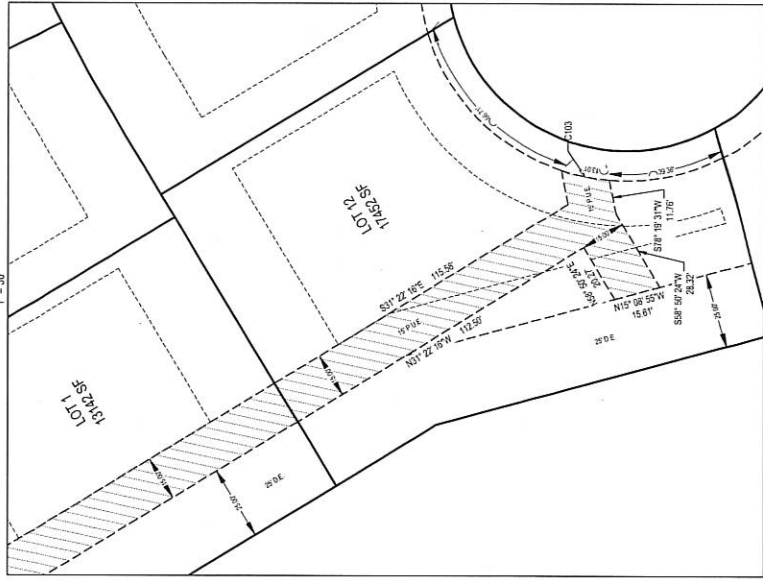
SITE

1" = 400'

[illegible]

core	size	depth	cost (secs)	cost (mins)
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C3	12.09	6.53	4.467	36.7
C4	12.09	6.53	4.467	36.7
C5	12.09	6.53	4.467	36.7
C6	12.09	6.53	4.467	36.7
C7	12.09	6.53	4.467	36.7
C8	12.09	6.53	4.467	36.7
C9	12.09	6.53	4.467	36.7
C10	12.09	6.53	4.467	36.7
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C79	12.09	6.53	4.467	36.7
C80	12.09	6.53	4.467	36.7

RISK FACTOR					COORDINATOR
CARE	ACUTE	SEVERE	DELTA	NOT IN FPM	
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C99	150426	1887	192222	530-22 FPM	2818
C100	150426	1887	192222	530-22 FPM	2818



LINE TABLE		
LINE	BEARING	DISTANCE
1.1	N63° 41' 00"E	10.00
1.2	N62° 44' 20"E	1.15
1.3	N62° 44' 20"E	37.35
1.4	S53° 23' 30"E	3.40
1.5	S63° 48' 30"W	41.52
1.6	S73° 31' 00"W	46.71
1.7	S68° 59' 24"E	7.31
1.8	S66° 43' 37"W	3.40
1.9	N65° 50' 24"E	48.52
1.10	N60° 50' 24"E	70.90
1.11	S32° 18' 52"E	10.00
1.12	S23° 14' 14"E	3.45
1.13	S31° 09' 20"E	0.32
1.14	S50° 47' 00"W	50.00
1.15	S39° 20' 00"W	367

LINE TABLE		
LINE	BEARING	DISTANCE
116	N 32° 57' 32"E	9.14
117	S 67° 02' 54"W	10.68
118	N 67° 25' 54"W	9.21
119	S 66° 43' 37"W	9.48
120	N 62° 18' 52"W	10.03
121	S 66° 41' 05"W	10.68
122	N 61° 17' 05"W	9.13
123	N 61° 09' 30"W	6.82
124	N 32° 12' 56"E	9.65
125	S 55° 27' 44"E	9.72
126	S 55° 27' 30"E	9.47
127	S 52° 12' 34"E	6.72
128	N 67° 18' 52"W	1.84
129	N 64° 31' 38"E	9.05
130	N 60° 50' 24"E	2.17

From: Miles Whitney <miles@cayotecon.com>
Sent: Thursday, July 25, 2019 4:43 PM
To: Tracy Lankford <tlankford@cityofhewitt.com>
Subject: Hewitt - Moonlight Phase 2, Variance Request

Tracy,

In regards to the variance request for Phase 2 of the Moonlight Subd., see the below items in yellow. In regards to the variance request for Phase 3, it may be premature to consider this variance since they have yet to submit anything for this phase. In addition, the development has submitted a revised plat, from the originally approved plat, that changed the lots depths for those that backed up to the channel and then also removed the platting of the proposed retention/detention pond parcel, see the attached, for it and is to be platted at a later date when Phase 3 is considered.

Description;

P&Z's consideration on granting a variance request to the City's Drainage Ordinance due to a conflict between it and Section 404 of the Clean Water Act.

Recommendation/Item Summary;

Moonlight Subd. Phase 2, is requesting variances to the City of Hewitt's, Code of Ordinances, Section 6.03, C, 1. The development's representative has determined that the existing channel to be Jurisdictional Waters of the U.S., under Section 404 of the Clean Water Act. Under the requirements of Section 404, the activities in waters of the United States regulated include fill for development, water resource projects, infrastructure development and mining projects. If the development were to follow the requirements of the City's Ordinances, then they would be in violation of the Clean Water Act's Section 404.

Under the requirements of the City's Ordinances, this development would be required to reconstruct the existing drainage channel utilizing reinforced concrete lining, however given the channels determination to be Jurisdictional Waters of the U.S., this concrete channel lining would be in conflict with the allowed improvements within the channel.

Since the City's Ordinances cannot be met, as written, the City has requested additional consideration be given to the existing channel to include but not limited to;

1. Extra width of the proposed Drainage Easements.
2. Gate access to the channel for all homes backing up to the channel. So the homeowners can maintain the channel.
3. Channel stabilization structures, to prevent channel migration.

Staff is recommending approval of this request with additional considerations. Also the City will be working towards a revision to the City's current Ordinance to allow the Staff to handle future conflict of this nature, with Federal/State laws, to be handled on a case by case basis on the Staff level.

What are your thoughts? Revise if you see fit and if I see anything else I'll let you know.

Sincerely,
Miles Whitney, P.E.
Cayote Consulting, LLC
T.B.P.E. F-16387

From: Tracy Lankford
To: Brittney Cantu
Subject: drainage ordinance
Date: Tuesday, July 30, 2019 11:47:44 AM
Attachments: image001.png

Section 6.03. - Drainage features and policies.

C. Reinforced concrete lined open channels should be used when the criteria outlined in section 6.03(B)(1) above is exceeded:

1. Reinforced concrete lined channels shall conform to the following:

- a. Channels draining an area with a "CA" factor of 250 or less shall be lined with reinforced concrete in a manner which will contain the design frequency storm plus one foot of freeboard within the concrete lining.
- b. Channels draining an area with a "CA" factor of more than 250 but less than 500 shall be concrete lined to contain the runoff from a five-year return frequency storm with the balance of the required design frequency storm contained within grassed slopes no steeper than four horizontal to one vertical and with a minimum of one foot freeboard.
- c. Channels draining an area with a "CA" factor of more than 500 but less than 2,000 shall be constructed with a reinforced concrete pilot channel not less than 12 feet in width and having at least six-inch curbs, a four-inch depressed invert, and an appropriate edge protection as accepted by the city engineer or his/her authorized designee. The remainder of the channel shall consist of earthen side slopes with proper vegetative cover on slopes not steeper than four to one.

HEWITT
TEXAS

TRACY LANKFORD

Community Development Director

254.666.6173

tlankford@cityofhewitt.com

103 N. Hewitt Drive • Hewitt, Texas 76643

ORDINANCE NO. 2018-15

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEWITT, TEXAS
GRANTING A VARIANCE TO SECTION 603 C(1) "DRAINAGE FEATURES
AND POLICIES" OF APPENDIX B "SUBDIVISIONS" OF THE CODE OF
ORDINANCES OF THE CITY OF HEWITT, TEXAS TO ALLOW FOR UNLINED
DRAINAGE CHANNEL AS REQUESTED BY DEVELOPMENT LOCATED AT
MOONLIGHT PARK PHASE 2, HEWITT, TEXAS**

CAME ON FOR CONSIDERATION a variance request by Justin Fuller ("Applicant") for a drainage channel variance to be located at its development at Moonlight Park Phase 2, Hewitt, Texas. The development has a channel that has been determined to be Jurisdictional Waters of the U. S. under section 404 of the Clean Water Act, qualifying to apply for a variance under Section Appendix B section 13 of the Hewitt Code of Ordinances. After a public hearing on the variance the City Council considered and acted on the variance request.

Based on the information provided it is FOUND that the Applicant is entitled to the variance requested because:

- 1) The existing channel has been determined to be Jurisdictional Waters of the U.S., under Section 404 of the Clean Water Act.

It is further FOUND that:

- a. If the development were to follow the requirements of the City's Ordinances, then they would be in violation of the Clean Water Act's Section 404.

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

1. The recitals set forth above are incorporated and made findings of fact; and
2. The variance requested by Justin Fuller of Clark/Fuller (Moonlight Park Addition Phase 2) for an unlined drainage channel is approved to be located at its development at 635 Enterprise Blvd., Hewitt, Texas is GRANTED.

PASSED AND APPROVED: August 12, 2019.

CITY OF HEWITT, TEXAS

Charles D. Turner, 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: August 12, 2019

AGENDA ITEM #: 10

SUBMITTED BY: Lance Bracco, Fire Chief

ITEM DESCRIPTION:

Declaring Fire Department's 1993 International E-1 Aerial-1 Truck as surplus equipment to allow for the sale of this apparatus.

STAFF RECOMMENDATION/ITEM SUMMARY:

With the purchase of Truck-1, the 1993 Aerial-1 Truck needs to be classified as surplus equipment so that it can be put up for sale.

SUGGESTED MOTION:

"I move to approve that Aerial-1 a 1993 International E-1 be classified as surplus equipment so that this apparatus may be put up for sale."

ATTACHMENTS:

None



COUNCIL AGENDA ITEM FORM

MEETING DATE: August 12, 2019

AGENDA ITEM #: 11

SUBMITTED BY: Bo Thomas, City Manager

ITEM DESCRIPTION:

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

STAFF RECOMMENDATION/ITEM SUMMARY:

The County has asked the City to consider authorizing this interlocal agreement concerning the bid for micro slurry seal work by Viking Contractors. As provided by the State's purchasing regulations, agencies may use pricing from other publicly bid projects in certain circumstances. In this case, Viking is offering the County the same pricing per yard as bid to Hewitt and will be able to do the County work while they are already set up in the area. The County Commissioners will consider the interlocal agreement at their next meeting on August 6th. There is no cost for the City of Hewitt in approving this item. Staff recommends approval by the City Council.

SUGGESTED MOTION:

"I move to authorize the City Manager to execute the Interlocal Agreement with McLennan County for Micro Slurry Seal."

ATTACHMENTS:

Agreement

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

THE STATE OF TEXAS
COUNTY OF MCLENNAN

This AGREEMENT is entered into this _____ day of _____, 2019, by and between the CITY OF HEWITT, TEXAS ("HEWITT") and MCLENNAN COUNTY ("COUNTY"), each duly organized and existing under the laws of the State of Texas, and each acting herein and through its duly authorized official.

WITNESSETH

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

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

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

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

WHEREAS, the County currently maintains roads within the Woodfield Addition and the Hills Over the Bosque Addition as listed below ("Roads") (total area approximately 53,232 square yards):

Cobblestone Lane, Royal Springs Lane, Laurel Oaks Lane, Twisted Oaks Lane, Deerfield Lane, Oak Run Circle, Forrest Haze Circle, Woodridge Circle, Forest Bend Drive, Greentree Drive, Riverview Drive, North Bend Court, and South Fork Circle.

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

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

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

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

WHEREAS, the cost of a slurry seal of the Roads will be a cost not to exceed \$182,349.20; and

WHEREAS, Viking will include a bond to cover the cost of the aforementioned slurry seal project; and

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

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

1. INCORPORATION OF RECITALS

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

2. CONTRACT FOR CONSTRUCTION

HEWITT shall authorize a Change Order to its contract with Viking Construction, Inc., which will include the slurry sealing of the Roads maintained by the COUNTY. Amount of this change order shall not exceed \$182,349.20.

3. PAYMENT FOR CONSTRUCTION

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

4. COORDINATION OF WORK

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

5. MISCELLANEOUS

- A. ENTIRE AGREEMENT. This agreement constitutes the entire Agreement between HEWITT and the COUNTY, and all negotiations and all understandings between the parties are merged herein.

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

EXECUTED this _____ day of _____, 2019.

CITY OF HEWITT, TEXAS

By: _____
Bo Thomas, City Manager

ATTEST:

Lydia Lopez, City Secretary

MCLENNAN COUNTY, TEXAS

By: _____
Scott M. Felton, County Judge

ATTEST:

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

By: Myrce'tez Gowan, DEPUTY



VIKING Construction, Inc.

*Preserving Texas roads with
pride and integrity.*

2592 Shell Road
Georgetown, TX 78628
Office 1(512)930-5777 ▼ Facsimile 1(512) 868-1955

July 16, 2019

Specializing in Micro-Surfacing and
Slurry Seal Pavement Maintenance

McLennan County
Attn: Mr. Luke Lammert

RE: Slurry Seal Woodfield Addition/Hills over the Bosque Subdivision

Mr. Lammert,

Viking Construction is pleased to offer the following quote for the above referenced project:

Mobilization-----	\$2,500.00
Bond cost-----	\$1,522.00
Slurry Seal approximately 53,232 SY @ \$3.35/SY =	<u>\$178,327.20</u>
TOTAL-----	\$182,349.20

Work will be constructed in accordance with the City of Hewitt 2019 – Various Street Improvements: Slurry Seal contract. Price for this project is based on McLennan County to piggy-back off the Hewitt contract. Work will be performed in the same time frame when we are completing the Hewitt contract. We expect that to be in the month of August 2019.

This quote does not include any needed barricades, base repair, crack sealing, striping, striping layout, removal of existing thermo plastic or police officers

Thank you for the opportunity to quote this project.

If you have any questions, please contact me @ 512-930-5777.

Sincerely,

Viking Construction Inc.

Dan Welsh
Marketing/Project Manager



COUNCIL AGENDA ITEM FORM

MEETING DATE: August 12, 2019

AGENDA ITEM #: 12

SUBMITTED BY: Jim Devlin, Police Chief

ITEM DESCRIPTION:

Authorize the City Manager to negotiate and execute an Interlocal Cooperation Agreement between Midway Independent School District to provide School Resource Officers (SROs).

STAFF RECOMMENDATION/ITEM SUMMARY:

The City of Hewitt has had a longstanding partnership with Midway ISD to provide School Resource Officers (SROs). These SROs work in the schools and serve many functions, primarily focused on the safety and security of students in the District. The program has proved to be invaluable in strengthening the relationship with students and Police officers as well as District employees. With the continued focus on safety of students in classrooms, and is currently staffed with three (3) officers assigned to Midway schools.

The District pays a proportional share of the officer's salary and benefits as well as equipment, training, and even costs of vehicles. The agreement is based on the number of days an officer is assigned to the school. When the officer is not in a school, they are utilized by the Hewitt Police Department as deemed appropriate by the Chief.

If this item is approved, city staff would work with the District to coordinate assignments for the officers.

SUGGESTED MOTION:

"I move to authorize the City Manager to execute the Interlocal Cooperation Agreement with Midway ISD to provide School Resource Officers (SROs)."

ATTACHMENTS:

Interlocal agreement

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
MIDWAY INDEPENDENT SCHOOL DISTRICT and
THE CITY OF HEWITT**

This Interlocal Cooperation Agreement (Agreement) is made and entered into by and between Midway Independent School District (Midway ISD), a political subdivision acting through its Board of Trustees, and the City of Hewitt (hereinafter referred to as “Hewitt,” or the “City” individually, and together, the “Cities”), each political subdivision acting through their respective City Councils. Collectively Midway ISD and the Cities may be referred to as the “Parties”.

PREMISES

WHEREAS, Chapter 791 of the Texas Government Code, as amended, entitled Interlocal Cooperation Contracts, authorizes contracts between political subdivisions for the performance of governmental functions and services; and

WHEREAS, Midway ISD is a public school district with campuses located within the jurisdictional boundaries of each of the Cities where the respective Cities presently operate a Police Department; and

WHEREAS, Section 37.081 of the Texas Education Code authorizes Midway ISD to commission peace officers to provide necessary security and protection to its school children and the employees who serve them, as well as determine the jurisdiction of such peace officers; and

WHEREAS, each City has equal rights to determine which agencies have authority in its respective jurisdiction; and

WHEREAS, Midway ISD and the Cities each find that contracting for and with respect to the governmental services described herein will result in increased efficiency, economy, and enhanced public safety for the constituents of both Midway ISD and the Cities; and

NOW THEREFORE, in consideration of the mutual covenants and agreements of the Parties, it is agreed as follows:

ARTICLE 1: SERVICES TO BE PROVIDED

- 1.1 The Cities hereby authorize their respective Chiefs of Police (Chiefs) to appoint and assign one or more appropriately licensed and commissioned law enforcement officer to be employed full-time by each City and called to duty by the applicable Chief to provide enhanced law enforcement services as a School Resource Officer (SRO) for Midway ISD during the active school year, which generally encompasses 180 days during each calendar year. Officers may also be assigned to work at school events on other days, with the total number of days worked not to exceed 190 days per school year.
- 1.2 While school is in session, the Cities will each assign one or more SROs to one or more schools in Midway ISD on a full-time basis, forty (40) hours each work week, according to the daily schedule agreed upon by the applicable Chief and the Midway ISD Superintendent’s designee, minus any scheduled vacation time, sick time, training time, court time, or any other police-related activity, including any emergencies such as civil disasters.

- 1.3 The Parties agree that every effort should be made to schedule and/or designate SRO vacation days, compensatory time, and other days off at times when school is not in session or at other times when the SRO's absence will not otherwise create an unnecessary risk or hamper school operations. SROs will coordinate vacation hours with the Midway ISD Superintendent's designee.
- 1.4 Should any officer assigned as an SRO during the active school year be absent for more than five consecutive school days, the applicable Chief will assign a suitable replacement whose training is acceptable to both Parties.
- 1.5 The SRO shall follow the policies and procedures of Midway ISD to the extent those policies do not conflict with the policies and procedures of the Cities or applicable Chiefs.
- 1.6 The SRO will consult with the Midway ISD Superintendent and other Midway ISD administrative staff in carrying out his/her day-to-day duties as an SRO. The applicable Chiefs retain final authority over their respective SRO's law enforcement responsibilities.
- 1.7 The duties, schedule, and responsibilities of the SRO on days when school is not in session shall be determined solely at the discretion of the applicable Chiefs.
- 1.8 The duties to be performed by the SRO include, but are not limited to, the following:
 - a. Patrolling areas within or in the vicinity of the geographical boundaries of Midway ISD to protect all students, personnel, and visitors. Patrol and other law enforcement duties of the SROs shall be performed with the use of City-owned vehicles;
 - b. Being a visible presence during the school day in order to assist the Midway ISD administration with general public safety services during school hours;
 - c. Helping Midway ISD administrators maintain the peace and/or address a breach of the peace as needed;
 - d. Engaging in all law enforcement activities arising from the enforcement of criminal laws or Midway ISD policies and rules that pertain maintaining a safe and orderly school environment, including, but not limited to, intervening in and investigating alleged crimes or violations of Midway ISD rules that pertain to maintaining a safe and orderly school environment, issuing citations, transporting arrested persons, completing follow-up activities, filing of affidavits and complaints, and participating in legal proceedings resulting from the law enforcement services provided in accordance with this Agreement. However, violations of Midway ISD policies and rules that are strictly personnel or student discipline matters and non-criminal in nature will only be assigned to the SRO for investigation at the specific direction of the Midway ISD Superintendent's designee and with approval of the respective Chief;
 - e. Responding to calls for services during the course of the regular school day or when serving in support of an official Midway ISD extracurricular or after-school activity;
 - f. Assisting in providing security as needed for after-hour activities and events taking place at Midway ISD facilities;
 - g. Assisting with student truancy, including detaining or escorting a student alleged to have

violated Chapter 25 of the Texas Education Code;

- h. Mediating disputes on campus that could otherwise impact the safe and orderly school environment, including working with students to help solve disputes in a non-violent manner;
- i. Accompanying outside service providers, upon request, as the service provider conducts random canine searches on Midway ISD property;
- j. Preventing property loss due to theft or vandalism;
- k. Providing traffic control as needed;
- l. Assisting Midway ISD with its Emergency Operation Plan;
- m. Assisting with school safety projects, scheduling and maintaining emergency drills, emergency response, and after-action reviews within Midway ISD;
- n. Providing training for staff as requested by the Midway ISD Superintendent's designee;
- o. Serving as a resource for law enforcement education at the request of school staff, such as speaking to classes on the law, search and seizure, drugs, or motor vehicle laws;
- p. Maintaining the confidentiality of student records as required by the Family Educational Rights and Privacy Act;
- q. Preparing reports and documentation related to law enforcement events occurring within the geographic boundaries of Midway ISD; and
- r. Performing other duties that may be assigned from time to time by their applicable Chief in consultation with the Midway ISD Superintendent's designee.

- 1.9 No assignment, task, or function shall be imposed on the SRO by Midway ISD that would violate or jeopardize the officer's sworn oath, conditions of licensure, or departmental regulations; however, each officer is responsible for disclosing to appropriate Midway ISD personnel his/her opinion that such assignment, task, or function would have such an effect.
- 1.10 Circumstances constituting an immediate threat to public safety may be dealt with by the SRO consistent with his/her training and responsibility as a peace officer.
- 1.11 The final disciplinary action or other dispensation of any matter or issue involving only a violation of a rule or regulation of Midway ISD shall be at the discretion of Midway ISD, provided that in the event the SRO observes any event, matter or action that appears to constitute a violation of any local, State or Federal penal or criminal law, then, in such event, the investigation of and decision to file charges on any such event shall be made by the SRO.
- 1.12 When the SRO takes a person into custody in the course of performing his/her duties on behalf of Midway ISD under this Agreement, Midway ISD shall receive notification of the incident from the City within the timeframe required by law and of the disposition of the individual to the extent allowed by law.

- 1.13 To the extent permitted by applicable law, the SRO shall report to Midway ISD information obtained during the investigation of any reported incident involving a Midway ISD student or employee for the purposes of determining appropriate disciplinary actions and modifications of education programs as a result of the incident.
- 1.14 Changes in the total number of officers to be assigned hereunder or the total cumulative number of hours to be worked shall be determined by mutual consent of the Parties in writing as part of the annual review of this Agreement or at any other time as mutually agreed between the Cities and Midway ISD in writing.

ARTICLE 2: GENERAL DUTIES & RESPONSIBILITIES

- 2.1 The Cities agree to perform any obligations required to maintain their SRO as a commissioned police officer with their respective police departments with full Texas peace officer status; including but not limited to, providing the SRO with any and all continuing training necessary to maintain his/her TCLEOSE certification.
- 2.2 SROs assigned to Midway ISD shall be subject to the approval of the Midway ISD Superintendent or designee. Midway ISD understands that the Chiefs of Police may rotate or change any officer assigned to serve as an SRO; provided, however, that Midway ISD may refuse any particular officer assigned as an SRO and request assignment of a different officer. In approving or rejecting the assignment of an SRO, Midway ISD will not base its decision on the SRO's race, color, national origin, sex, religion, age, disability, or genetic information.
- 2.3 Any properly licensed officer providing SRO services under this Agreement shall be vested with all powers, privileges, and immunities of a peace officer within all territory contained in the boundaries of Midway ISD and while on any property under the control and jurisdiction of Midway ISD or otherwise in the performance of his/her duties under the guidelines of Midway ISD policies and regulations.
- 2.4 The Cities will authorize their respective SRO to carry a weapon and act as a peace officer at all times, so long as the employee is acting under his/her official capacity. Likewise, Midway ISD specifically authorizes each SRO to carry a weapon in performing services at all schools and property within Midway ISD. When not on duty as an SRO, the officer's right to carry a firearm will fall back under provisions and rules set forth by TCLEOSE and the Cities.
- 2.5 As a City employee, any disciplinary action taken against the SRO shall follow the policy and procedure of the applicable City. Nothing herein shall change the employment status that the SRO occupies with the applicable City.
- 2.6 Midway ISD will report student misconduct to each City Police Department in accordance with Texas Education Code § 37.015.
- 2.7 Subject to its obligations under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, Midway ISD agrees to provide the SRO with (a) unrestricted access to student and personnel records as necessary for the investigation of criminal offenses, to collect certain incident-based data, or to ensure the safety and security of school campuses or events, and (b) unrestricted access to technology installed at Midway ISD, including surveillance cameras, to provide for safety and security. SROs shall be designated as "school officials" under Midway ISD Policy FL (local) for purposes of access to student records.

- 2.8 Midway ISD will include the Chiefs of Police or his/her designees as a member of the Midway ISD School Safety and Security Committee.
- 2.9 The Parties shall each monitor, review and provide oversight and supervision of the services as they are provided and each agree to notify the other as soon as reasonably possible in the event the level or quality of any scheduling, operating, service or performance issue becomes unsatisfactory.
- 2.10 The Parties recognize that the services to be provided by each City may be limited to the extent that said services conflict with or compromise the respective Chief's ability to provide effective law enforcement services to the City generally; and, should a conflict arise between the policies of Midway ISD and one of the Cities, the applicable City policy shall prevail.
- 2.11 The Parties agree that they will use their best reasonable efforts to coordinate media relations pertaining to law enforcement incidents and investigations occurring pursuant to this Agreement prior to the release of information whenever possible. Information will only be released by a Party in accordance with established law and its existing policies and procedures.
- 2.12 Nothing in this Agreement prevents Midway ISD from continuing its practice of hiring off-duty police officers to provide security at sporting events, after-hour activities, or other events. This Agreement shall not govern off-duty peace officers hired for these purposes.
- 2.13 The Chiefs of Police of the participating Cities will work together with the designee of the Midway ISD Superintendent to create a Memorandum of Understanding regarding uniform procedures to facilitate the interaction of the City Police Departments and the ability of the respective Police Departments to assist one another in providing SRO and related services to all of the school campuses within Midway ISD.

ARTICLE 3: FINANCIAL RESPONSIBILITIES & EQUIPMENT

- 3.1 The Cities shall provide the SRO with all wages, salaries, or other compensation, and benefits of similarly-situated and classified employees of the respective City. The Cities shall also be directly responsible for the payment of all payroll taxes, bond costs, retirement contributions, overtime, social security taxes, if any, and all other payroll expenses.
- 3.2 For the purpose of subsidizing the expenses incurred by the Cities in the employment and retention of an SRO to provide services on all Midway ISD campuses, Midway ISD agrees to pay the Cities for the salary, employer share of payroll taxes, benefits, applicable overtime, and personnel services of the SROs performed under this Agreement.
- 3.3 Midway ISD will pay for any additional SRO training it may require unrelated to TCLEOSE training requirements.
- 3.4 The Cities will provide Midway ISD with a quarterly invoice for the salary, employer share of payroll taxes, benefits, overtime, and personnel services of the SRO due at least ten (10) business days prior to each payment date. Midway ISD will pay all invoices within thirty days out of current revenue funds.
- 3.5 The Cities shall keep and maintain accurate records of dates of service and the hours served by the SRO. The City shall be responsible for calculating and documenting the charge for services rendered pursuant to this Agreement. With 48-hour notice, the Cities shall promptly provide

Midway ISD with access to all time calculation records maintained by the Cities for any SRO services provided pursuant to this Agreement.

- 3.6 Overtime hours that relate to SRO duties must be authorized and approved by the Midway ISD Superintendent's designee prior to the performance of the overtime work unless there is an emergency situation or the officer is in the process of transporting a student in which case no such prior approval is required. Overtime work will be paid in accordance with procedures established by the respective City. The Parties will periodically review overtime worked to determine whether procedures need to be developed to control overtime or whether other adjustments are needed.
- 3.7 The Parties agree to adjust and/or re-compute the payments herein at such times as are convenient and necessary when the circumstances and conditions exists making such adjustments necessary and desirable to accomplish the objectives of this Agreement.
- 3.8 The Parties agree to provide the following equipment and materials to the SRO:
- a. At its own cost, each City shall furnish its respective SRO with all equipment routinely assigned to law enforcement personnel who serve the respective City. Each City will maintain and service all equipment used by the SRO in providing services to Midway ISD. Equipment includes, but is not limited to, uniforms, computers and computer equipment, firearms, radios, and all other devices used by the respective City law enforcement personnel in the performance of their duties.
 - b. Each City will provide its SRO with an appropriately marked patrol vehicle designating law enforcement services being performed under authority of the respective City for use in his/her SRO duties, but not for personal use. Midway ISD will reimburse the Cities for fuel costs incurred in the SRO's performance of duties on behalf of Midway ISD.
 - c. Midway ISD will provide each SRO with office space on school property, a telephone, computer, and other office equipment to perform duties under this Agreement, and as mutually agreed by the Parties. Each City will provide the SRO with access to its Police Department facilities as needed to conduct police business regarding the securing of evidence in crimes and interviewing individuals in connection with a criminal investigation.
- 3.9 Subject to the maximums set out in the attached summary of Cost Calculations at Exhibits A and B, the amount Midway ISD is to pay to each City for services under this Agreement shall be based on an annual budget agreed to by Midway ISD and each City, and shall be paid in quarterly installments based on actual expenditures incurred each year this Agreement is in effect.

ARTICLE 4: RELATIONSHIP BETWEEN THE PARTIES

- 4.1 Notwithstanding any provision to the contrary herein, this Agreement is a contract for and with respect to the performance of governmental functions by governmental entities. The relationship of Midway ISD and the Cities shall, with respect to that part of any service or function undertaken as a result of or pursuant to this Agreement, be that of independent contractors.
- 4.2 Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship.
- 4.3 Officers employed by the Cities and assigned by the respective Chiefs to serve as an SRO at

Midway ISD are and will remain employed by the Cities.

- 4.4 Each City shall have no liability whatsoever for or with respect to Midway ISD's use of any Midway ISD property or facility, or the actions of, or failure to act by, any employees, subcontractors, agents or assigns of Midway ISD. Midway ISD covenants and agrees that:
- a. Midway ISD shall be solely responsible, as between Midway ISD and each City and the agents, officers and employees of each City, for and with respect to any claim or cause of action arising out of or with respect to any act, omission, or failure to act by Midway ISD or its agents, officers, employees, and subcontractors, while on Midway ISD property or while using any Midway ISD facility or performing any function or providing or delivering any service undertaken by Midway ISD pursuant to this Agreement.
 - b. For and with respect to Midway ISD property or Midway ISD's use of any Midway ISD facility, Midway ISD hereby contracts, covenants, and agrees to obtain and maintain in full force and effect, during the term of this Agreement, a policy or policies of insurance, or risk pool coverage, reasonably expected to insure Midway ISD and its agents, officers, and employees from any and against any claim, cause of action or liability arising out of or from the action, omission, or failure to act by Midway ISD, its agents, officers, employees, and subcontractors in the course of their duties.
- 4.5 Midway ISD shall have no liability whatsoever for or with respect to each City's use of any City property or facility, or the actions of, or failure to act by, any employees, subcontractors, agents, or assigns of each City. Each City covenants and agrees that:
- a. Each City shall be solely responsible, as between each City and Midway ISD and the agents, officers, and employees of the Midway ISD, for and with respect to any claim or cause of action arising out of or with respect to any act, omission, or failure to act by each City or its agents, officers, employees, and subcontractors, while on the respective City's property or while using the any of the respective City's facilities or performing any function or providing or delivering any service undertaken by the respective City pursuant to this Agreement.
 - b. For and with respect to the services to be provided by each City to Midway ISD pursuant to this Agreement, each City hereby contracts, covenants, and agrees to obtain and maintain in full force and effect, during the term of this Agreement, a policy or policies of insurance, or risk pool coverage, in the amounts sufficient to insure the respective City and its agents, officers, and employees from and against any claim, cause of action, or liability arising out of or from the action, omission, or failure to act by the respective City, its agents, officers, employees, and subcontractors in the course of their duties.
- 4.6 Each City shall have no liability whatsoever for or with respect to another City's use of its property or facility, or the actions of, or failure to act by, any employees, subcontractors, agents or assigns of another City. Each City covenants and agrees that each shall be responsible for its own negligent acts or omissions or other tortious conduct in the course of performance of this Agreement, without waiving any governmental immunity available to City under Texas and other applicable laws, and without waiving any available defenses under Texas and other applicable laws. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third person or entities.
- 4.7 It is specifically agreed that, as between the Parties, each party to this Agreement shall be

individually and respectively responsible for responding to, dealing with, insuring against, defending, and otherwise handling and managing liability and potential liability pursuant to this Agreement.

- 4.8 Each party hereto reserves and does not waive any immunity or defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from the services provided and/or any circumstance arising under the Agreement. Neither Midway ISD nor the Cities waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas on behalf of itself, its trustees, council members, officers, employees, and agents. Furthermore, nothing in this Agreement shall waive or limit the entitlement of an officer serving as an SRO to official or qualified immunity.
- 4.9 No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. This Agreement shall not be interpreted nor construed to give to any third party the right to any claim or cause of action, and neither the Cities nor Midway ISD shall be held legally liable for any claim or cause of action arising pursuant to, or out of the services provided under, this Agreement except as specifically provided herein or by law. The Parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Agreement.
- 4.10 Nothing in this Agreement shall be deemed to extend, increase or limit the jurisdiction or authority of any of the Cities or Midway ISD except as necessary to implement, perform and obtain the services and duties provided for in this Agreement. Save and except only as specifically provided in this Agreement, all governmental functions and services traditionally provided by Midway ISD, and all governmental and proprietary functions and services traditionally provided by the Cities, shall be and remain the sole responsibility of each such respective party.

ARTICLE 5: TERM

- 5.1 The initial term of this Agreement shall commence on August 1, 2019, and continue through July 31, 2020, and shall automatically renew for an annual term commencing on August 1st thereafter, unless terminated earlier in writing by either party.
- 5.2 If one of the Cities wishes to renew this Agreement subject to a change in Midway ISD's annual payment for the SRO salaries and related costs, the respective City shall provide Midway ISD with written notice of that requested change, including a revised Summary of Calculations for Costs, no later than April 1st of the calendar year. Unless Midway ISD notifies the City in writing of its agreement to the change in annual payment by May 15th, the Agreement between the respective City and Midway ISD shall terminate at the end of the term. Termination of this agreement with one of the participating Cities in accordance with this clause shall not affect the Agreement with the other participating City; the Agreement between the remaining Parties shall be valid, enforceable, and carried into effect.
- 5.3 After the initial annual term of this Agreement, Midway ISD and each City will agree on the annual amount payable for the SRO salaries and related costs by executing an agreed upon Summary of Calculations for Costs.
- 5.4 This Agreement may be terminated at any time by either party, with or without cause, by giving the other party a minimum of sixty (60) days written notice of its intention to terminate, such notice to be delivered by hand or U.S. Certified Mail to the other party. Termination of this Agreement with one of the participating Cities shall not affect the Agreement with the other

participating Cities; the Agreement between the remaining Parties shall be valid, enforceable, and carried into effect.

- 5.5 In the event the Parties are unable to reach a mutual agreement on the terms of the Memorandum of Understanding described in Article 2.13 above by August of the annual term, any Party will have cause to terminate its participation in the Interlocal Agreement by giving the other Parties a minimum of thirty (30) days written notice of its intention to terminate, such notice to be delivered by hand or U.S. Certified Mail to the other party. Termination of this Agreement with one of the participating Cities shall not affect the Agreement with the other participating cities; the Agreement between the remaining Parties shall be valid, enforceable, and carried into effect.
- 5.6 Termination will not relieve Midway ISD of its obligation to pay the respective City for any amounts due and payable for services performed prior to termination.

ARTICLE 6: NOTIFICATIONS

- 6.1 All correspondence and communications regarding this Agreement shall be directed to:

CITY OF HEWITT
Attn: Chief of Police
100 Patriot Court
Hewitt, Texas 76643

MIDWAY INDEPENDENT SCHOOL DISTRICT
Attn: Superintendent of School
13885 Woodway Drive
Woodway, Texas 76712

- 6.2 Notices provided pursuant to this Agreement must be in writing and hand-delivered or sent by certified mail, return receipt requested.

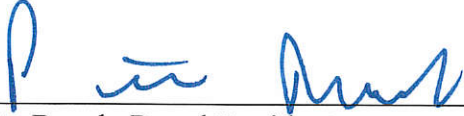
ARTICLE 7: MISCELLANEOUS PROVISIONS

- 7.1 If any portion of this Agreement shall be deemed void or invalid, the remaining portions of the Agreement shall continue in full force and effect.
- 7.2 This Agreement represents the entire Agreement between the Parties, and it supersedes any prior understanding or written or oral agreement relating to the subject matter herein. This Agreement may not be modified, altered, changed, or amended, except by written agreement of the Parties.
- 7.3 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall live in McLennan County, Texas unless otherwise mandated by law.
- 7.4 No Party shall assign or otherwise transfer its interest in this Agreement without the express written permission of the other Party.
- 7.5 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 when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.
- 7.6 By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by their governing body in order to enter into and perform the terms of

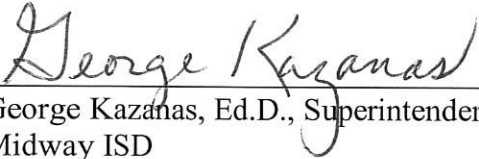
this Agreement.

The Parties have executed and attested to this Agreement by their duly authorized officers effective as of _____ 2019.

MIDWAY ISD



Pete Rusek, Board President
Midway ISD



George Kazanas, Ed.D., Superintendent
Midway ISD

CITY OF HEWITT

Bo Thomas, City Manager
City of Hewitt

James Devlin, Chief of Police
City of Hewitt



COUNCIL AGENDA ITEM FORM

MEETING DATE: August 12, 2019

AGENDA ITEM #: 13

SUBMITTED BY: Bo Thomas, City Manager

ITEM DESCRIPTION:

Consideration and action on **Resolution No. 2019-11**; 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 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 2019-2020, our costs will be \$40,423.

SUGGESTED MOTION:

I move to approve Resolution No. 2019-11; to continue marketing Hewitt in the Regional Marketing Plan.

ATTACHMENTS:

Resolution and Agreement

RESOLUTION NO. 2019-11

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 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 12th day of August, 2019.

CITY OF HEWITT, TEXAS

Charles D. Turner, Mayor

ATTEST:

Lydia Lopez, City Secretary

APPROVED AS TO FORM & LEGALITY:

Michael W. Dixon, City Attorney

INTERLOCAL AGREEMENT FOR REGIONAL MARKETING

STATE OF TEXAS §
 §
COUNTY OF McLENNAN §

INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement ("Agreement") is made and entered into by and between the City of Waco, Texas (Waco), City of Bellmead, Texas (Bellmead), City of Hewitt, Texas (Hewitt) and the City of McGregor, Texas (McGregor), Texas home-rule municipal corporations acting by and through their authorized representatives, and hereinafter referred to jointly as "Cities".

Recitals.

WHEREAS, the Cities desire to use certain revenue received from municipal hotel occupancy tax to directly promote tourism and the convention and hotel industry; and

WHEREAS, the Cities desire to directly promote tourism by advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity; and

NOW, THEREFORE, pursuant to Chapter 351 of the Texas Tax Code and as otherwise authorized and permitted by the laws of the State of Texas, for and in consideration of the covenants, conditions and undertakings hereinafter described, and the benefits to accrue to the citizens of the Cities, and subject to each and every term and condition of this Agreement, the Cities contract, covenant and agree as follows:

1. Recitals. The recitals hereinabove set forth are incorporated herein for all purposes and are found by the respective City Councils of Waco, Bellmead, Hewitt and McGregor to be true and correct. It is further found and determined that the City Councils of Waco, Bellmead, Hewitt and McGregor have authorized and approved execution of this Agreement.

2. Term of the Agreement. The term of this agreement shall be from October 1, 2019 through September 30, 2020.

3. Services. The services covered by this agreement shall be performed by the City of Waco may generally be described as regional marketing and advertising services for the City of Waco and surrounding areas.

4. Compensation. For services described, Cities agree to provide the differing levels of compensation as described with more particularity in **Exhibit A**.

5. Non Appropriation Cause. As required by State law, and notwithstanding any other provision of this Agreement, a City may terminate this agreement at the end of any fiscal year in the event that that City's governing body fails to appropriate funds for the purposes of this Agreement.

6. Force Majeure. No Party shall be liable for its failure to perform its obligations under this Agreement if performance is made impractical, abnormally difficult, or abnormally costly, as a result of any unforeseen occurrence beyond its reasonable control. The Party invoking this Force Majeure clause shall notify the other Party immediately by verbal communication and in writing by certified

mail of the nature and extent of the contingency within ten (10) working days after its occurrence. If 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: Yost Zakhary
City Manager of Bellmead
3015 Bellmead Drive
Waco, Texas 76705
yzakhary@bellmead.com
Fax: (254) 799-5969

To the City of Hewitt: Bo Thomas
City Manager of Hewitt
200 Patriot Court
Hewitt, Texas 76643
bthomas@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: _____
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
- 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

	Hotel Revenues	7% of Hotel Revs.	24%	Marketing Fee	or \$15,000 Min.
Hewitt	\$ 2,406,160	\$ 168,431	24%	\$ 40,423	\$ 40,423
McGregor	\$ 548,766	\$ 38,414	24%	\$ 9,219	\$ 15,000
Bellmead	\$ 10,388,147	\$ 727,170	24%	\$ 174,521	\$ 174,521

Hewitt: \$40,423.00

McGregor: \$15,000.00

Bellmead: \$174,521.00



COUNCIL AGENDA ITEM FORM

MEETING DATE: August 12, 2019

AGENDA ITEM #: 14

SUBMITTED BY: Bo Thomas, City Manager

ITEM DESCRIPTION:

Consideration and action on **Ordinance No. 2019-16**; authorizing an Interlocal Cooperation Agreement with Waco Metropolitan Area Regional Sewerage System (WMARSS) including a Bill of Sale, Blanket Conveyance and a Quit Claim Deed in order to convey WMARSS and most of its assets to the City of Waco and including a Quit Claim Deed in order to convey the remainder of WMARSS assets (easements) to the City of Waco. In addition, authorize the City Manager to execute a Wholesale Wastewater Contract with the City of Waco.

STAFF RECOMMENDATION/ITEM SUMMARY:

Council at its June 3, 2019 workshop discussed this potential transaction and the merits of relinquishing Hewitt's interests. Staff provided a presentation of the various arrangements that had been deliberated by the WMARSS Board over a two year period of time. At this time it has been determined by the WMARSS member cities representatives that the option before you is the best option for all member cities. It allows for the best possible financing arrangements (bonding, grants and low interest loans), places the burden over capacities, future permitting and TCEQ compliance with one entity and places the responsibility for liability with one entity.

SUGGESTED MOTION:

"I move to approve **Ordinance No. 2019-16**; authorizing an Interlocal Cooperation Agreement with Waco Metropolitan Area Regional Sewerage System (WMARSS) including a Bill of Sale, Blanket Conveyance and a Quit Claim Deed in order to convey WMARSS and most of its assets to the City of Waco and including a Quit Claim Deed in order to convey the remainder of WMARSS assets (easements) to the City of Waco. In addition, authorize the City Manager to execute a Wholesale Wastewater Contract with the City of Waco."

ATTACHMENTS:

Ordinance No. 2019-16
Interlocal Cooperation Agreement with Exhibits (including Wholesale Wastewater Contract
Option considerations

City of Waco agenda information
Talking points

ORDINANCE NO. 2019-16

ORDINANCE OF THE CITY OF HEWITT, TEXAS APPROVING: 1) WACO METROPOLITAN AREA REGIONAL SEWER SYSTEM ("WMARSS") 2019 AGREEMENT TERMINATING THE EXISTING OPERATION & MANAGEMENT AGREEMENTS AND CONVEYING ASSETS TO THE CITY OF WACO; AND 2) APPROVING WHOLESALE WASTEWATER CONTRACT BETWEEN THE CITY AND THE CITY OF WACO; AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME ON BEHALF OF THE CITY AND TO EXECUTE ALL OTHER INSTRUMENTS NECESSARY TO CARRY OUT THE TRANSFER OF ASSETS OR OTHERWISE SUPPORT THE AGREEMENTS; AUTHORIZING THE CITY OF WACO TO MAKE INSPECTION OF WASTE GENERATORS WITHIN THE CITY; MAKING FINDINGS; AND MAKING OPEN MEETINGS DETERMINATION

WHEREAS, the City of Hewitt ("City") has a need for collection and disposal of sanitary sewer waste generated by its internal sanitary sewer system;

WHEREAS, other cities have that same need;

WHEREAS, because of this need the Waco Metropolitan Area Regional Sewer System ("WMARSS") was created by agreement between cities;

WHEREAS, under the current configuration, each member city of WMARSS has an ownership interest in the assets of WMARSS and is required to have their city councils approve projects and actions that are required for the operation of the regional system that are often time sensitive. This also requires each owner to issue its own debt needed for any projects which is more time-consuming, results in the duplication of underwriting and attorney fees, and results in more expensive financing overall than on a single debt issuance under Waco's rating;

WHEREAS, the member cities have agreed that removing these inefficiencies is in the best interest of all member cities;

WHEREAS, Waco is willing to operate the regional system as a Wholesale Wastewater Service Provider;

WHEREAS, this requires that Waco own the assets of the regional system;

WHEREAS, although the cities are transferring ownership of assets, they will continue to have the same capacity in the system as before, and will have the ability under the Wholesale Wastewater Contract to increase that capacity in accordance with the Contract's terms;

WHEREAS, this transition is in the best interest of the City.

NOW, THEREFORE

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

Section 1. The foregoing recitals are incorporated herein and made findings of fact;

Section 2. The WMARSS 2019 AGREEMENT TERMINATING EXISTING OPERATION & MANAGEMENT AGREEMENTS AND CONVEYING ASSETS TO THE CITY OF WACO is hereby APPROVED and the City Manager is authorized to execute the same on behalf of the City and to bind the City thereby;

Section 3. The City Manager is further authorized to execute any deeds, bills of sale, or other instruments necessary and proper to convey the City's ownership interest in WMARSS Assets to the City of Waco, and to bind the City by his signature;

Section 4. The foregoing is contingent on the City Council of the City of Waco approving the Wholesale Wastewater Contract binding Waco to provide wholesale wastewater services to the City;

Section 5. The Wholesale Wastewater Contract between the City and the City of Waco is APPROVED and the City Manager is authorized to execute the same on behalf of the City and to bind the City thereby. The City Manager is also authorized to sign any assignments or other instruments necessary to authorize the City of Waco to operate the system in the capacity contemplated;

Section 6. Notwithstanding anything to the contrary in any ordinance or regulation of the City, the City of Waco shall have, and is hereby GRANTED, the authority to make inspections of businesses/waste generators within the City to determine whether the generator is causing a situation that could result in non-complying waste entering the Waco system. However, any enforcement action against a violator shall be by the City.

Section 7. It is found and determined that the meeting at which this Ordinance was adopted was open to the public and was noticed and held in accordance with the Texas Open Meetings Act.

PASSED this ____ day of _____, 2019.

CITY OF HEWITT, TEXAS

Charles D. Turner, Mayor

Attest:

Lydia Lopez, City Secretary

**WACO METROPOLITAN AREA REGIONAL SEWER SYSTEM ("WMARSS"):
2019 AGREEMENT TERMINATING EXISTING OPERATION & MANAGEMENT
AGREEMENTS AND CONVEYING ASSETS TO THE CITY OF WACO**

STATE OF TEXAS §
 §
COUNTY OF McLENNAN §

INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement ("Agreement") is made and entered into by and between the City of Bellmead, Texas ("Bellmead"), the City of Hewitt, Texas ("Hewitt"), the City of Lacy Lakeview, Texas, ("Lacy-Lakeview"), the City of Robinson, Texas ("Robinson"), the City of Waco, Texas ("Waco"), and the City of Woodway, Texas ("Woodway"), Texas home-rule municipal corporations, and the City of Lorena, Texas ("Lorena"), a Texas general law municipality, acting by and through their authorized representatives, and hereinafter referred to jointly as "Cities" or "Parties."

Recitals.

Whereas, because of their belief that they could increase the efficiency and effectiveness of providing wastewater treatment to their citizens, Bellmead, Lacy-Lakeview, Robinson, Waco, and Woodway entered into the BRA Agreement in January 2004 for the purpose of taking control of the WMARSS Existing System from BRA; and

Whereas, pursuant to the BRA Agreement, Waco took title to assets comprising the WMARSS Existing System in February 2004 for the benefit of the WMARSS participating Cities and

Whereas, Bellmead, Lacy-Lakeview, Robinson, Waco, and Woodway entered into the 2003-2004 WMARSS Interlocal Agreement, which, among other things, designated Waco as the Operator of the WMARSS Facilities and WMARSS Equipment for the benefit of the participating Cities; and

Whereas, as provided for in the 2003-2004 WMARSS Interlocal Agreement, and pursuant to the 2004 Hewitt Conveyance, Hewitt acquired an undivided 2.4% interest in the WMARSS Existing System from Waco in May 2004, and thereby became one of the joint owners of WMARSS; and

Whereas, pursuant to the 2007 WMARSS Interlocal Agreement, Lorena acquired an equity interest in WMARSS in July 2007, and thereby became one of the joint owners of WMARSS; and

Whereas, Waco purchased approximately 233.9 acres of real property near Bull Hide creek along Cooksey Lane in McLennan County, Texas, for the benefit of WMARSS and constructed and began operating the Bull Hide WWTP at the location in early 2012; and

Whereas, Waco acquired additional assets related to the WMARSS Facilities and operated them for the benefit of the participating Cities;

Whereas, due to the complexity of operating and managing the WMARSS Facilities and the need to plan for the future growth in demand for wastewater treatment capacity, each of the Cities have determined that (i) the transfer and conveyance of all of the WMARSS Assets to Waco, (ii) the termination of the various WMARSS Interlocal Agreements governing the operation and management of the WMARSS Facilities and WMARSS Assets, and (iii) the entry into new separate wholesale wastewater agreements whereby Waco will provide wastewater treatment services to Bellmead, Hewitt, Lacy-Lakeview, Lorena, Robinson, and Woodway, will increase the efficiency and effectiveness of providing wastewater treatment services to each of the Cities' citizens and benefit the public health, safety and welfare of the present and future citizens of the Cities; and

Whereas, Bellmead, Hewitt, Lacy-Lakeview, Lorena, Robinson, and Woodway agree to transfer and convey to Waco their right, title and interest to all the real, personal and intellectual property that comprises the WMARSS Assets; and

Whereas, Waco agrees to accept the transfer and discharge the considerations specified in this Agreement; and

Whereas, the Cities agree to terminate all of the WMARSS Interlocal Agreements and the obligations arising under each of them; and

Whereas, Bellmead, Hewitt, Lacy-Lakeview, Lorena, Robinson, and Woodway each agree to enter into a new wholesale wastewater agreement with Waco; and

Whereas, this Agreement will accomplish a legitimate public purpose of the Cities by providing dependable wastewater treatments services.

NOW, THEREFORE, pursuant to *Chapter 791, Texas Government Code, Chapter 271, Texas Local Government Code* and as otherwise authorized and permitted by the laws of the State of Texas, for and in consideration of the covenants, conditions and undertakings hereinafter described, and the benefits to accrue to the citizens of the Cities, and subject to each and every term and condition of this Agreement, the Parties contract, covenant and agree as follows:

ARTICLE 1

Findings and Declarations

- 1.1 Recitals.** The recitals hereinabove set forth are incorporated herein for all purposes and are found by the respective City Councils of Bellmead, Hewitt, Lacy Lakeview, Lorena, Robinson, Waco and Woodway to be true and correct. It is further found and determined that the City Councils of Bellmead, Hewitt, Lacy-Lakeview, Lorena, Robinson, Waco and Woodway have authorized or will authorize and approve execution of this Agreement.
- 1.2 Agreement Enforcement.** It is the declared and stated intent of the Cities that the terms, conditions and provisions of this Agreement may be enforced by each of the Cities, jointly

or independently, either at law or in equity, and the Cities shall be deemed to have waived any claim or right that is inconsistent with this Agreement and shall be estopped from challenging any term, provision or condition hereof, unless a party breaches this Agreement or as provided elsewhere in this Agreement.

ARTICLE 2

Definitions and Interpretations

2.1 Definitions. The following terms and expressions used in this Agreement, unless the context indicates otherwise, shall mean:

2.1.1 2003-2004 WMARSS Interlocal Agreement means that certain Interlocal Cooperation Agreement by and between Bellmead, Lacy-Lakeview, Robinson, Waco, and Woodway, executed by the participating cities between December 30, 2003, and January 12, 2004.

2.1.2 2004 WMARSS Interlocal Agreement means that certain Waco Metropolitan Area Regional Sewer System ("WMARSS") Agreement for Operation and Management of Facilities by and between Bellmead, Lacy-Lakeview, Robinson, Waco, and Woodway, executed by the participating cities between April 2, 2004, and April 8, 2004.

2.1.3 2004 Hewitt Conveyance means that certain Conveyance of Undivided Interest in Waco Metropolitan Area Regional Sewer System to the City of Hewitt, Texas between the City of Waco, Texas, and the City of Hewitt, Texas, dated May 5, 2004, and recorded in the real property records of McLennan County as McLennan County Clerk number 2004019570.

2.1.4 2007 WMARSS Interlocal Industrial Pretreatment Agreement means that certain Waco Metropolitan Area Regional Sewer System ("WMARSS"): Interlocal Cooperation Agreement Establishing Industrial Pretreatment Program and Assigning Responsibilities by and between by and between Bellmead, Hewitt, Lacy-Lakeview, Robinson, Waco, and Woodway executed by each of the Cities between June 12, 2007, and June 26, 2007.

2.1.5 2007 WMARSS Interlocal Agreement means that certain Waco Metropolitan Area Regional Sewer System ("WMARSS"): Agreement for Membership Expansion, Facility Expansion/Addition, and Operation & Management of Facilities by and between Bellmead, Hewitt, Lacy-Lakeview, Robinson, Waco, Woodway, and Lorena executed by each of the Cities between June 7, 2007, and July 3, 2007.

2.1.6 2009 WMARSS Interlocal Agreement means that certain Waco Metropolitan Area Regional Sewer System ("WMARSS"): Agreement for Membership Expansion, Facility Expansion/Addition, and Operation & Management of Facilities by and between Bellmead, Hewitt, Lacy-Lakeview, Robinson, Waco, Woodway, and Lorena executed by each of the Cities (other than Lacy-Lakeview) between September 3, 2009, and September 29, 2009.

- 2.1.7 2013 WMARSS Interlocal Agreement** means that certain Waco Metropolitan Area Regional Sewer System ("WMARSS"): 2013 Agreement for Operation & Management of Facilities by and between Bellmead, Hewitt, Lacy-Lakeview, Robinson, Waco, Woodway, and Lorena executed by each of the Cities between March 27, 2013, and June 11, 2013, as extended.
- 2.1.8 2018 WMARSS Interlocal Agreement** means that certain Waco Metropolitan Area Regional Sewer System ("WMARSS"): 2013 Agreement for Operation & Management of Facilities by and between Bellmead, Hewitt, Lacy-Lakeview, Robinson, Waco, Woodway, and Lorena executed by each of the Cities between February 6, 2018, and June 13, 2018.
- 2.1.9 Bellmead Funding Agreement** means that certain Waco Metropolitan Area Regional Sewer System Funding Agreement by and between Waco and Bellmead dated February 24, 2004, and recorded in McLennan County Official Public records as Document 2004021586, and that certain Escrow Agreement by and between the same parties executed in connection therewith.
- 2.1.10 BRA** shall mean the Brazos River Authority.
- 2.1.11 BRA Agreement** means collectively, that certain Contract to Transfer the Waco Metropolitan Area Regional Sewer System between BRA and Bellmead, Lacy-Lakeview, Robinson, Waco, and Woodway dated January 20, 2004, and that certain Closing Agreement between BRA and Bellmead, Lacy-Lakeview, Robinson, Waco, and Woodway dated February 24, 2004.
- 2.1.12 Bull Hide WWTP** shall mean the 1.5 mgd plant constructed south of Cooksey Lane on Bull Hide Creek in McLennan County, Texas.
- 2.1.13 City** means one of the cities that are a party to this Agreement.
- 2.1.14 Cities (or WMARSS Cities)** shall mean the cities of Bellmead, Hewitt, Lacy Lakeview, Robinson, Waco, Woodway, and Lorena. The Cities may also be referred to jointly as Parties.
- 2.1.15 Conveying Cities (or a singular Conveying City)** means the Cities of Bellmead, Hewitt, Lacy-Lakeview, Lorena, Robinson, and Woodway.
- 2.1.16 Effective Date** for the Cities of Bellmead, Hewitt, Lacy Lakeview, Lorena Robinson, Waco, and Woodway shall be the later of (i) the date when this Agreement has been executed by all of these Cities, or (ii) October 1, 2019.
- 2.1.17 Hewitt Funding Agreement** means that certain Waco Metropolitan Area Regional Sewer System Funding Agreement by and between Waco and Hewitt dated May 21, 2004, and recorded in McLennan County Official Public records as Document 2004021586, and that certain Escrow Agreement by and between the same parties executed in connection therewith.

- 2.1.18 Lien** shall mean any mortgage, pledge, lien, security interest, or charge of any kind.
- 2.1.19 Operator** shall mean the City of Waco, Texas.
- 2.1.20 Original Plant** shall mean the “Existing System” as defined in the BRA Agreement, along with all subsequent expansions, additions, and improvements.
- 2.1.21 Party or Parties** means a City and/or Cities.
- 2.1.22 Permits** shall have the meaning given in Section 2.1.30(g).
- 2.1.23 Robinson Funding Agreement** means that certain Waco Metropolitan Area Regional Sewer System Funding Agreement by and between Waco and Robinson dated February 20, 2004, and recorded in McLennan County Official Public records as Document 2004021586, and that certain Escrow Agreement by and between the same parties executed in connection therewith.
- 2.1.24 TCEQ** means the Texas Commission on Environmental Quality, or any of its predecessors.
- 2.1.25 TCEQ Permit** shall have the meaning given in Section 2.1.30(g).
- 2.1.26 Warranties** shall have the meaning given in Section 2.1.30(i).
- 2.1.27 Wastewater Treatment Plant or “WWTP”** means the wastewater treatment and disposal plant acquired from BRA pursuant to the BRA Agreement, and any and all treatment and disposal plants constructed as part any extensions, improvements, expansions, betterments, rehabilitations or replacements thereof that are used for the storage, treatment, recycling and reclamation of wastewater by WMARSS.
- 2.1.28 WMARSS** means the Waco Metropolitan Area Regional Sewer System and refers to the physical facilities, land, equipment, and all other tangible and intangible assets of the regional wastewater collection and treatment system jointly owned by the Cities, and within this Agreement WMARSS is sometimes used to refer to the Cities participating in the regional wastewater collection and treatment system.
- 2.1.29 WMARSS After-Acquired Assets** means all WMARSS Assets acquired by any Conveying City or Waco for the benefit of WMARSS pursuant to any agreement other than the BRA Agreement.
- 2.1.30 WMARSS Assets** means all of the assets that Waco operates as part of the WMARSS under and pursuant to any WMARSS Interlocal Agreement with the Cities, and any additions and improvements thereto and all real, intellectual, and personal property, easements and associated infrastructure, which the WMARSS Assets shall include, without limitation, the following:

- (a) The real property owned by any Conveying City or Waco (including without limitation, all real property owned by Waco for the benefit of WMARSS) and described in Exhibit A attached to this Agreement (the “WMARSS Owned Real Property”), which WMARSS Owned Real Property shall include, without limitation, the Original Plant, the WMARSS After-Acquired Assets constituting real property or fixtures, the WMARSS Facilities, all estates, rights, titles and interests of the Conveying Cities in and to all tenements, hereditaments, easements, rights-of-way, rights, licenses, permits (including building, occupancy, environmental and operating permits), rights of ingress and egress, reversionary interests, privileges and appurtenances relating to the WMARSS Owned Real Property and owned by a Conveying City (or the Conveying Cities) or belonging, pertaining or relating to the WMARSS Owned Real Property, any and all rights to present or future use of utility facilities relating to the WMARSS Owned Real Property, and the entire right, title and interest of a Conveying City, if any, in, to and under all streets, alleys, passages, strips, gores, pipes, pipelines, meters, metering stations, vaults, manholes, sewers, sewer rights, ditches, water, water courses, water rights and powers, air rights, railroad sidings, minerals, mineral rights and mineral interests, upon, above, in, under or pertaining to the WMARSS Owned Real Property, and all options and rights to purchase or otherwise acquire real property to the extent associated with the WMARSS, together with all right, title and interest, if any, in and to real property, which, or in which it is later determined or discovered, to have been used in connection with WMARSS;
- (b) All estates, rights, titles and interests of a Conveying City (or the Conveying Cities) in and to all plants, storage facilities, buildings, structures, works, fixtures (including, without limitation, all apparatus, buildings, appliances, machinery, equipment and other articles of a permanent nature), construction in progress, improvements, betterments, installations, and additions constructed, erected or located on or attached or affixed to the WMARSS Owned Real Property;
- (c) That certain Lease Agreement for Bullhide Wastewater Plant Agricultural Land Use between the City of Waco as the operator of WMARSS, and Robert Hahn, dated December 7, 2017, to be effective as of September 15, 2017 (the “WMARSS Leased Real Property”);
- (d) All of each of the Conveying Cities’ interest in (or, to the extent owned by a third person and held by the Conveying Cities pursuant to lease, the Conveying Cities’ leasehold interest in) the tangible personal property, fixtures, furniture, furnishings, office equipment, computers, computer programs, computer software, laboratory equipment, chemicals, vehicles, supplies, telephones, radios, machinery, tools and equipment used in connection with the WMARSS Assets, together with all right, title and interest, if any, in and to personal property, and all other interests, whether direct, indirect or equitable, which, or in which it is later determined or

discovered, to have been related to or used in connection with WMARSS (the "Personal Property"), including, without limitation, the WMARSS After-Acquired Assets constituting Personal Property, and the WMARSS Equipment.

- (e) The contracts, commitments, agreements, leases, licenses and arrangements relating to the WMARSS to which a Conveying City is a party, if any (the "Assumed Contracts");
- (f) To the extent relating primarily to the WMARSS, all of the (together referred to hereinafter as the "Files and Records"):
 - (i) Land files, contract files, surveys, maps, plats, correspondence and other documents and instruments evidencing title to or interest in the WMARSS Assets;
 - (ii) Accounting and financial records;
 - (iii) Engineering design plans, operation and maintenance manuals, plans, and records;
 - (iv) Employee records;
 - (v) Construction records, sub-contractor records, vendor records, manufacturer records, and maintenance records;
 - (vi) Other books, records and files; and
 - (vii) Plans, data, research records, customer and supplier lists and similar data and information;
- (g) All permits, registrations, licenses, authorizations, approvals, consents, franchises, and the like issued to or for the benefit of Waco or the Conveying Cities by any federal, state or local governmental entity that are required to operate the WMARSS (the "Permits"), including, without limitation, any and all Permits from the Texas Commission on Environmental Quality or any of its predecessors (collectively, "TCEQ") necessary for the operation of the System, including without limitation TCEQ Permit WQ 11071-001, NPDES Permit No. TX 0026506, and TCEQ Air Permit No. 22237 (the "TCEQ Permit," whether one or more).
- (h) The originals of all copyrighted material, patents, trademarks and intellectual property of any kind developed for WMARSS or paid for in whole or in part by the Conveying Cities through payments to Waco, including, without limitation, intellectual property;
- (i) All warranties, guaranties, and the like covering any of the WMARSS Assets (the "Warranties");

- (j) All rights of any of the Conveying Cities to the accounts and notes receivable and cash payments for services and products, whether arising by sale, lease or otherwise, arising with respect to the WMARSS;
 - (k) All goodwill relating to or arising primarily from the WMARSS.
- 2.1.31 WMARSS Board** means the board originally created by the 2003-2004 Interlocal Agreement, and as later constituted by virtue of any later WMARSS Interlocal Agreement.
- 2.1.32 WMARSS Equipment** shall mean any tangible personal property utilized in any way to operate and maintain the WMARSS Facilities.
- 2.1.33 WMARSS Existing System** has the meaning set forth on Exhibit B.
- 2.1.34 WMARSS Facility or Facilities** shall mean the Original Plant, any improvements, upgrades, or repairs to the Original Plant, any expansion to the Original Plant, and all later expansions, additions and improvements to any Waste Water Treatment Plant acquired by Waco or any of the other Cities which provided waste water treatment services pursuant to any agreement among the Cities. This term shall include, but is not limited to, Wastewater Treatment Plants, lift stations, interceptors, and any other physical or tangible structure used to treat or transport wastewater and the real property that such structures are located on or associated with.
- 2.1.35 WMARSS Leased Real Property** shall have the meaning given in Section 2.1.30(c).
- 2.1.36 WMARSS Owned Real Property** shall have the meaning given in Section 2.1.30(a).
- 2.1.37 WMARSS Interlocal Agreement** shall mean any agreement among a City or Cities regarding the ownership, operation, or management of any of the WMARSS Assets, including without limitation, the 2003-2004 WMARSS Interlocal Agreement, the 2004 WMARSS Interlocal Agreement, the Bellmead Funding Agreement, the Hewitt Funding Agreement, the Robinson Funding Agreement, the Woodway Funding Agreement, the 2007 WMARSS Interlocal Agreement, the 2007 WMARSS Interlocal Industrial Pretreatment Agreement, the 2009 WMARSS Interlocal Agreement, the 2013 WMARSS Interlocal Agreement, and the 2018 WMARSS Interlocal Agreement, and any agreement among a City or Cities executed as a result of any of the foregoing Interlocal Agreements, whether in the nature of an amendment or an extension, or otherwise.
- 2.1.38 Woodway Funding Agreement** means that certain Waco Metropolitan Area Regional Sewer System Funding Agreement by and between Waco and Woodway dated February 24, 2004, and recorded in McLennan County Official Public records as Document 2004021586, and that certain Escrow Agreement by and between the same parties executed in connection therewith.

2.2 Interpretations. The following principles shall control the interpretation of this agreement:

2.2.1 Reference to any document means the document as amended or supplemented from time to time.

2.2.2 Reference to any party or governmental regulatory agency means that entity and its successors and assigns.

2.2.3 Where a conflict exists with this Agreement and any other WMARSS Interlocal Agreement, this Agreement shall control after its Effective Date.

ARTICLE 3 Conveyances

3.1 Each of the Conveying Cities hereby transfers and conveys to Waco all of its right, title and interest, whether tangible or intangible, including without limitation, all equity and equitable interests in the WMARSS Assets, free and clear of all Liens. The conveyance of the WMARSS Assets is "AS IS", with no covenants or agreements relating to the status or condition of the WMARSS Assets, except for the representations and warranties set forth in this Agreement or any of the documents executed in connection with this Agreement.

3.2 Each Conveying City agrees to execute and deliver to Waco in connection with the execution of this Agreement, the Quitclaim Deed in the form of Exhibit C-1, and the Bill of Sale and Blanket Conveyance in the form of Exhibit D. Each Conveying City agrees to execute and deliver to Waco and Lorena in connection with the execution of this Agreement, the Quitclaim Deed in the form of Exhibit C-2. The Cities agree that such documents will be dated to be effective as of October 1, 2019. Waco may cause the Quitclaim Deeds to be recorded in the real property records of McLennan County, Texas, on, or at any time after, October 1, 2019.

3.3 Each of the Conveying Cities hereby represent and warrant to Waco as follows:

3.3.1 There is no claim of whatever nature pending against the WMARSS Assets, or of any regulatory activity, inspection, or notice relating to the WMARSS Assets;

3.3.2 There is no statute, regulation, order, decree, or judgment enacted or promulgated by any governmental entity which prohibits the consummation of the transactions contemplated by this Agreement or makes such transactions illegal;

3.3.3 No preliminary or permanent injunction, temporary restraining order or other decree of any governmental entity, and no action, suit or proceeding by, or before, any governmental entity has been instituted that prohibits or materially restrains, or seeks to prohibit or materially restrain, the consummation of the transactions contemplated by this Agreement;

3.4 Each of the Cities represent and warrant to the others that they have the requisite power and authority to enter into, execute, and deliver this Agreement and all of the documents

set forth in this Agreement, and to consummate the transactions contemplated hereby and thereby.

- 3.5 Each Conveying City agrees to cooperate with Waco in the transfer of the TCEQ Permit to Waco's name, or, to the extent required, the application for a new TCEQ permit in replacement of the TCEQ Permit, whether prior to or after the Effective Date, by among other things, executing and delivering to Waco or TCEQ such requests for information, transfer applications, conveyance documents, and signatures on such documents as are required to fully and completely effectuate such transfer(s).
- 3.6 In the event that it is determined that any of the documents executed in connection with this Agreement were insufficient to fully transfer or convey all right, title and interest in the WMARSS Assets to Waco as set forth in Section 3.1, upon Waco's request made to a Conveying City, each such Conveying City agrees to execute and deliver to Waco such document or documents as may reasonably be necessary to fully effectuate such transfer and conveyance.

ARTICLE 4

Termination of WMARSS

- 4.1 As of the Effective Date, each and every WMARSS Interlocal Agreement is hereby terminated and of no further force or effect. As of the Effective Date, the WMARSS Board is hereby dissolved. Except as specifically set forth in this Agreement, each City, including without limitation, Waco acting as Operator under any WMARSS Interlocal Agreement, is hereby released from all obligations arising out of any WMARSS Interlocal Agreement as of the Effective Date.
- 4.2 Bellmead (with respect to the Bellmead Funding Agreement), Hewitt (with respect to the Hewitt Funding Agreement), Robinson (with respect to the Robinson Funding Agreement), and Woodway (with respect to the Woodway Funding Agreement), each acknowledge and agree that there are amounts that remain unpaid to Waco pursuant to their respective funding agreements. The amounts that remain outstanding as of the Effective Date pursuant to each funding agreement is as shown on Exhibit F attached hereto. Each of Bellmead, Hewitt, Robinson, and Woodway agree to pay all such outstanding amounts to Waco on the Effective Date, via transfer of the applicable outstanding amount out of unrestricted funds being held for the benefit of each City by Waco, as Operator, to Waco. Promptly after the payment of such amounts, Waco will cause to be recorded in the real property records of McLennan County, Texas, a release and termination of the funding agreements recorded at Document No. 2004021586 in the real property records of McLennan County, Texas.
- 4.3 Each City acknowledges and agrees that certain construction, repair, and/or capital improvement projects undertaken or to be undertaken by WMARSS have not yet been fully completed and/or have not yet been fully paid for by WMARSS. The list of such incomplete or unfunded construction projects as of the date of this agreement is listed on Exhibit G attached hereto. Each City agrees to continue funding its obligations for such projects as and when required by the 2018 WMARSS Interlocal Agreement through the

Effective Date. In addition, each City agrees to pay to Waco, on or before the Effective Date, an amount sufficient to fully fund each City's share of such incomplete or unfunded constructions costs, with the intention that all of the costs for each such project shall be fully paid to Waco on or before the Effective Date.

- 4.4 Each City acknowledges and agrees that Waco, as Operator, is currently holding certain "Reserve Funds" pursuant to the 2018 WMARSS Interlocal Agreement. The estimated amount of such "Reserve Funds" that will be held by Waco, as Operator, as of the Effective Date, for the benefit of each City (after taking into account the payment of the Funding Agreements as described in Section 4.2 above) is shown on Exhibit H attached hereto. Each City hereby releases all such "Reserve Funds", as shown on Exhibit H, to Waco as of the Effective Date. If, after completion of Waco's annual audit for the Fiscal Year ended September 30, 2019, it is determined that the amount of such "Reserve Funds" released by each City on the Effective Date, after being reduced by outstanding encumbrances as of September 30, 2019, exceeded, in the aggregate, 10% of the Annual Operation and Maintenance Expense Requirement for Fiscal Year 2019 (as defined in the 2018 WMARSS Interlocal Agreement), Waco shall refund the applicable proportionate share of any such excess to each City. Likewise, if, after completion of Waco's annual audit for the Fiscal Year ended September 30, 2019, it is determined that the amounts of such "Reserve Funds" released by each City on the Effective Date, after being reduced by outstanding encumbrances as of September 30, 2019, was less than 10% of the Annual Operation and Maintenance Expense Requirement for Fiscal Year 2019, in the aggregate, each City agrees to pay to Waco its proportionate share of any such shortfall, within 30 days of a receipt of an invoice therefor from Waco.

ARTICLE 5

New Wholesale Wastewater Contracts

- 5.1 As a condition to the effectiveness of this Agreement, each Conveying City agrees to execute and deliver to Waco the Wholesale Wastewater Contract in the form attached hereto as Exhibit E, which Wholesale Wastewater Contract commits Waco to provide capacity in Waco's wastewater treatment facilities on the terms and conditions and as more fully set forth therein.

ARTICLE 6

Dispute Resolution

- 6.1 **Mediation Required.** Each City agrees that prior to filing a lawsuit or an administrative complaint with a regulatory agency seeking compensation or injunctive relief against any City that is a party to this Agreement relating to the management or operation of the WMARSS, the City will agree to submit the disputed matter to non-binding mediation. Venue of such mediation, as well as any litigation, shall be in McLennan County, Texas.

ARTICLE 7
Termination and Default Remedies

- 7.1 No Waiver.** No waiver or waivers of any breach or default by any Party to this Agreement of any term, covenant, conditions, or liability hereunder, or of performance by another Party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind under any circumstances.

ARTICLE 8
Notices

- 8.1** All notices, requests, consents, waivers and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given:
- 8.1.1** if transmitted by facsimile, upon acknowledgment of receipt thereof in writing by facsimile or otherwise;
 - 8.1.2** if personally delivered, upon delivery or refusal of delivery;
 - 8.1.3** if mailed by registered or certified United States mail, return receipt requested, postage prepaid, upon delivery or refusal of delivery; or
 - 8.1.4** if sent by a nationally recognized overnight delivery service, upon delivery or refusal of delivery.
- 8.2** Unless changed by giving notice as provided in Article 12, all notices, consents, waivers or other communications required or permitted to be given hereunder shall be addressed to the respective Party to whom such notice, consent, waiver or other communication relates at the following addresses:

To the City of Bellmead:

City Manager
3015 Bellmead Drive
Waco, Texas 76705
Email:
Fax: (254) 799-5969

To the City of Hewitt:

City Manager
P.O. Box 610
Hewitt, Texas 76643
Email:citymanager@cityofhewitt.com
Fax: (254)

To the City of Lacy-Lakeview:

City Manager
501 E. Craven
Lacy Lakeview, Texas 76705
E-mail:
Fax: (254) 799-6265

To the City of Lorena: City Manager
114 E. Center Street
Lorena, Texas 76655-9651
Email:
Fax: (254) 857-4118

To the City of Robinson: City Manager
111 West Lyndale
Robinson, Texas 76706
Email:
Fax: (254) 662-1035

To the City of Waco: City Manager
P.O. Box 2570
Waco, Texas 76702-2570
Email:
Fax: (254) 750-5880

To the City of Woodway: City Manager
922 Estates Drive
Woodway, TX 76712
Email:
Fax (254) 772-0695

ARTICLE 9

Miscellaneous

- 9.1 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.
- 9.2 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.
- 9.3 Indirect or Consequential Damages.** Operator's liability to cities in contract or in tort under this agreement specifically excludes any and all indirect or consequential damages arising from the operation, maintenance, and management of project.
- 9.4 Effective Date.** This Agreement shall be in full force and effect as of the date the governing bodies of Bellmead, Hewitt, Lacy-Lakeview, Lorena, Robinson, Waco and

Woodway have authorized and approved this Agreement by Resolution duly adopted by each respective governing body.

- 9.5 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.
- 9.6 Exhibits.** The Exhibits that are attached hereto are incorporated herein and made a part of this Contract. The Exhibits include:
- 9.6.1 Exhibit A: WMARSS Owned Real Property**
- 9.6.2 Exhibit B: Definition of Existing System from Contract to Transfer the Waco Metropolitan Area Regional Sewer System ("WMARSS")** executed by the Cities of Bellmead, Hewitt, Lacy-Lakeview, Lorena, Robinson, Waco, and Woodway ("Participants") with the Brazos River Authority ("Authority") dated January 20, 2004
- 9.6.3 Exhibit C-1: Form of Quit-Claim Deed**
- 9.6.4 Exhibit C-2: Form of Quit-Claim Deed (Waco-Lorena Force Main)**
- 9.6.5 Exhibit D: Sewer Agreement**
- 9.7 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.
- 9.8 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.
- 9.9 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.

- 9.10 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.
- 9.11 Assignment.** No Party hereto may assign its rights and obligations hereunder.
- 9.12 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.
- 9.13 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.
- 9.14 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 BELLMEAD

By: _____
City Manager

ATTEST

City Secretary

Date Signed

[remainder of page intentionally left blank]

THE CITY OF HEWITT

By: _____
City Manager

ATTEST

City Secretary

Date Signed

THE CITY OF LACY LAKEVIEW

By: _____
City Manager

ATTEST

City Secretary

Date Signed

THE CITY OF LORENA

By: _____
City Manager

ATTEST

City Secretary

Date Signed

THE CITY OF ROBINSON

By: _____
City Manager

ATTEST

City Secretary

Date Signed

THE CITY OF WACO, TEXAS

By: _____
City Manager

ATTEST

City Secretary

Date Signed

THE CITY OF WOODWAY

By: _____
City Manager

ATTEST

City Secretary

Date Signed

Exhibit A
WMARSS Owned Real Property

EXHIBIT A - PROPERTY DESCRIPTION

Property described in the following transfer documents recorded in the real property records of McLennan County, Texas:

[ORIGINAL PLANT]

- A. Special Warranty Deed and Assignment of Easements recorded at Document No. 2004008879.

[LACY-LAKEVIEW CONVEYANCE]

- A. Conveyance of Undivided Interest Waco Metropolitan Area Regional Sewer System recorded at Document No. 2004008883.

[HEWITT CONVEYANCE]

- A. Conveyance of Undivided Interest in Waco Metropolitan Area Regional Sewer System to the City of Hewitt, Texas recorded at Document No. 2004019570.

[ORIGINAL QUIT-CLAIM PROPERTY]

- A. Deed Without Warranty recorded at Volume 1062, Page 467.
- B. Deed Without Warranty recorded at Document No. 2001025285, as modified by Special Warranty Deed recorded at Document No. 2002001431.
- C. Document recorded at Volume 1062, Page 478.
- D. Lis Pendens recorded at Volume 7, Page 355 and Statement of Condemnation recorded at Document No. 2004007442.
- E. Lis Pendens recorded at Volume 6, Page 410 and Statement of Condemnation recorded at Document No. 2004007441.
- F. Lis Pendens recorded at Volume 6, Page 412 and Judgement of Court in Absence of Objection recorded at Document No. 2004007443.
- G. Lis Pendens recorded at Volume 6, Page 408 and Judgment recorded at Document No. 2004007444.
- H. Sanitary Sewer Easement recorded at Volume 1683, Page 793.
- I. Easement recorded at Volume 1679, Page 192.
- J. Sewer Line Easement recorded at Volume 1679, Page 202.
- K. Sewer Line Easement recorded at Volume 1672, Page 504.

L. Sewer Line Easement recorded at Volume 1088, Page 578.

M. Sewer Line Easement recorded at Volume 1077, Page 97.

[BULL HIDE WWTP]

A. Warranty Deed recorded at Document No. 2008008311.

[TRANSFER LIFT STATION]

A. Permission to install facility within right-of-way of State Highway 6/Loop 340, Texas Department of Transportation Application/Permit No. WAC20170227153744.

B. Permission to install facility within right-of-way of Business Highway 77, Texas Department of Transportation Application/Permit No. WAC20170227155127.

C. Encroachment on Easement from Oncor Electric Delivery Company LLC, recorded at Document No. 2018011637, over Easements recorded at Volume 685, Page 626 and Volume 688, Page 157. (28)

D. Encroachment on Easement from Oncor Electric Delivery Company LLC, recorded at Document No. 2018011638, over Easement recorded at Volume 891, Page 471. (29)

E. Encroachment on Easement from Oncor Electric Delivery Company LLC, recorded at Document No. 2018011639, over Easements recorded at Volume 897, Page 70 and Volume 686, Page 234 (as modified by Easement Modification Agreements #2008017126 and #2008024672). (30)

F. Encroachment on Easement from Oncor Electric Delivery Company LLC, recorded at Document No. 2017029477, over Easement recorded at Volume 1851, Page 653. (31)

G. Encroachment on Easement from Oncor Electric Delivery Company LLC, recorded at Document No. 2019000042, over Easement recorded at Volume 683, Page 548 and Volume 892, Page 407. (32)

H. Permission to install facility within right-of-way at approximately 1,785 feet northeast of S. University Parks Drive across Velma Drive, Waco, TX, Texas Department of Transportation Application/Permit No. WAC20170609103621.

I. Encroachment Agreement from Atmos Energy Corporation, recorded at Document No. 2017041784, over Easement recorded at Volume 865, Page 596. (15A)

J. Perpetual Easement recorded at Document No. 2017013060. (1)

K. Perpetual Easement recorded at Document No. 2017040499. (1A)

- L. Public Water/Sewer/Electrical Easement recorded at Document No. 2017038515. (2A)
- M. Ingress/Egress Access Easement recorded at Document No. 2017038514. (2B)
- N. Public Water/Sewer Easement (with Temporary Construction Easement) recorded at Document No. 2017038513. (2C)
- O. Perpetual Easement recorded at Document No. 2008026264. (3)
- P. Special Warranty Deed recorded at Document No. 2017040498. (4)
- Q. Perpetual Easement recorded at Document No. 2017040500. (4A)
- R. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017040501. (4B)
- S. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017040502. (4C)
- T. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2018002101. (4D)
- U. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017013061. (5)
- V. Judgment of Court in Absence of Objection recorded at Document No. 2018003833. (6A - Ashley)
- W. Deed Without Warranty recorded at MCC Document No. 2003004773. (7)
- X. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017013065. (9)
- Y. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017026614. (9A)
- Z. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017013064. (9C)
- AA. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017013059. (11A)

AB. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017026617. (11B)

AC. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017034048. (11C)

AD. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017040503. (12)

AE. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017013058. (13)

AF. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017026613. (13A)

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AP. Perpetual Easement recorded at Document No. 2017013063. (26A)

AQ. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017034705. (27)

[FLAT CREEK INTERCEPTOR]

A. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008028949. (Austin)

B. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008018095 (Allen)

C. Judgment recorded at Document No. 2017006550. (Baker)

D. Judgment of Court in Absence of Objection recorded at Document No. 2018032450. (Brown/McDowell)

E. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008022340. (Central Companies)

F. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008013362. (Central Tx Investors; (Bowden))

G. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008019338. (Centroplex Prop)

H. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008022339. (Cooper)

I. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008022338. (FM 3400 Trust; (Thompson))

J. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008019342. (Fred M)

K. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008032981. (Frey, Wasserman)

L. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009002918. (Guerrero)

M. Perpetual Easement recorded at Document No. 2010000525. (Harrison 1)

N. Perpetual Easement recorded at Document No. 2008019337. (Harrison 2)

- O. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008026263. (Hirsch 1)
- P. Perpetual Easement recorded at Document No. 2008026264. (Hirsch 2)
- Q. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009010369. (Jones)
- R. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008029640. (LeBlanc; (Rosa Smith))
- S. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008019341. (Lopez)
- T. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008019340. (McDowell)
- U. Judgment Nunc Pro Tunc recorded at Document No. 2014027579. (Obenoskey)
- V. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008019339. (Ranch Creek)
- W. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008018093. (Robinson 1)
- X. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008018094. (Robinson 2)
- Y. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009018285. (Robinson 3)
- Z. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008018096. (Rosenauer)
- AA. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008030516. (Ruiz)
- AB. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008032980. (Stahl)
- AC. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010025320. (Tractor Supply)

[BULLHIDE CREEK INTERCEPTOR]

- A. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2013008862. (Abood)
- B. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2013001977. (Armstrong)
- C. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009020963. (Big Creek)
- D. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2011001907. (H Cross)
- E. Perpetual Easement recorded at Document No. 2010000183. (McLennan Cty)
- F. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010036977. (Smokey)
- G. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2012037854. (Sumner)
- H. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010029360. (Warren Bros)

[SANDY CREEK]

- A. Easement Agreement for Water Delivery System recorded at Document No. 2007029088, and amended by First Amendment to Easement Agreement for Water Delivery System as recorded in Document No. 2009010169.

[BULLHIDE CREEK INTERCEPTOR]

- A. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009023174. (Bostick)
- B. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010006467. (Davis Iron 1)
- C. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010006466. (Davis Iron 2)
- D. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010000844. (Simmons)
- E. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009033124. (Warren)

[WACO LORENA FORCE MAIN]

- A. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010006467. (Davis Iron 1)
- B. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010006466. (Davis Iron 2)
- C. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010009681. (Harmon)
- D. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009032410. (Hatch)
- E. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010033550. (RKS)

[OTHER]

- A. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2015016030. (Cottonwood Creek Interceptor)
- B. Public Utility Easement recorded at Document No. 2017017780. (Herring/MLK Easement)
- C. Perpetual Easement to the City of Waco, Texas, f/b/o Waco Metropolitan Area Regional Sewerage System (with Temporary Construction Easement) recorded at Document No. 2010025320. (2010 Tractor Supply)
- D. Perpetual Easement to the City of Waco, Texas (with Temporary Construction Easement), recorded at Document No. 2008026202. (Lift Station)

Exhibit B

Definition from the Contract to Transfer the Waco Metropolitan Area Regional Sewer System ("WMARSS") executed by the Cities of Bellmead, Lacy-Lakeview, Robinson, Waco, and Woodway ("Participants") with the Brazos River Authority ("Authority") dated January 20, 2004.

"Existing System" means all of the assets that the Authority operates as part of the WMARSS under and pursuant to agreements for sewerage services between Authority and the Participants and any additions and improvements thereto and all real, intellectual, and personal property, easements and associated infrastructure, which the Existing System shall include, without limitation, the following:

1. The real property owned by the Authority and described in Schedule 1.1(j)(1) to the Transfer Agreement (the "Owned Real Property"), which Owned Real Property shall include, without limitation, all estates, rights, titles and interests of the Authority in and to all tenements, hereditaments, easements, rights-of-way, rights, licenses, permits (including building, occupancy, environmental and operating permits), rights of ingress and egress, reversionary interests, privileges and appurtenances relating to the Owned Real Property and owned by the Authority or belonging, pertaining or relating to the Owned Real Property, any and all rights to present or future use of utility facilities relating to the Owned Real Property, and the entire right, title and interest of the Authority, if any, in, to and under all streets, alleys, passages, strips, gores, pipes, pipelines, meters, vaults, manholes, sewers, sewer rights, ditches, water, water courses, water rights and powers, air rights, railroad sidings, minerals, mineral rights and mineral interests, upon, above, in, under or pertaining to the Owned Real Property, and all options and rights to purchase or otherwise acquire real property to the extent associated with the WMARSS;
2. All estates, rights, titles and interests of the Authority in and to all plants, storage facilities, buildings, structures, works, fixtures (including, without limitation, all apparatus, buildings, appliances, machinery, equipment and other articles of a permanent nature), construction in progress, improvements, betterments, installations, and additions constructed, erected or located on or attached or affixed to the Owned Real Property;
3. The real property leases in effect (each a "Real Property Lease"), if any, as described in Schedule 1.1(j)(3) to the Transfer Agreement (the "Leased Real Property");
4. All of the Authority's interest in (or, to the extent owned by a third person and held by the Authority pursuant to lease, the Authority's leasehold interest in) the tangible personal property, fixtures, furniture, furnishings, office equipment, computers, computer programs, computer software, laboratory equipment, chemicals, vehicles, supplies, telephones, radios, machinery, tools and equipment that has been paid for directly or indirectly, in whole or in part, by the Participants through payments to

the Authority (unless with the consent of the Participants, the Authority has reimbursed or does reimburse the Participants for their contribution to the acquisition of such property prior to Closing) (the "Personal Property"), including, without limitation, the Personal Property described in Schedule 1.1(j)(4) to the Transfer Agreement;

5. The contracts, commitments, agreements, leases, licenses and arrangements relating to the WMARSS to which the Authority is a party described upon Schedule 1.1(j)(5) to the Transfer Agreement (the "Assumed Contracts");
6. To the extent relating primarily to the WMARSS, all of the Authority's (together referred to hereinafter as the "Files and Records"):
 - (a) Land files, contract files, surveys, maps, plats, correspondence and other documents and instruments evidencing the Authority's title to or interest in the Existing System;
 - (b) Accounting and financial records;
 - (c) Engineering design plans, operation and maintenance manuals, plans, and records;
 - (d) Employee records for each Hired Employee (defined in Section 11.1 of the Transfer Agreement), to the extent the delivery of these employee records is not in violation of applicable laws;
 - (e) Construction records, sub-contractor records, vendor records, manufacturer records, and maintenance records;
 - (f) Other books, records and files; and
 - (g) Plans, data, research records, customer and supplier lists and similar data and information;
7. All permits, registrations, licenses, authorizations, approvals, consents, franchises, and the like issued to the Authority by any federal, state or local governmental entity that are required to operate the WMARSS (the "Permits"), including, without limitation, any and all Permits from the Texas Commission on Environmental Quality or any of its predecessors (collectively, "TCEQ") necessary for the operation of the System (the "TCEQ Permit," whether one or more), the TCEQ Permit and the other Permits being described in Schedule 1.1(j)(7) of the Transfer Agreement;
8. The originals of all copyrighted material, patents, trademarks and intellectual property of any kind developed for WMARSS or paid for in whole or in part by the Participants through payments to the Authority, including, without limitation, the intellectual property described in Schedule 1.1(j)(8) of the Transfer Agreement;

9. All warranties, guaranties, and the like covering any of the assets comprising the Existing System (the "Warranties");
10. All rights of the Authority to the accounts and notes receivable and cash payments for services and products, whether arising by sale, lease or otherwise, arising with respect to the WMARSS;
11. All goodwill relating to or arising primarily from the WMARSS.

Exhibit C-1
Form of Quitclaim Deed

QUITCLAIM DEED

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MCLENNAN §

THAT, the CITY OF BELLMEAD, the CITY OF HEWITT, the CITY OF LACY LAKEVIEW, the CITY OF ROBINSON, and the CITY OF WOODWAY, Texas home-rule municipal corporations, and the CITY OF LORENA, a Texas general law municipality, in their individual capacities, and acting collectively together with the CITY OF WACO as the parties comprising the WACO METROPOLITAN AREA REGIONAL SEWER SYSTEM (sometimes also known as WACO METROPOLITAN AREA REGIONAL SEWER SYSTEM FUND, WACO METROPOLITAN AREA REGIONAL SEWERAGE SYSTEM, or WMARSS) (individually and collectively, "**Grantor**"), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to it in hand paid by the CITY OF WACO, a municipal corporation located in McLennan County, Texas ("**Grantee**"), the receipt and sufficiency of which are hereby acknowledged by Grantor, has QUITCLAIMED unto Grantee all of Grantor's right, title, interest, claim, and demand in and to, and by these presents does QUITCLAIM the following (collectively, the "**Property**"): those certain tracts of real property and easements situated in McLennan County, Texas, and described in those documents listed in Exhibit A attached hereto and made a part hereof for all purposes, together with all and singular Grantor's right, title, interest, claim, and demand in and to the rights, privileges, hereditaments, and appurtenances pertaining to such real property, including any and all strips and gores, if any, between the property and any abutting properties, whether owned or claimed by deed, limitations, or otherwise, and whether located inside or outside the property, and any land lying in or under the bed of any creek, stream, or waterway or any highway, avenue, street, road, alley, easement or right-of-way, open or proposed, in, or across, abutting or adjacent to the property, together with all improvements, fixtures and personalty owned by Grantor located thereon and any right, title and interest of Grantor in and to adjacent streets, alleys and rights-of-way, together with Grantor's right, title and interest, if any, in and to property, real or personal, in which or in which it is later determined or discovered that Grantor has or purports to have an interest, whether direct, indirect or equitable, to the extent such property is used in connection with the WACO METROPOLITAN AREA REGIONAL SEWER SYSTEM.

TO HAVE AND TO HOLD the above released rights, titles, interests, claims, and demands to said Property, to Grantee and Grantee's legal representatives, successors and assigns forever. Neither Grantor nor Grantor's legal representatives, successors or assigns shall have, claim, or demand any right or title to the Property or any part of it.

Grantor represents and warrants to Grantee that Grantor has the requisite power and authority to enter into, execute and deliver this Deed and to consummate the transactions contemplated hereby. Except for the representations and warranties made in the immediately preceding sentence, (a)

Grantor hereby disclaims any warranty, representation, covenant, agreement, or guaranty, oral or written, expressed or implied or by operation of law, with respect to any matter affecting the Property, and Grantor shall have no liability to Grantee, and Grantee releases Grantor from any liability (including, but not limited to, contractual and/or statutory actions for contribution or indemnify), for, concerning, or regarding (i) the nature and condition of the Property, including, but not limited to the suitability thereof for any activity or use; (ii) any improvements or substances located thereon; or (iii) the compliance of the Property with any laws, rules, ordinances or regulations of any government or other body, and (b) BY ITS ACCEPTANCE OF THIS DEED AND IN CONSIDERATION OF THE CONVEYANCE BY GRANTOR HEREIN, GRANTEE ACKNOWLEDGES AND AGREES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE, AND EXPRESSLY DISCLAIMS ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR GUARANTIES, EXPRESSED OR "IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE MERCHANTABILITY, HABITABILITY, QUANTITY, QUALITY, OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR ITS SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. GRANTEE HEREBY ACCEPTS THE PROPERTY IN ITS PRESENT CONDITION ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS.

Notwithstanding anything to the contrary contained in this Quitclaim Deed, in the event that a Grantor has received any warranty of title with respect to the Property, then such Grantor does by this instrument transfer and assign to Grantee, to the extent transferable, such warranty of title to the extent (and only to the extent) it pertains to and covers the Grantor's interest in and to the Property.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY BLANK.]

EXECUTED on the dates set forth below, to be effective as of noon, October 1, 2019.

GRANTOR:
THE CITY OF BELLMEAD

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF BELLMEAD, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF HEWITT

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS

§
§
§

COUNTY OF MCLENNAN

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF HEWITT, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF LACY-LAKEVIEW

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF LACY-LAKEVIEW, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF LORENA

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS

§
§
§

COUNTY OF MCLENNA

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF LORENA, a Texas general law municipality, on behalf of said municipality.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF ROBINSON

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS

§
§
§

COUNTY OF MCLENNAN

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF ROBINSON, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF WACO

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF WACO, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF WOODWAY

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF WOODWAY, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

Accepted, acknowledged and agreed:

GRANTEE:
THE CITY OF WACO

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF WACO, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

EXHIBIT A

PROPERTY DESCRIPTION

Property described in the following transfer documents recorded in the real property records of McLennan County, Texas:

[ORIGINAL PLANT]

- A. Special Warranty Deed and Assignment of Easements recorded at Document No. 2004008879.

[LACY-LAKEVIEW CONVEYANCE]

- A. Conveyance of Undivided Interest Waco Metropolitan Area Regional Sewer System recorded at Document No. 2004008883.

[HEWITT CONVEYANCE]

- A. Conveyance of Undivided Interest in Waco Metropolitan Area Regional Sewer System to the City of Hewitt, Texas recorded at Document No. 2004019570.

[ORIGINAL QUIT-CLAIM PROPERTY]

- A. Deed Without Warranty recorded at Volume 1062, Page 467.
- B. Deed Without Warranty recorded at Document No. 2001025285, as modified by Special Warranty Deed recorded at Document No. 2002001431.
- C. Document recorded at Volume 1062, Page 478.
- D. Lis Pendens recorded at Volume 7, Page 355 and Statement of Condemnation recorded at Document No. 2004007442.
- E. Lis Pendens recorded at Volume 6, Page 410 and Statement of Condemnation recorded at Document No. 2004007441.
- F. Lis Pendens recorded at Volume 6, Page 412 and Judgement of Court in Absence of Objection recorded at Document No. 2004007443.
- G. Lis Pendens recorded at Volume 6, Page 408 and Judgment recorded at Document No. 2004007444.
- H. Sanitary Sewer Easement recorded at Volume 1683, Page 793.
- I. Easement recorded at Volume 1679, Page 192.
- J. Sewer Line Easement recorded at Volume 1679, Page 202.

- K. Sewer Line Easement recorded at Volume 1672, Page 504.
- L. Sewer Line Easement recorded at Volume 1088, Page 578.
- M. Sewer Line Easement recorded at Volume 1077, Page 97.

[BULL HIDE WWTP]

- A. Warranty Deed recorded at Document No. 2008008311.

[TRANSFER LIFT STATION]

- A. Permission to install facility within right-of-way of State Highway 6/Loop 340, Texas Department of Transportation Application/Permit No. WAC20170227153744.
- B. Permission to install facility within right-of-way of Business Highway 77, Texas Department of Transportation Application/Permit No. WAC20170227155127.
- C. Encroachment on Easement from Oncor Electric Delivery Company LLC, recorded at Document No. 2018011637, over Easements recorded at Volume 685, Page 626 and Volume 688, Page 157. (28)
- D. Encroachment on Easement from Oncor Electric Delivery Company LLC, recorded at Document No. 2018011638, over Easement recorded at Volume 891, Page 471. (29)
- E. Encroachment on Easement from Oncor Electric Delivery Company LLC, recorded at Document No. 2018011639, over Easements recorded at Volume 897, Page 70 and Volume 686, Page 234 (as modified by Easement Modification Agreements #2008017126 and #2008024672). (30)
- F. Encroachment on Easement from Oncor Electric Delivery Company LLC, recorded at Document No. 2017029477, over Easement recorded at Volume 1851, Page 653. (31)
- G. Encroachment on Easement from Oncor Electric Delivery Company LLC, recorded at Document No. 2019000042, over Easement recorded at Volume 683, Page 548 and Volume 892, Page 407. (32)
- H. Permission to install facility within right-of-way at approximately 1,785 feet northeast of S. University Parks Drive across Velma Drive, Waco, TX, Texas Department of Transportation Application/Permit No. WAC20170609103621.
- I. Encroachment Agreement from Atmos Energy Corporation, recorded at Document No. 2017041784, over Easement recorded at Volume 865, Page 596. (15A)
- J. Perpetual Easement recorded at Document No. 2017013060. (1)

- K. Perpetual Easement recorded at Document No. 2017040499. (1A)
- L. Public Water/Sewer/Electrical Easement recorded at Document No. 2017038515. (2A)
- M. Ingress/Egress Access Easement recorded at Document No. 2017038514. (2B)
- N. Public Water/Sewer Easement (with Temporary Construction Easement) recorded at Document No. 2017038513. (2C)
- O. Perpetual Easement recorded at Document No. 2008026264. (3)
- P. Special Warranty Deed recorded at Document No. 2017040498. (4)
- Q. Perpetual Easement recorded at Document No. 2017040500. (4A)
- R. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017040501. (4B)
- S. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017040502. (4C)
- T. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2018002101. (4D)
- U. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017013061. (5)
- V. Judgment of Court in Absence of Objection recorded at Document No. 2018003833. (6A - Ashley)
- W. Deed Without Warranty recorded at MCC Document No. 2003004773. (7)
- X. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017013065. (9)
- Y. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017026614. (9A)
- Z. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017013064. (9C)
- AA. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017013059. (11A)

AB. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017026617. (11B)

AC. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017034048. (11C)

AD. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017040503. (12)

AE. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017013058. (13)

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AP. Perpetual Easement recorded at Document No. 2017013063. (26A)

AQ. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2017034705. (27)

[FLAT CREEK INTERCEPTOR]

A. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008028949. (Austin)

B. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008018095 (Allen)

C. Judgment recorded at Document No. 2017006550. (Baker)

D. Judgment of Court in Absence of Objection recorded at Document No. 2018032450. (Brown/McDowell)

E. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008022340. (Central Companies)

F. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008013362. (Central Tx Investors; (Bowden))

G. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008019338. (Centroplex Prop)

H. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008022339. (Cooper)

I. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008022338. (FM 3400 Trust; (Thompson))

J. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008019342. (Fred M)

K. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008032981. (Frey, Wasserman)

L. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009002918. (Guerrero)

M. Perpetual Easement recorded at Document No. 2010000525. (Harrison 1)

N. Perpetual Easement recorded at Document No. 2008019337. (Harrison 2)

- O. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008026263. (Hirsch 1)
- P. Perpetual Easement recorded at Document No. 2008026264. (Hirsch 2)
- Q. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009010369. (Jones)
- R. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008029640. (LeBlanc; (Rosa Smith))
- S. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008019341. (Lopez)
- T. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008019340. (McDowell)
- U. Judgment Nunc Pro Tunc recorded at Document No. 2014027579. (Obenoskey)
- V. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008019339. (Ranch Creek)
- W. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008018093. (Robinson 1)
- X. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008018094. (Robinson 2)
- Y. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009018285. (Robinson 3)
- Z. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008018096. (Rosenauer)
- AA. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008030516. (Ruiz)
- AB. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2008032980. (Stahl)
- AC. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010025320. (Tractor Supply)

[BULLHIDE CREEK INTERCEPTOR]

- A. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2013008862. (Abood)
- B. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2013001977. (Armstrong)
- C. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009020963. (Big Creek)
- D. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2011001907. (H Cross)
- E. Perpetual Easement recorded at Document No. 2010000183. (McLennan Cty)
- F. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010036977. (Smokey)
- G. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2012037854. (Sumner)
- H. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010029360. (Warren Bros)

[SANDY CREEK]

- A. Easement Agreement for Water Delivery System recorded at Document No. 2007029088, and amended by First Amendment to Easement Agreement for Water Delivery System as recorded in Document No. 2009010169.

[OTHER]

- A. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2015016030. (Cottonwood Creek Interceptor)
- B. Public Utility Easement recorded at Document No. 2017017780. (Herring/MLK Easement)
- C. Perpetual Easement to the City of Waco, Texas, f/b/o Waco Metropolitan Area Regional Sewerage System (with Temporary Construction Easement) recorded at Document No. 2010025320. (2010 Tractor Supply)
- D. Perpetual Easement to the City of Waco, Texas (with Temporary Construction Easement), recorded at Document No. 2008026202. (Lift Station)

Exhibit C-2

Form of Quitclaim Deed (Waco-Lorena Force Main)

QUITCLAIM DEED

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MCLENNAN §

THAT, the CITY OF BELLMEAD, the CITY OF HEWITT, the CITY OF LACY LAKEVIEW, the CITY OF ROBINSON, and the CITY OF WOODWAY, Texas home-rule municipal corporations, and the CITY OF LORENA, a Texas general law municipality, in their individual capacities, and acting collectively together with the CITY OF WACO as the parties comprising the WACO METROPOLITAN AREA REGIONAL SEWER SYSTEM (sometimes also known as WACO METROPOLITAN AREA REGIONAL SEWER SYSTEM FUND, WACO METROPOLITAN AREA REGIONAL SEWERAGE SYSTEM, or WMARSS) (individually and collectively, "**Grantor**"), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to it in hand paid by the CITY OF WACO, a municipal corporation located in McLennan County, Texas, and the CITY OF LORENA, a Texas general law municipality (collectively, "**Grantee**"), the receipt and sufficiency of which are hereby acknowledged by Grantor, has QUITCLAIMED unto Grantee all of Grantor's right, title, interest, claim, and demand in and to, and by these presents does QUITCLAIM the following (collectively, the "**Property**"): those certain tracts of real property and easements situated in McLennan County, Texas, and described in those documents listed in Exhibit A attached hereto and made a part hereof for all purposes, together with all and singular Grantor's right, title, interest, claim, and demand in and to the rights, privileges, hereditaments, and appurtenances pertaining to such real property, including any and all strips and gores, if any, between the property and any abutting properties, whether owned or claimed by deed, limitations, or otherwise, and whether located inside or outside the property, and any land lying in or under the bed of any creek, stream, or waterway or any highway, avenue, street, road, alley, easement or right-of-way, open or proposed, in, or across, abutting or adjacent to the property, together with all improvements, fixtures and personalty owned by Grantor located thereon and any right, title and interest of Grantor in and to adjacent streets, alleys and rights-of-way, together with Grantor's right, title and interest, if any, in and to property, real or personal, in which or in which it is later determined or discovered that Grantor has or purports to have an interest, whether direct, indirect or equitable, to the extent such property is used in connection with the WACO METROPOLITAN AREA REGIONAL SEWER SYSTEM.

TO HAVE AND TO HOLD the above released rights, titles, interests, claims, and demands to said Property, to Grantee and Grantee's legal representatives, successors and assigns forever. Neither Grantor nor Grantor's legal representatives, successors or assigns shall have, claim, or demand any right or title to the Property or any part of it.

Grantor represents and warrants to Grantee that Grantor has the requisite power and authority to enter into, execute and deliver this Deed and to consummate the transactions contemplated hereby. Except for the representations and warranties made in the immediately preceding sentence, (a)

Grantor hereby disclaims any warranty, representation, covenant, agreement, or guaranty, oral or written, expressed or implied or by operation of law, with respect to any matter affecting the Property, and Grantor shall have no liability to Grantee, and Grantee releases Grantor from any liability (including, but not limited to, contractual and/or statutory actions for contribution or indemnify), for, concerning, or regarding (i) the nature and condition of the Property, including, but not limited to the suitability thereof for any activity or use; (ii) any improvements or substances located thereon; or (iii) the compliance of the Property with any laws, rules, ordinances or regulations of any government or other body, and (b) BY ITS ACCEPTANCE OF THIS DEED AND IN CONSIDERATION OF THE CONVEYANCE BY GRANTOR HEREIN, GRANTEE ACKNOWLEDGES AND AGREES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE, AND EXPRESSLY DISCLAIMS ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR GUARANTIES, EXPRESSED OR "IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE MERCHANTABILITY, HABITABILITY, QUANTITY, QUALITY, OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR ITS SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. GRANTEE HEREBY ACCEPTS THE PROPERTY IN ITS PRESENT CONDITION ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS.

Notwithstanding anything to the contrary contained in this Quitclaim Deed, in the event that a Grantor has received any warranty of title with respect to the Property, then such Grantor does by this instrument transfer and assign to Grantee, to the extent transferable, such warranty of title to the extent (and only to the extent) it pertains to and covers the Grantor's interest in and to the Property.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY BLANK.]

EXECUTED on the dates set forth below, to be effective as of noon, October 1, 2019.

GRANTOR:
THE CITY OF BELLMEAD

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF BELLMEAD, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF HEWITT

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF HEWITT, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF LACY-LAKEVIEW

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF LACY-LAKEVIEW, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF LORENA

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNA §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF LORENA, a Texas general law municipality, on behalf of said municipality.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF ROBINSON

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF ROBINSON, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF WACO

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF WACO, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

GRANTOR:
THE CITY OF WOODWAY

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF WOODWAY, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

Accepted, acknowledged and agreed:

GRANTEE:
THE CITY OF WACO

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF WACO, a municipal corporation, on behalf of said corporation.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

Accepted, acknowledged and agreed:

GRANTEE:
THE CITY OF LORENA

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

THE STATE OF TEXAS §
 §
COUNTY OF MCLENNAN §

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, City Manager of THE CITY OF LORENA, a Texas general law municipality, on behalf of said municipality.

[NOTARY STAMP]

Notary for the State of: _____
My Commission Expires: _____

EXHIBIT A

PROPERTY DESCRIPTION

Property described in the following transfer documents recorded in the real property records of McLennan County, Texas:

[BULLHIDE CREEK INTERCEPTOR]

- A. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009023174. (Bostick)
- B. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010006467. (Davis Iron 1)
- C. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010006466. (Davis Iron 2)
- D. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010000844. (Simmons)
- E. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009033124. (Warren)

[WACO LORENA FORCE MAIN]

- A. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010006467. (Davis Iron 1)
- B. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010006466. (Davis Iron 2)
- C. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010009681. (Harmon)
- D. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2009032410. (Hatch)
- E. Perpetual Easement (with Temporary Construction Easement) recorded at Document No. 2010033550. (RKS)

Exhibit D

Form of Bill of Sale and Blanket Conveyance

BILL OF SALE AND BLANKET CONVEYANCE

This BILL OF SALE AND BLANKET CONVEYANCE (this "**Agreement**") is executed as of the dates set forth below, to be effective as of noon, October 1, 2019, by and among the CITY OF BELLMEAD, the CITY OF HEWITT, the CITY OF LACY LAKEVIEW, the CITY OF ROBINSON, and the CITY OF WOODWAY, Texas home-rule municipal corporations, and the CITY OF LORENA, a Texas general law municipality, in their individual capacities, and acting collectively together with the CITY OF WACO as the parties comprising the WACO METROPOLITAN AREA REGIONAL SEWER SYSTEM (sometimes also known as WACO METROPOLITAN AREA REGIONAL SEWER SYSTEM FUND, WACO METROPOLITAN AREA REGIONAL SEWERAGE SYSTEM, or WMARSS) (individually and collectively, "**Assignor**"), and the CITY OF WACO, a municipal corporation located in McLennan County, Texas ("**Assignee**").

WHEREAS, the parties comprising Assignor entered into that certain Waco Metropolitan Area Regional Sewer System ("WMARSS"): 2019 Agreement Terminating Existing Operation & Management Agreements and Conveying Assets to the City of Waco dated effective as of October 1, 2019 (the "**Transfer Agreement**") which provides for, among other things, the transfer and conveyance by Assignor to Assignee of Assignor's right, title and interest in certain real and personal property and other interests described in the Transfer Agreement, and all improvements located on such real property; and

WHEREAS, pursuant to the Transfer Agreement, Assignor has agreed, among other things, to assign all Assignor's right, title and interest, if any, in and to WMARSS Assets (as defined in the Transfer Agreement) upon the terms set forth herein.

NOW, THEREFORE, in consideration of the sum of Ten and no/100 Dollars (\$10.00), the covenants contained herein and in the Transfer Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. All terms in initial capital letters used herein and not otherwise defined have the meanings ascribed to such terms in the Transfer Agreement.
2. Assignor hereby quitclaims to Assignee, its successors and assigns, all Assignor's right, title and interest in and to the WMARSS Assets, excluding the WMARSS Assets conveyed to Assignee by quitclaim deed under the Transfer Agreement (collectively, the "**Transferred Property**").
3. The Transferred Property is conveyed and assigned on an "AS IS" basis, without warranty or representation of any kind from Assignor.
4. This Agreement may not be modified, changed or supplemented, nor may any obligations hereunder be waived, except by a written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. No waiver of any breach of any agreement or provision herein contained shall be deemed effective unless explicitly set forth in writing by the party so waiving and no such waiver

shall be deemed a waiver of any proceeding or succeeding breach thereof or any other agreement or provision herein contained.

5. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
6. This Agreement and the covenants and agreements herein contained shall survive the Closing.
7. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and their respective successors and assigns.
8. This Agreement may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterpart.
9. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

[Signatures continue on the following page]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the time, day and year first above written.

ASSIGNOR:
THE CITY OF BELLMEAD

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

ASSIGNOR:
THE CITY OF HEWITT

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

ASSIGNOR:
THE CITY OF LACY-LAKEVIEW

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

ASSIGNOR:
THE CITY OF LORENA

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

ASSIGNOR:
THE CITY OF ROBINSON

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

ASSIGNOR:
THE CITY OF WACO

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

ASSIGNOR:
THE CITY OF WOODWAY

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

ASSIGNEE:
THE CITY OF WACO

By: _____
Name: _____
Title: City Manager

ATTEST

City Secretary

Date Signed

Exhibit E

Form of Wholesale Wastewater Contract

WHOLESALE WASTEWATER CONTRACT

This Wholesale Wastewater Contract (the "Contract") is made and entered into this, the _____ day of _____, 2019, (the "Closing Date") by and between the City of Waco, Texas, a Texas home-rule municipality ("Waco" or "Owner"), and the _____, ("Customer"), with the terms to go into effect on the 1st day of October, 2019 (the "Effective Date").

WHEREAS, Customer has transferred its ownership interest in Waco Metropolitan Regional Sewer System ("WMARSS") facilities to Waco under separate agreement to simplify operations and maintenance administration, reduce regulatory liability, and capitalize on efficiencies available with centralized ownership of the WMARSS facilities; and,

WHEREAS, Waco and Customer desire to enter into a wholesale contractual relationship for purposes of Waco providing wastewater treatment service to Customer;

Waco and Customer, in consideration of the terms, covenants and conditions herein contained, hereby agree as follows:

1. Definitions

In addition to terms otherwise defined herein, when used in this Contract, the following terms, when capitalized, shall be defined as follows.

- 1.1 **Administrative Cost or Indirect Cost** – The costs to provide services to Waco Wastewater Treatment and Regional Collection Facilities by various City of Waco Departments, including, but not limited to, Water/Wastewater Utilities, Legal, and Engineering. The amount will be established and approved as part of the City's annual budget process in accordance with the Full Cost Allocation Plan.
- 1.2 **Act or "the Act"** - The Federal Water Pollution Control Act, also known as the Clean Water Act ("CWA"), as amended (33 U.S.C. 1251, et seq.).
- 1.3 **Approved Connection Points** - the Points of Entry identified in Exhibit "C", as it may be amended from time to time by the mutual agreement of the parties In Writing.
- 1.4 **Biochemical Oxygen Demand (BOD)** - The quantity of oxygen by weight, expressed in milligrams per liter (mg/l) utilized in the biochemical oxidation

Exhibit E - Page 1

of organic matter under standard conditions for five days at a temperature of 20 degrees Celsius.

- 1.5 Calibration** - Field verification of metering station flow measurement accuracy utilizing flow meter calibration and field measured velocity profile data.
- 1.6 Capital Improvement Expenses** – Means all acquisition, construction, reconstruction, rehabilitation, replacement and decommissioning costs as those terms are generally understood in standard accounting practice as applied to projects of the nature of the Waco Wastewater Treatment and Regional Collection Facilities determined by Waco to be capital improvements. The term shall include, but is not limited to the costs of obtaining all licenses and permits; costs of purchasing any equipment, property, rights in property, land, easements, and rights of way, including damages to land and property; engineering, inspections, administrative, auditing, legal expenses incurred in connection with planning, development, acquisition, construction, reconstruction or decommissioning of Waco Wastewater Treatment and Regional Collection Facilities; the cost of tools and equipment required for the operation and maintenance of Waco Wastewater Treatment and Regional Collection Facilities; costs of the same nature for any expansion, extension, enlargement, improvement, rehabilitation or replacement of Waco Wastewater Treatment and Regional Collection Facilities; legal and other expenses incurred in accomplishing the acquisition or construction of Waco Wastewater Treatment and Regional Collection Facilities. The term does not include Operation and Maintenance Expenses.
- 1.7 Categorical Pretreatment Standards** – The standards outlined in 40 CFR 403 and 40 CFR chapter I, subchapter N.
- 1.8 Composite Sample** - The sample resulting from the combination of individual Wastewater samples taken at selected intervals based on an increment of either flow or time.
- 1.9 Customer System or Customer's System** - The facilities of Customer used for Pretreatment, collection or transportation of Wastewater to the Point of Entry.
- 1.10 Debt Service Requirements** – Includes, without limitation, (i) the principal of, premium, if any, and interest when due on Waco Debt Obligations,

(ii) any payments required by the ordinance or other authorizing document for a Waco Debt Obligation to be paid into a debt service fund, debt service reserve fund or other contingency fund, (iii) the costs of any insurance for Waco Debt Obligations, (iv) amounts payable under any credit agreements relating to Waco Debt Obligations, and (v) any trustee or paying agent fees and expenses, and any other costs and expenses relating to the issuance, maintenance, and payment of Waco Debt Obligations.

- 1.11 **Director** - the City of Waco's Director of Utility Services or his/her designee.
- 1.12 **Domestic Accounts** - Those accounts under which Wastewater is being discharged that does not exceed the quality parameters outlined in Exhibit "B".
- 1.13 **Fiscal Year** - The twelve (12) month period beginning October 1 of each year.
- 1.14 **Full Cost Allocation Plan** - The Indirect Cost Study prepared by Waco (either internally or by contracted consultant) and used to calculate Indirect Costs attributable to City of Waco Departments, as may be amended and updated from time to time.
- 1.15 **In Writing** - means a written document signed by both parties to this Contract.
- 1.16 **Indirect Discharge** - The introduction of pollutants into the Publicly Owned Treatment Works from any nondomestic source regulated under section 307(b), (c), or (d) of the Act.
- 1.17 **Industrial User** - Any person or entity directly or indirectly discharging or causing the discharge of wastewater that includes industrial waste into the Internal Collection Facilities of a Customer that is then discharged into Waco facilities.
- 1.18 **Industrial Wastes** - Waste resulting from any process of industry, manufacturing, trade or business from the development of any natural resource, any mixture of waste with water or normal wastewater, or distinct from normal wastewater.

- 1.19 Infiltration** - Water that has migrated from the ground into a wastewater system.
- 1.20 Inflow** - Water other than sewage that enters a wastewater system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, Infiltration water.
- 1.21 Internal Collection Facilities** – The facilities utilized by each Customer to transport and deliver wastewater to Waco Wastewater Treatment and Regional Collection Facilities at a Point of Entry. Each Customer shall be responsible for the management, operation, and maintenance of its Internal Collection Facilities up to a Point of Entry.
- 1.22 Liquid Waste** - The water-borne solids, liquids, and gaseous substances derived from certain sources including, but not limited to, grease traps, septic tanks, chemical toilet waste, and sand trap waste.
- 1.23 Metering and Sampling Facility** - The meter station and all metering and telemetry equipment required to accurately measure or sample Wastewater flows of the Customer at the Point of Entry or other such locations as may be mutually agreed upon In Writing.
- 1.24 Non-domestic Account** - Those accounts under which wastewater is being discharged that exceeds the quality parameters outlined in Exhibit B.
- 1.25 Operations and Maintenance Expense** – All direct and indirect costs of operation, maintenance, repair, rehabilitation, replacement, and decommissioning of Waco Wastewater Treatment and Regional Collection Facilities determined by Waco to be operation and maintenance expenses, whether arising before or after the Effective Date, excluding depreciation and Capital Improvement Expenses, and includes but is not limited to:
- (a) Costs of maintaining any permits or licenses necessary to own, operate, and maintain Waco Wastewater Treatment and Regional Collection Facilities;

- (b) Costs of labor, materials, utilities, supervision, engineering, accounting, auditing, legal and professional services, insurance, personnel, data processing, and purchasing;
- (c) Costs of those routine or repetitive activities or recommended by the equipment or facility manufacturer or by Waco to maximize the service life of the equipment, sewer, vehicles, and facility (maintenance);
- (d) Costs of nonroutine/nonrepetitive activities required for operational continuity, safety, and performance generally resulting from failure or damage to, or to avert a failure or damage to, equipment, sewer, vehicle, or facility or some component thereof (repairs);
- (e) Cost of any other tools, supplies, inventory, services, and equipment, together with Administrative Costs or Indirect Costs not otherwise included in this definition, necessary for the proper operation and maintenance of Waco Wastewater Treatment and Regional Collection Facilities;
- (f) Any and all expenses incurred in connection with any litigation or administrative proceedings of any nature whatsoever concerning Waco Wastewater Treatment and Regional Collection Facilities to any person, entity, or party;
- (g) Payments made in satisfaction of judgements resulting from settlement of claims not covered by insurance maintained by Waco arising in connection with the ownership, operation, or maintenance of the Waco Wastewater Treatment and Regional Collection Facilities;
- (h) Costs for Waco Wastewater Treatment and Regional Collection Facilities construction projects that have not begun as of the Closing Date, but will become part of the "Capital Rate" determination upon the Effective Date; and,
- (i) All costs and expenses of all liabilities or claims made against Waco or Customer, whether known or unknown as of the Closing Date, and those which may arise or become known after the Effective Date.

- 1.26 Point of Entry** - Any points at which the Customer's wastewater enters the Waco System, by whatever means, whether metered or unmetered.
- 1.27 Pretreatment** – Shall be defined as set out in 40 CFR Part 403.
- 1.28 Pretreatment Requirements** - Any substantive or procedural requirement related to Pretreatment imposed on an Industrial User, other than a Pretreatment Standard.
- 1.29 Pretreatment Standard or Standards** - Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.
- 1.30 Publicly Owned Treatment Works (POTW)** –A treatment works as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by the State or a municipality. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or Industrial Wastes and any conveyances which convey wastewater to a treatment plant. The term also means the municipal entity having jurisdiction over the Industrial Users and responsibility for the operation and maintenance of the treatment works.
- 1.31 Significant Industrial User ("SIU")** - Users of the Waco Wastewater Treatment and Regional Collection Facilities that are in the following categories: (1) All Industrial Users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N, and (2) Any other Industrial User that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment plant; or is designated as such by the Control Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)).
- 1.32 Standard Methods** - Those testing or analysis procedures as prescribed in the then current edition of "Standard Methods for Examination of Water and Wastewater," published by the American Public Health Association or the U.S. Environmental Protection Agency Manual of Methodologies for the Examination of Water and Wastewaters, or as will otherwise comply with procedures specified in state and federal discharge permits held by Waco.

- 1.33 Strength** - The concentration of dissolved and suspended matter in sewage, as indicated by Biochemical Oxygen Demand, Suspended Solids, Total Kjeldahl Nitrogen, or Total Phosphorus.
- 1.34 Suspended Solids** – The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.
- 1.35 Waco Debt Obligations** – Bonds, notes or other obligations or agreements issued or entered into by Waco, including any bonds, notes or other obligations or agreements issued to refund or refinance the foregoing.
- 1.36 Unauthorized Discharge** – Any discharge of wastewater into or adjacent to waters in the state at any location not permitted.
- 1.37 Waco Expense** - Expenses incurred by Waco related to the Waco Wastewater Treatment and Regional Collection Facilities
- 1.38 Waco System or Waco's System** - Waco's wastewater collection and treatment system, which is a Publicly Owned Treatment Works under Section 307 of the Act. For purposes of this Contract, the Waco System includes all wastewater treatment plants.
- 1.39 Waco Wastewater Treatment and Regional Collection Facilities** – Includes all facilities previously known as the Waco Metropolitan Area Regional Sewerage System (“WMARSS”), and any future improvements or expansions thereto, as well as any new facilities constructed to treat and transmit wastewater.
- 1.40 Wastewater** - Liquid and water-carried Industrial Wastes, and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the Publicly Owned Treatment Works.
- 1.41 2018 WMARSS O&M Interlocal Agreement** - the Waco Metropolitan Area Regional Sewer System (“WMARSS”): 2018 Agreement for Operation & Management of Facilities by and between Bellmead, Hewitt, Lacy-Lakeview, Robinson, Waco, Woodway, and Lorena executed by each of the Cities between February 6, 2018, and June 13, 2018

2. Connection to the Waco System

2.1 Waco hereby grants to Customer, upon compliance with the terms and conditions contained herein, permission to connect Customer's System to the Waco System for the term of this Contract provided that Customer is not in material breach of any provision of this Contract. If the Effective Date is not the same date as the Closing Date, then the 2018 WMARSS O&M Interlocal Agreement will remain in effect until the Effective Date of this Contract.

2.2 Waco commits to provide Customer with capacity in the Waco Wastewater Treatment and Regional Collection Facilities; initial reservations for access to capacities are listed in Exhibit "A." Access to a specific amount of capacity is reserved for Customer at the Central Wastewater Treatment Plant ("Central Plant"), and access to a separate specific amount of capacity is reserved for Customer at Bull Hide Wastewater Treatment Plant ("Bull Hide Plant"). (Together, the Central Plant and Bull Hide Plant may be referred to as the "Plants"; separately, each may be referred to as "Plant.") This commitment shall continue until such time as Customer stops conveying Wastewater to the Waco Wastewater Treatment Plant and Regional Collection Facilities pursuant to this Contract. Leases, or other forms of agreements, to allow a Customer to use capacity from another Customer, will not be allowed.

2.3 Waco agrees to accept all "admissible waste," as defined in Exhibit "B", delivered by Customer in accordance with this Contract at the Point(s) of Entry designated on Exhibit "C", attached hereto and incorporated herein, and at such additional points as may later be mutually agreed upon by the parties In Writing.

2.4 The cost of all delivery facilities necessary to convey wastewater to Approved Connection Points, whether shown on Exhibit "C" or mutually agreed upon at a later date by the parties, together with the cost of connection of the Customer System to the Waco System, shall be borne by Customer. In the event Waco requests Customer to increase the size of any such delivery facility, the difference in the cost of the delivery facilities that would be necessary to convey Wastewater to the designated Points of Entry, and the cost of the delivery facilities as requested by Waco, shall be at Waco's expense.

2.5 Unless mutually agreed to In Writing by Waco and Customer, Customer shall be responsible for all costs for the design, contracting, construction, and financing of Customer's System, including all facilities necessary to deliver Wastewater to the Point(s) of Entry ("Delivery Facilities") and the cost and acquisition of any necessary rights-of-way and easements to and from such facilities. All designs, materials, and specifications shall, at a minimum, conform to Waco's requirements. Plans and specifications for any Delivery Facilities which physically connects to the Waco System shall be submitted to the Director

for written approval. Such approval shall not be unreasonably withheld. No construction shall begin until such approval has been given. Customer agrees that Waco has the right to make periodic inspections during the construction phase of the Delivery Facilities. Final acceptance of such Delivery Facilities is subject to the inspection and written approval of the Director.

2.6 After the date of this Contract, Customer agrees to provide 90 (ninety) days written notice to Waco of its intent to provide service to any new single user or new development whose need for wastewater service would exceed 100,000 gallons per day.

3. Maintenance of Customer System

3.1 Customer agrees to maintain Customer's System in good condition and to make repairs in a timely manner. Waco shall not have any responsibility or liability for the operation of the Customer's System, it being Customer's sole responsibility to provide adequate facilities to deliver its wastewater to the Waco System.

4. Treatment Capacity Expansion

4.1 TPDES Permit No. 11071-001 issued for the Waco Wastewater Treatment and Regional Collection Facilities states that whenever the flow measurements for the facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrade of the domestic wastewater treatment and/or collection facilities and whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from TCEQ to commence construction of the necessary additional treatment and/or collection facilities. This 75%/90% Rule (the "Rule") is not triggered by an individual Customer using 75% or 90% of its own specific capacity in one of the Plants, instead the Rule is triggered by the overall flows into a given Plant.

Acquiring additional capacity requires the expansion of existing facilities and/or the construction of new facilities, including but not limited to, treatment facilities (or satellite treatment plants) and associated lift stations and interceptors as well as storage facilities for peak flows that alleviate the need for treatment facilities. Costs to acquire these facilities include the design and engineering services and land acquisition, construction costs, and (often) the services of a program manager. This expansion and/or construction does not include the expansion or construction of Customer's Internal Collection Facilities.

Any time that Customer's expansion of internal collection facilities will result in increased intake at any Waco Wastewater Treatment and Regional Collection Facilities, Customer must provide notice of its system change to Waco to ensure that increased intake will not damage the affected Waco Wastewater Treatment and Regional Collection

Facilities. Said notification must include an engineering study on the effects to the Waco Wastewater Treatment and Regional Collection Facilities.

4.2 Waco shall notify Customer when Customer's average daily flows into a Plant reach or exceed 75% of Customer's capacity reserved in said Plant, in order to serve notice to said Customer that they are near capacity at said Plant. Waco shall also notify Customer when customer average daily flows in three consecutive months reach or exceed 90% of customer's capacity reserved in a Plant. If Customer has capacity in both Plants, Customer may propose to Waco that Customer's flows be adjusted between the two Plants, as long as Customer's flows stay within Customer's applicable contracted capacity in each Plant. If Waco approves of the Customer's proposal, Waco and Customer will work together to adjust Customer's flows into each Plant.

Upon notice to Customer that they are at 90% of their then current capacity in a Plant, Customer will be required to request expanded capacity, which at a minimum, provides sufficient capacity in total (original capacity plus expanded capacity) so that existing flows are below the 75% threshold. Requested capacity, and payment for the requested capacity, will be effective in the subsequent rate year.

4.3 If Customer flows, at any time, exceed its current capacity in a given Plant, but the total capacity of said Plant is not at or above the threshold requiring an immediate expansion, Customer shall be billed an "Interim Capacity Rate" for the additional excess capacity above its reserved capacity. The charge for excess capacity will be on a per MGD basis and charged for the billing period in which the excess capacity is used. Upon completion of the applicable Plant's expansion, Customer's Interim Capacity Expansion Rate shall expire and be replaced with the Capacity Expansion Rate outlined in Section 8.1 of this Contract.

4.4 At such time as additional capacity is needed as outlined in section 4.2 of this Contract, Waco will calculate the total amount of expansion necessary and the total cost for each Customer that has capacity in the affected Plant. Customer will decide how much additional capacity it desires and inform Waco of its desired capacity in the expansion, so long as said capacity requested is equal to or greater than that calculated by Waco and sufficient to bring Customer below the 75% threshold. Customer's purchase of additional capacity will be charged to the Customer via the Capacity Expansion Rate as outlined in Section 7.1 of this Contract.

If a Customer elects not to participate in an expansion of a Plant and is not required to obtain additional capacity by applying the 75% / 90% standard as applied to that Customer's capacity in the applicable Plant (calculated by Customer's daily average and annual average flows for three consecutive months), then:

- (1) Customer will not be required to share in acquisition and construction costs associated with the expansion and will not be charged a Capacity Expansion Rate; and
- (2) Customer's capacity shall remain at the capacity, stated in MGD, it had access to prior to the expansion; and
- (3) Consequently, Customer's overall percentage of reserved capacity in Waco Wastewater Treatment and Regional Collection Facilities will be reduced following the expansion.

5. Metering and Sampling Facilities

5.1 On the Effective Date of this Contract, Customer shall transfer ownership of all existing Metering and Sampling Facilities to Waco, and Waco shall have the exclusive right to enter, use, operate, and maintain Metering and Sampling Facilities and Waco shall become solely responsible for the operational and maintenance responsibilities associated with these facilities. Should additional Points of Entry be added by Customer thereafter to deliver Customer's wastewater to the Waco System, Customer shall construct Metering and Sampling Facilities for each such Point of Entry that are designed and engineered in a manner satisfactory to Waco, and shall transfer ownership of such newly constructed facilities at no cost to Waco, together with all necessary access easements and rights-of-way to Waco in a form satisfactory to Waco, together with the authority to operate and maintain the facilities as specified in Section 5.3. Customer will always provide Waco a route of ingress and egress to Metering and Sampling Facilities, which shall be accessible to Waco without notice. Waco shall have the discretion to construct improvements, expansions, and replacements to these facilities at the timing of Waco's needs, provided, however, that Waco shall permit Customer to review proposed construction, expansion, and replacement plans. Customer will grant and provide to Waco such permits or easements as are necessary for the continuous operation and maintenance of all Metering and Sampling Facilities. All such costs incurred by Waco for operation, maintenance, construction, expansion, and replacement of Metering and Sampling Facilities shall be considered Operations and Maintenance Expenses associated with the Waco Wastewater Treatment and Regional Collection Facilities.

5.2 Unless otherwise agreed to by both parties In Writing, Waco shall have the option to construct Customer Metering and Sampling Facilities not currently in existence. All construction costs, including, but not limited to, site acquisition and preparation, design and engineering, construction and equipment for such facilities, together with the costs of necessary easements and rights-of-way, shall be costs paid by the Customer, including any and all necessary modifications to accommodate a complete initial installation satisfactory to Waco. If Customer constructs new Metering and Sampling Facilities, Customer shall

transfer ownership of the newly constructed facilities, together with all necessary access easements and rights-of-way to said Facilities and the authority to operate and maintain said Facilities as specified in Section 5.3, to Waco at no cost to Waco and in a form satisfactory to Waco. Thereafter, Waco shall operate and maintain the Facilities as an Operations and Maintenance Expense associated with the Waco Wastewater Treatment and Regional Collection Facilities.

5.3 Expenses incurred by Waco for the operation and maintenance of Metering and Sampling Facilities shall be Operations and Maintenance Expense associated with the Waco Wastewater Treatment and Regional Collection Facilities and shall include, without limitation, the following:

- (a) Cost of electricity and batteries at the facility;
- (b) Cost of the initial installation of the telemetry service at the facility and to the control center and cost of monthly lease charge for connectivity;
- (c) Cost of calibration and field measured Velocity Profiles;
- (d) Cost of parts, materials and supplies required for repairs, calibrations and upgrading of the facilities;
- (e) Labor cost plus fringe benefits and indirect costs for repairs, calibrations and upgrading of the facilities;
- (f) Maintenance costs of ingress and egress and meter facility site; and,
- (g) Administrative Costs and Indirect Costs, including but not limited to record and book keeping, cost of service studies and costs associated with ratemaking.

5.4 Replacement of facilities described in this section or equipment therein occasioned as a result of obsolescence due to age, excessive maintenance, growth or other reasons as determined by the Director shall be considered an Operations and Maintenance Expense. Any replacement facility or equipment therein shall comply with Waco's standards and specifications.

6. Rights-of-Way

6.1 Customer shall grant, without charge to Waco, such easements and rights-of-way along public highways or other property owned by Customer, to the extent lawful and

as reasonably necessary, to construct or maintain mains or facilities within the corporate limits of Customer to provide wastewater collection to Customer and to other areas; provided, however, that nothing herein shall impose upon Customer an obligation to acquire title or easement rights with regard to any property. Whenever by reason of reconstruction, widening or straightening of streets, replacement of water or sewer lines, traffic signals, traffic signs and markings or any other public works project it shall be deemed necessary by Customer to remove, alter change, adapt, or conform the underground or overhead facilities of Waco located in rights-of-way or other property owned by Customer, such alterations shall be made by Waco at Waco's expense within thirty days from the issuance of written notice to Waco to make the alterations unless a different schedule has been approved by Customer. All work done by or on behalf of Waco under this Section of the Contract will be performed in accordance with specifications equal to those applying to work of a similar nature performed within Waco, but neither party hereto will be required to restore the other's property to a condition exceeding its original condition, unless otherwise mutually agreed In Writing. Waco and Customer agree to coordinate the location of the mains and facilities in the other's easements and rights-of-way in order to prevent conflicts insofar as reasonably practicable.

7. Metering and Sampling

7.1 All flow discharged into the Waco System by Customer shall be metered, except as provided in below Section 7.2. Should both parties agree In Writing that metering is not possible, the agreed upon method for determining the discharge volume for such area(s) shall be deemed to include an adjustment for Infiltration and Inflow.

7.2 If, in the judgment of the Director, the Wastewater generated within the retail service area producing Wastewater discharged to Waco and applicable to Customer cannot be accurately measured by an approved metering station, then the charge for sanitary sewer service will be based on an alternative method as agreed to, In Writing, by the parties. Specific to water usage information that may be utilized within an alternative methodology, Waco shall have the right to audit Customer's water usage records and Customer shall produce them to the Waco within ten (10) business days of Waco's written request.

7.3 Customer shall have access to the Metering and Sampling Facilities at all reasonable times as coordinated with the City of Waco; provided, however, that any reading, calibration or adjustment to such metering equipment shall be done by employees or agents of Waco. Waco shall notify the Customer at least 72 hours in advance of the date and time for any reading, calibration or adjustment, and Customer may be present and observe, if so desired.

7.4 All readings of meters will be entered into data collection systems maintained by Waco. Customer shall have access to such records during reasonable business hours and shall be furnished with monthly totalizer readings for each Metering and Sampling Facility at a Point of Entry. Customer, at Customer's expense, may plug into Waco's SCADA system in order to monitor's Customer's System; Customer will pay for its SCADA signals while Waco will pay for Waco's SCADA signals.

7.5 Waco shall calibrate and service the meters no less than once each six months (that is once every 180 days). Copies of the results of the six-month calibration, velocity profiles, and all related information shall be provided to Customer on request.

7.6 After a calibration is completed, if it is determined that a meter is under-metering or over-metering wastewater flow by more than 5%, the registration of the flow as determined by the meter shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable; or, if such time is not ascertainable, then for a period extending back one-half of the time elapsed since the date of the last calibration, but in no event further back than a period of twelve months.

7.7 If any meter used to determine volume from Customer is out of service or out of repair so that the amount of wastewater metered cannot be ascertained or computed from the reading thereof, the wastewater delivered through the period such meter is out of service or out of repair shall be the average use of the last twelve months plus three percent, divided by three-hundred and sixty-five, and the result multiplied by the number of days the meter is out of service or out of repair.

7.8 Waco shall periodically determine the quality of the Wastewater at the Metering and Sampling Facilities or other agreed upon sampling points for the purposes of billing for the Strength of the Wastewater. The sampling and testing shall occur on a random basis once per month specific to wastewater strength, and four (4) times per year specific to the local limits identified in Exhibit D. To determine the quality of the Wastewater, Waco shall collect 24-hour composite samples where feasible. If, at the request of Customer or at the request of the Director, more extensive monitoring is desired, such additional monitoring shall be paid for by the party making the request and shall be done in compliance with this Section. If Customer requests such additional monitoring, Waco shall invoice Customer and payment shall be made within thirty (30) days after receipt of invoice. Waco shall analyze the samples collected in accordance with Standard Methods and will provide analysis reports to the Customer, if requested.

7.9 If in the opinion of the Director, compliance monitoring is required, the Director may order that additional monitoring be performed with or without prior notice to Customer. Compliance monitoring is to be in addition to the periodic sampling set forth

in Section 7.8. All information obtained as a result of such compliance monitoring shall be provided to the Customer upon request. Waco will provide notice of such compliance monitoring to Customer within a reasonable time thereafter.

7.10 Costs incurred by Waco under this section will be considered to be an Operations and Maintenance Expense.

8. Rates and Charges

8.1 Wholesale wastewater rates established hereunder will be determined based upon an annual cost-of-service analysis using the methodologies and principals generally accepted within the industry, as applicable. The cost of such analysis will be considered an Operations and Maintenance Expense. Rates to be charged under this Contract will consist of the following:

- (a) An Operations and Maintenance Rate ("O&M Rate") to recover Operation and Maintenance Expense as defined in Section 1.25 of this Contract. The following general terms and conditions will apply to the O&M Rate:
 - i. The O&M Rate will be paid per 1,000 gallons based on actual metered flow (or the flows as laid out in Section 6.2) entering the Waco Wastewater Treatment and Regional Collection Facilities. Waco will base the fee on actual sewage flows from the prior twelve-month period ending on April 30th.
 - ii. The O&M Rate will be the same for all customers for Wastewater treatment service, including Waco.
 - iii. The O&M Rate will include all Waco Expenses associated with the Waco Wastewater Treatment and Regional Collection Facilities which are Operations and Maintenance Expenses
 - iv. Customer specifically agrees that Operations and Maintenance Expenses will include, but not be limited to, expenses related to the City of Waco's Fats, Oils and Greases (FOG) Program. In order for Waco employees to perform their duties under the FOG Program, Customer shall first have an ordinance requiring cleaning and maintenance of any facility in Customer's jurisdiction that generates fats, oils, or greases as a result of food manufacturing, processing, or preparation, or food service. Said ordinance shall allow for Waco to (1) provide monitoring and inspections of, and (2) have right of entry into, said facilities within Customer's jurisdiction. Customer is responsible for any enforcement actions concerning any violation found during Waco's inspection(s). Customer's failure to adopt the

required ordinance will not exclude Customer from paying expenses associated with the FOG Program.

- v. The O&M Rate will exclude principal and interest payments associated with outstanding debt maintained by the City of Waco at the time of closing.
- vi. Revenue from the sale of reclaimed or reuse water deriving from a contract executed prior to this Contract (and as renewed) will not be included as an offsetting revenue in the calculation of the O&M Rate. Said revenues derived from contracts executed prior to the Effective Date of this Contract shall be divided between the Cities of Bellmead, Hewitt, Lacy Lakeview, Robinson, Waco, and Woodway based on the ratio of each City's flows into the Waco Wastewater Treatment and Regional Collection System to the sum of all flows from those six cities. This ratio will be calculated annually at the same time as the O&M Rate is calculated and will remain in effect for a twelve (12) month period. Revenues from the sale of reclaimed or reuse water derived from contracts executed after the Effective Date of this Contract will be included as an offsetting revenue in the calculation of the O&M Rate.
- vii. The O&M Rate will be based on the Waco's adopted Fiscal Year budget and will include Administrative Costs, Indirect Costs and any required monies to maintain reserves in accordance with the financial policies adopted by the Waco City Council. The budgeted values will be determined no later than May 31st of every year and will be presented and discussed with the Wholesale Wastewater Advisory Committee.

(b) A Capital Rate (the "Capital Rate") to recover the cost of cash funded outlays by Waco or the Debt Service Requirements associated with Waco Debt Obligations issued specifically to fund Capital Improvement Expenses, as defined in Section 1.6 of this Contract, for the improvement, repair or replacement of Waco Wastewater Treatment and Regional Collection Facilities, which do not add to the Wastewater treatment capacity of such facilities. The following general terms and conditions will apply to the Capital Rate:

- i. The Capital Rate will only include cash funded outlays made by Waco or Debt Service Requirements associated with Waco Debt Obligations issued to fund Capital Improvement Expenses for the improvement, repair or replacement of Waco Wastewater Treatment and Regional Collection Facilities in existence on the date such Waco Debt Obligations are issued, but which do not expand or add to the capacity of such facilities. The Capital Rate shall also include capital projects

which were under design or construction between the Closing Date and Effective Date of this Contract.

- ii. The Capital Rate will be paid by customers based on their proportionate share of treatment capacity in the Waco Wastewater Treatment and Regional Collection Facilities as of the date of such cash funded outlay or issuance of such Waco Debt Obligations, and will be paid in such amounts and at such times as may be agreed to by Waco and the Customer In Writing at the time of such cash funded outlay or issuance of Waco Debt Obligations.
- iii. The Capital Rate will specifically exclude any debt issued and expended by the City of Waco prior to contract execution specific to the Waco Wastewater Treatment and Regional Collection Facilities. The Capital Rate may include debt issued by Waco before the effective date of the contract, but expended after contract execution.

(c) A Capacity Expansion Rate (the "Capacity Expansion Rate") to recover the cost of cash funded outlays by Waco or Debt Service Requirements associated with Waco Debt Obligations issued specifically for Capital Improvement Expenses as defined in Section 1.6 of this Contract for the development or expansion of new or expanded treatment or transmission facilities that will result in additional capacity in the Waco Wastewater Treatment and Regional Collection Facilities. The following general terms and conditions will apply to the Capacity Expansion Rate:

- i. The Capacity Expansion Rate will only include cash funded outlays and Debt Service Requirements on Waco Debt Obligations issued to fund Capital Improvement Expenses associated with the development of new or expanded transmission or treatment facilities that will result in additional capacity.
- ii. The Capacity Expansion Rate will be paid by customers based on their proportionate share of new treatment or transmission capacity as may be subscribed to and will be paid in such amounts and at such times as may be agreed to by Waco and the Customer In Writing at the time of such cash funded outlay or issuance of Waco Debt Obligations.

(d) An Interim Capacity Expansion Rate to reimburse Waco for the use by Customer of excess capacity in the Waco Wastewater Treatment and Regional Collection Facilities when a Customer exceeds its capacity subscription, but an immediate plant expansion is not required as outlined in Section 4.3. The following general terms and conditions will apply to the Interim Capacity Expansion Rate:

- i. The Interim Capacity Expansion Rate, stated in MGD, will be based upon Waco's original capacity investment costs divided by Waco's previous annual flows and will be determined on an annual basis.
- ii. The Interim Capacity Expansion Rate will be charged monthly based on the excess capacity of Waco (in MGD) utilized by the Customer.
- iii. Revenues from the Interim Capacity Expansion Rate will be for the sole benefit of Waco and will not be used to offset any costs within the calculation of rates to customers.
- iv. At such time as a Customer's capacity in a plant is increased in accordance with the terms of this Contract, then Customer's Interim Capacity Expansion Rate will expire and be replaced with the Capacity Expansion Rate outlined in this Contract.

(e) Excess Strength Surcharge to recover the cost of Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), Total Phosphorus (TP), and Total Kjeldahl Nitrogen (TKN) exceeding the levels defined in Exhibit D of this Contract. The following general terms and conditions will apply to the Excess Strength Surcharge:

- i. The excess charge will be calculated each month based upon the City's then applicable wastewater surcharge rates using the formula outlined in Exhibit E.
- ii. The surcharge will be assessed the entire month.

8.2 Waco and Customer recognize that the price the Customer is required to pay for Wastewater treatment services under this Contract is directly related to Waco's obligations to pay the Debt Service Requirements on Waco Debt Obligations issued for the purpose of providing its Wastewater treatment and transmission system and Waco's obligations as a public utility to operate and maintain such system in accordance with appropriate regulatory requirements and good business management practices. Consequently, the obligations of the Customer to pay for Wastewater treatment services pursuant to the provisions of this Contract shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counterclaim the Customer might otherwise have against Waco and Customer will not suspend or discontinue such payment or [(except in accordance with Section 20)] terminate this Contract for any cause whatsoever. This Section 8.2 shall not be construed to release Waco from the performance of any of its agreements contained herein or, except to the extent provided in this Section 8.2 permit or restrict the Customer from asserting any rights it may have against Waco.

8.3 The initial rates for this Contract shall be those adopted by the Waco City Council on or before September 30, 2019, with an effective date on or after October 1,

2019. Customer will receive notice of the initial rates within 10 business days of the rates being established by the Waco City Council.

The types of rates are listed below (as a summary of the paragraphs above):

Operations and Maintenance Rate:	at a <i>per 1,000 gallons</i> rate
Capital Rate:	at a <i>per MGD</i> rate
Capacity Expansion Rate (or Interim	
Capacity Expansion Rate:	at a <i>per MGD</i> rate
Excess Strength Surcharges:	<i>per month based on excess strengths</i>

Any challenge to a rate established by the Waco City Council must be brought within ninety (90) days of its adoption.

8.4 Each month during the term of this Contract, Waco shall prepare and deliver to Customer a billing statement showing the Customer's total flow, Customer's Contract Capacity, O&M Rate and resulting charges, Capital Rate and resulting charges, Interim and or Capacity Expansion Rate and charges, and Excess Strength Surcharge Fees, as each may be applicable to customer.

8.5 Customer shall make payment by the thirtieth (30th) day after the date the Customer receives an invoice from Waco. Payment shall be considered late if not received by Waco by the 30th day after delivery of said bill, unless a protest or dispute is filed as provided in Section 8.6.

8.6 If Customer has a protest or dispute concerning a statement, Customer shall notify Waco In Writing within twenty-one (21) days of delivery of said statement to Customer; notice shall be sent by Customer in accordance with Section 15 of this Contract. Customer shall pay the portion of the statement that is not being disputed or protested. Upon written notification from Customer, the portion of the statement under dispute or protest (provided the dispute or protest is made in good faith and is not unreasonable) will be set aside until resolved.

(1) Waco and Customer will negotiate in good faith to resolve the dispute. Any dispute that is not so resolved will be submitted to non-binding mediation.

(2) If the dispute is resolved in favor of Waco, then Waco is entitled to receive interest on the unpaid balance of the invoice submitted by Waco beginning on the thirty-first (31st) date after the payment was due. If the dispute is resolved in favor of the Customer, then Waco shall submit a corrected invoice that must be paid within thirty (30) days of its receipt by the Customer. In either case, interest will

accrue at the rate in effect on September 1 of the Fiscal Year in which the payment becomes overdue; said rate is equal to the sum of (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding Fiscal Year that does not fall on a Saturday or Sunday.

(3) This section is subject to any future amendments to the Texas Government Code, Section 2251 (Texas Prompt Payment Act)

8.7 Waco and Customer agree that services obtained pursuant to this Contract are essential and necessary to the operation of Customer's waterworks and wastewater facilities and that all payments made by each Customer hereunder shall constitute reasonable and necessary operating expenses of Customer's waterworks and wastewater systems, including for the purposes of the provisions of any and all ordinances of Customer authorizing the issuance of any revenue bond issues of Customer which are payable from its waterworks and wastewater systems.

8.8 Customer agrees, throughout the term of this Contract, to fix and collect such rates and charges for wastewater service to be supplied as will produce revenues in an amount equal to at least (i) all of operation and maintenance expenses of such Customer's System, including specifically its payments under this Contract; and (ii) all other amounts as required by law and the provisions of the ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding, including the amounts required to pay all principal of and interest on such bonds and other obligations.

8.9 The parties agree that the rates initially established under this Contract by Waco and the policies defined in this Contract are just and reasonable, and do not adversely affect the public interest. Notwithstanding any provision to the contrary, Customer does not waive the right to file and pursue an appeal of any increase in rates proposed or adopted by Waco that is not in conformance with this Contract.

8.10 To the extent that any mediation proceeding or any legal or administrative proceeding is hereafter instituted by Waco or by Customer or any other wholesale wastewater customer of Waco, which proceeding in any way relates to the terms, the rates, or the methodology or rate model used in performing the Cost of Service Study to establish rates related to wastewater service provided by Waco under this Contract, Customer and Waco agree that the reasonable expenses incurred by Waco in participating in such proceedings shall be deemed to be incurred for the benefit of, and are solely attributable to, the Wholesale Customer Class of Waco and are not incurred for the benefit of, or attributable to, Waco retail customers. Accordingly, all such reasonable expenses shall be billed to Customer, except to the extent that a regulatory authority finds that the rate case expenses incurred by Waco were not reasonable and necessary.

9. Industrial Connection and Monitoring

9.1 Customer agrees that it will at all times comply with the Pre-treatment program outlined in Exhibit "B".

9.2 Should Waco determine that amendments are needed to Exhibit "B", Waco will provide a draft of such amendments to the Wholesale Wastewater Advisory Committee for review and discussion. Following consultation with the Wholesale Wastewater Advisory Committee, Waco will provide a final version of the amended Exhibit "B" reflecting its consideration of the Committee's edits and comments. The final version of the amended Exhibit "B" will automatically become effective thirty (30) days following the presentation thereof to the Wholesale Wastewater Advisory Committee.

10. Infiltration and Inflow

10.1 Customer agrees that it has an obligation to prevent Infiltration and Inflow into its Customer's System from entering the Waco System. Customer further agrees that all sewer connections within its jurisdiction, which ultimately enter into the Waco System, will be constructed in accordance with specifications and standards at least equal to those of the City of Waco technical specifications and construction standards. Further, Customer covenants and agrees to maintain strict supervision and maintenance of Customer's System to prevent connections through which surface drainage can enter Customer's System, in order to prevent such drainage from ultimately being deposited into the Waco System. Customer shall not make, nor shall it permit to be made, any connection which will contribute storm water run-off from rainwater spouts, rainwater areas, streets, gutter drain, or other source into its sanitary sewer system.

11. Sludge Disposal

11.1 Customer recognizes the importance of processing and disposing of sludge in a timely and proper manner. Customer will cooperate with Waco in any environmentally sound sludge processing and disposal program meeting federal and state standards within the area served by Customer.

12. Wastehaulers

12.1 Customer shall not introduce or permit to be introduced, and shall prohibit the introduction of, Liquid Waste into the Customer System by Liquid Waste haulers, either directly or indirectly.

13. Reports and Records

13.1 If requested by the Director or Customer, the other party shall provide the following data on a quarterly basis:

(A) Actual number of customer accounts discharging directly or indirectly into the Waco System or Customer System within its service area;

(B) Classification of Domestic Accounts and Non-domestic Accounts within its service area by number and percentage of accounts discharging directly or indirectly into the Waco System or Customer System within its service area; and,

(C) Additional data which may assist Waco or Customer in developing methodology for cost-of-service studies, planning studies for analyzing federal grants, and system access fees; provided, however, that neither party shall request data that will require either party to incur unreasonable expenses in providing such data or require the production of confidential information.

14. Notices

14.1 Any notice, communication, request, reply or advice herein provided or permitted to be given, made or accepted by either party to the other party must be In Writing to:

City of Waco: Director of Waco Water Utility Services
City of Waco
200 Colcord Avenue
Waco, Texas 76707

Customer:

14.2 The parties hereto shall indicate In Writing any change that may occur in such respective addresses from time to time.

15. Inspection and Audit

15.1 Complete records and accounts shall be maintained by each party hereto for a minimum period of five years. Each party shall at all times, upon notice, have the right at reasonable times to examine and inspect records and accounts during normal business hours; and further, if required by any law, rule or regulation, make the records and accounts available to federal and state auditors.

16. Consent

16.1 Whenever, under the terms of this Contract, Waco is permitted to give its written consent or approval, Waco, in its discretion, may give or may refuse such written consent or approval and, if given, may restrict, limit or condition such consent or approval in any manner it shall deem advisable.

17. Waiver, Remedy, Severability

17.1 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

17.2 This Contract shall be governed by the laws and Constitution of the State of Texas. Venue for any action shall be in McLennan County, Texas.

17.3 It is agreed that, in the event any term or provision of this Contract is held to be invalid by any court of competent jurisdiction, the invalidity of such term or provision shall in no way affect any other term or provision contained herein; further, this Contract shall then continue as if such invalid term or provision had not been contained herein.

18. Ownership and Liability

18.1 No provision of this Contract shall be construed to create any type of joint or equity ownership of any property, any partnership or joint venture, nor shall same create any other rights or liabilities other than as specifically created herein, and Customer payments (whether past, present, or future) will not be construed as granting Customer partial ownership of, pre-paid capacity in, or equity in the Waco System.

18.2 Liability for damages arising out of the transportation, delivery, reception, treatment, and disposal of all Wastewater discharged into the Waco System shall remain with the Customer, together with title and ownership thereto, until such wastewater passes through the Point of Entry to the Waco System, at which time title, ownership and liability for such damage shall pass to Waco, save and except that title to any prohibited discharge and any liability therefor shall not pass to Waco. **Further, to the extent allowed by law,**

the parties hereto agree to indemnify, save and hold the other party harmless from any and all claims, demands, causes of action, damages, losses, costs, fines and expenses, including reasonable attorney's fees, that may be asserted by anyone at any time on account of the transportation, delivery, reception, treatment and/or disposal while title to the wastewater is in such party. If such liability for damages is not attributable to a specific customer or Waco, such liability shall be considered an Operations and Maintenance Expense.

18.3 Nothing in this Contract shall be construed as waiving sovereign immunity or any other immunity to which Customer or Waco may be entitled to under state or federal law.

18.4 Contracts made and entered into by either Customer or Waco for the construction, reconstruction or repair of any Delivery Facility shall include the requirements that the independent contractor(s) must provide adequate insurance protecting both the Customer and Waco as insured. Such contract must also provide that the independent contractor(s) covenant to indemnify, hold harmless and defend both the Customer and Waco against any and all suits or claims for damages of any nature arising out of the performance of such contract.

19. Compliance with Permit Conditions

19.1 Customer acknowledges that Waco is the holder of discharge permits issued by the United States and the State of Texas. Customer agrees that it will comply with all such permit conditions in any way relating to the collection system and the Customer's discharge into the collection system. **Customer agrees that in the event a fine is assessed against Waco for any violation of any permit condition, and the violation is attributable to any act of omission or commission by Customer, to indemnify Waco and pay to Waco the amount of such fine.** If such fine is not attributable to a specific customer, such fine shall be considered an Operations and Maintenance Expense and allocable to the customer in accordance with the provisions of this Contract.

20. Force Majeure

20.1 No party hereto shall be considered to be in default in the performance of any of the obligations hereunder (other than obligations of either party to pay costs and expenses) if such failure of performance shall be due to circumstances beyond the reasonable control of the parties, including but not limited to, the failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute and action or non-action by a failure to obtain the necessary authorizations and approvals from any governmental agency or authority or the electorate,

labor or material shortage, sabotage, or restraint by a court order or public authority, which by the exercise of due diligence and foresight such party could not have reasonably been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Either party rendered unable to fulfill any obligation by reason of an uncontrollable force shall exercise due diligence to remove such inability with all reasonable dispatch. In the event the proper operation of the Waco System, as a result of the foregoing, requires Waco to temporarily interrupt all or part of the services to Customer, no claims for damage shall be made by Customer against Waco.

21. Termination

21.1 This Contract may be terminated in whole or in part by the mutual consent of Customer and Waco. Notwithstanding anything contained herein to the contrary, any material breach by either party hereto to perform any of the duties or the obligations assumed by such party hereunder or to faithfully keep and perform any of the terms, conditions and provisions hereof shall be cause for termination of this Contract by Waco in the manner set forth in this Section of the Contract. Waco shall deliver to Customer sixty days prior written notice of its intention to so terminate this Contract if Customer fails to cure or adjust such material breach, including in such notice a reasonable description of the breach. If within said sixty days Customer shall fail or refuse to cure such default to the satisfaction of Waco, then and in such event, Waco shall have the right with three months advance written additional notice to Customer and without any liability whatsoever on the part of Waco to declare this Contract terminated. In the event of termination of this Contract, all rights, powers, and privileges of Customer hereunder shall cease and terminate and Customer shall make no claim of any kind whatsoever against Waco, its agents or representatives, by reason of such termination or any act incident thereto, provided Waco acted reasonably and such termination was not unreasonable, arbitrary and capricious. Waco shall advise Customer In Writing immediately upon acceptance of the cure of any default. The following breach, default or failure to perform a duty or obligation shall be considered to be a material breach:

- (A) Failure to adopt and enforce any ordinance required to be adopted and enforced herein;
- (B) Failure to make any payment of any bill, charge or fee as provided for in this Contract;
- (C) Making any connection to the Waco System at any point except as provided in Section 2.3 hereof;

(D) Failure to provide Waco ingress and egress for purposes of sampling and operation and maintenance of any metering or any sampling facility;

(E) Failure to provide Waco rights-of-way as required herein;

(F) Failure to permit any sampling of wastewater as provided for herein;

(G) Failure to comply with any provision in Exhibit "B"

21.2 In the event of any breach, default or failure of Customer to perform any duty under this Contract, Waco shall deliver to Customer written notice of such breach, default or failure. If Customer fails to cure such breach, default or failure within sixty (60) days of receipt of said notice, then Waco shall give Customer a written notice of such failure to cure and may surcharge Customer, retroactively to the initial date of notice issuance, Five-Hundred Dollars (\$500.00) per day until such time as Customer cures the noticed breach, default, or failure, or until such time as a judgment is entered into against the Customer.

21.3 Any failure by Waco to so terminate this Contract or the acceptance by Waco of any benefits under this Contract for any period of time after such material breach, default or failure by Customer shall not be determined to be a waiver by Waco of any rights to terminate this Contract for any subsequent material breach, default or failure.

21.4 Any failure by Customer to so terminate this Contract or the acceptance by Customer of any benefits under this Contract for any period of time after such breach, default or failure by Waco shall not be determined to be a waiver by Customer of any rights to terminate this Contract for any subsequent material breach, default or failure.

22. Term of Contract, Effective Date and Renewal

22.1 This Contract, together with all terms and conditions and covenants, shall be effective as of the Effective Date.

22.2 Unless sooner terminated pursuant to Section 20 this Contract will continue in force and effect until the later of (i) the date that is forty (40) years following the Effective Date or (ii) the date on which all Waco Debt Obligations issued for the purposes described in Section 7.1(b) and (c), and with respect to which the Customer has incurred Capital Charges or Capacity Expansion charges, are paid in full and discharged. As provided for in Section 2.2 of this Contract, Waco's commitment to provide Customer with capacity in the wastewater treatment facilities shall continue until such time as Customer stops conveying wastewater to the Waco Wastewater Treatment Plant and Regional Collection Facilities pursuant to this Contract. Upon the expiration of the term of this

Contract, Customer shall have no right, express or implied, to continuing service from Waco.

22.3 Customer shall have options to renew this Contract for terms of twenty years under conditions and at rates as may be mutually agreed to In Writing by the Parties. The first renewal term will begin following the later of the dates in Section 21.2(i) and (ii)). Customer specifically acknowledges that the ability of Waco to renew this Contract at a higher capacity specific to Customer than that stated in Exhibit "A" as may be amended from time to time subject to Waco first determining in Waco's sole discretion that Waco is projected to have, for the term of the renewal, sufficient capacity available after meeting the demands of Waco's existing and potential retail customers. Customer is required to provide Waco with Notice of Customer's desire to exercise a renewal option; each Notice is due to Waco no later than ten years before the current term is set to expire.

22.4 Renewal of this Contract is further subject to all state and federal laws and regulations that may limit Waco's or Customer's legal authority or ability to renew this Contract.

23. Wholesale Wastewater Advisory Committee

23.1 Customer's governing body shall annually appoint a representative to be a member of the Wholesale Wastewater Advisory Committee which Committee is hereby created and established and whose purpose shall be to consult with and advise Waco, through the Director, on matters pertaining to planning, improvements, grants, rate studies, budgets, administration, and additional wholesale customers, whether same be wholesale customers of Customer or Waco. The Committee, at its first meeting, shall elect a Chairman, Vice Chairman and Secretary. The Committee may establish bylaws governing the election of officers, meeting dates and other matters pertinent to its functioning.

23.2 The Wholesale Wastewater Advisory Committee shall meet as requested by Waco or as called to meet by the chairperson, but in no event less than once annually.

23.3 Prior to any increase in the rates or charges under this Contract, or before any increase in the wastewater treatment capacity under this Contract, the Committee shall meet to advise Waco with regard to the proposed changes.

24. Miscellaneous

24.1 Nothing in this Contract shall prohibit Waco from contracting with an independent, third-party for the operation or maintenance of any or all of the wastewater collection or treatment facilities if it is deemed by Waco to be in its best interest of the City

and its wholesale customers to do so. Waco must notify customers of its intent to enter into a contracting relationship, but the customer may in no way prohibit or prevent the City from doing so. However, at no time while this Contract is in effect will Waco sell its wastewater treatment facilities to a third-party without the unanimous consent and approval of each City provided service under this Contract.

24.2 Assignment. Customer agrees that Customer may not assign its rights and obligations hereunder without prior written approval of Waco.

24.3 Mediation Required. Waco and Customer agree that prior to filing a lawsuit or an administrative complaint with a regulatory agency seeking compensation or injunctive relief against the other, the parties agree to submit the disputed matter to non-binding mediation. Venue of such mediation, as well as any litigation, shall be in McLennan County, Texas.

24.4 This Contract is subject to all applicable federal and state laws and any applicable permits, or amendments to rules, orders and regulations of any state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

24.5 The Customer agrees to abide by any changes in this Contract made necessary by any amendment or revision to state or federal regulations.

24.6 Any duly authorized employee of Waco bearing proper credentials and identification may notify Customer of the need for access to any premises located within Customer's city limits or served by Customer for the purpose of inspections and observation, measurement, sampling, testing and auditing, in accordance with the provisions of this Contract, and Customer shall permit such access. Customer may elect to accompany the Waco representative.

24.7 In each instance herein where reference is made to a federal or state regulation or ordinance, it is the intention of the parties that, at any given time, the current federal or state regulation or ordinance shall apply. If a publication or reference work referred to herein is discontinued or ceases to be the generally accepted work in its field, or if conditions change, or new methods or processes are implemented by Waco, new standards shall be adopted which are in compliance with state and federal laws and any valid rules and regulations pursuant thereto.

24.8 Waco must comply with all federal, state and local government requirements to obtain grants and assistance for system design, system construction and studies.

Customer agrees to assist Waco in compliance by setting adequate rates, establishing proper user charges and complying with governmental requirements.

24.9 Section headings in this Contract are for convenience only and do not purport to accurately or completely describe the contents of any section. Such headings are not to be construed as a part of this Contract or any way defining, limiting or amplifying the provisions hereof.

24.10 **Entire Agreement.** This Contract and any Exhibits hereto embody the entire agreement and understanding of Waco and Customer 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 Contract 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 Contract may not be amended or modified except In Writing executed by all Parties and authorized by their respective governing bodies.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their respective officers thereunto duly authorized.

ATTEST:

CITY OF WACO, TEXAS ("OWNER")

By: _____
City Secretary

By: _____
City Manager

Date: _____

Date: _____

ATTEST:

**CUSTOMER: City of _____,
Texas**

By: _____
City Secretary

By: _____
City Manager

Date: _____

Date: _____

WHOLESALE WASTEWATER CONTRACT
EXHIBIT A
Wastewater Treatment Capacities (in MGD)
as of Effective Date of Contract

<u>City</u>	<u>Central Plant</u>
Bellmead	2.3083
Hewitt	2.8544
Lacy Lakeview	1.0546
Lorena	0.0000
Robinson	1.5711
Waco	34.5416
Woodway	2.6700
TOTAL	45.0000

<u>City</u>	<u>Bullhide</u>
Bellmead	0.0000
Hewitt	0.7200
Lacy Lakeview	0.0000
Lorena	0.3200
Robinson	0.0000
Waco	0.4600
Woodway	0.0000
TOTAL	1.5000

WHOLESALE WASTEWATER CONTRACT
EXHIBIT B
Pre-treatment Program Requirements

Section 1
Pretreatment Program & Sewer Quality

- 1.1 General Quality Requirements.** Waco must implement and enforce a pretreatment program from all industrial users of its wastewater treatment system pursuant to requirements set forth in the EPA pretreatment regulations, TCEQ pretreatment regulations, the List of Prohibited Discharges and Technically Based Local Limits outlined in Exhibit D, the Pretreatment Program outlined herein, and the Customer's sewer use ordinance. In this contract Customer agrees to adopt a sewer use ordinance that subjects the industrial users within its boundaries to the necessary pretreatment controls, and to implement and enforce the sewer use ordinance.

In order to permit Waco to properly treat and dispose of the wastewater, to protect public health and wastewater system personnel, prevent interference and pass through, improve the opportunity to recycle and reclaim wastewaters and sludges from the wastewater system, and to permit cooperation with other agencies which have requirements for the protection of the physical, chemical, and bacteriological quality of public water and water courses, each Customer agrees to prohibit discharges into the Waco Wastewater Treatment and Regional Collection Facilities at unauthorized Points of Entry or at rates of flow or of quality not herein specified as admissible.

- 1.2 Admissible Wastes.** Discharges into the Waco Wastewater Treatment and Regional Collection Facilities shall consist only of waste that said facilities are capable of handling:
- a. So that the effluent and sludge from the Waco Wastewater Treatment and Regional Collection Facilities meets the current legal standards of the EPA, TCEQ, or any other governmental body having legal authority to set standards for such effluent;
 - b. Without causing damage to Waco Wastewater Treatment and Regional Collection Facilities that would result in increased operations or maintenance costs;
 - c. Without causing excessive treatment costs; and
 - d. That meet the requirements of the EPA Pretreatment regulations, 40 CFR Part 403, the Customer's applicable ordinance, and the EPA or TCEQ approved Pretreatment Program for Waco.
- 1.3 Inadmissible Wastes.** As needed, Waco will review the List of Prohibited Discharges

and Technically Based Local Limits in Exhibit D to determine if changes are needed in response to changes in federal or state requirements, changes in treatment process, or the general character of wastewater received at the Waco Wastewater Treatment and Regional Collection Facilities.

- a. EPA and TCEQ periodically modify standards on prohibited discharges; therefore, revisions to, additions to, or deletions from the items contained on the List of Prohibited Discharges and Technically Based Local Limits will become necessary to comply with the latest standards. It is the intention of this Contract that prohibited discharge requirements be reviewed periodically by Waco with the Wholesale Wastewater Advisory Committee and that items named in Exhibit D be revised in accordance with the latest standards by EPA, TCEQ, or federal or state agency having regulatory authority over discharges made into Waco Wastewater Treatment and Regional Collection Facilities.
- b. Any required revisions shall be made by Waco after notice to Customer and shall become effective as stated in such notice. Revisions must be implemented as stated in the notice from Waco to the Customer.
- c. Each Customer shall be responsible for integrating the List of Prohibited Discharges and Technically Based Local Limits and any changes thereto into its local sewer use ordinances. Waco will issue letters notifying all affected users of any changes.
 - i. No letter will be issued by Waco without the draft letter being reviewed and signed by the Customer. Each Customer has ten (10) business days to submit the signed letter back to Waco for submittal to the affected users.

1.4 Adoption of Ordinance. Each Customer will adopt a local sewer use ordinance that meets all federal and state standards and any discharge standards established by Waco. Such sewer use ordinance shall be no less stringent than, and will be as broad in scope as, the sewer use ordinance of Waco. The ordinance shall be adopted regardless of whether the Customer has an Industrial User currently discharging to its Internal Collection Facilities.

1.5 Amendments and Changes to Discharge Standards. Whenever Waco revises its sewer discharge standards, it will forward a copy of the revisions to each Customer. Each Customer will adopt revisions to its sewer use ordinance that are at least as stringent as the standards adopted by Waco

- a. Customer will forward to Waco for review its proposed revisions within thirty (30) days of receipt of Waco's revised standards.
- b. Waco will provide Customer with written approval, requested modification, or rejection of Customer's revised sewer use ordinance.
- c. Customer will adopt its revisions within sixty (60) days of receiving approval

from Waco of the content thereof.

- 1.6 Specific Local Limits.** Each Customer will adopt and diligently enforce local limits. If Waco makes any revisions or additions to its local limits, Waco will forward to Customer a copy of such revisions or additions. Customer will adopt any such revisions or additions as required under Section 1.3.

Section 2

Responsibility for and Enforcement of Standards

- 2.1 Waco's Duties.** Waco, on behalf of Customer, will perform technical and administrative duties necessary to implement and enforce the Customer's sewer use ordinance, including: (1) assisting with the update of the industrial waste survey; (2) drafting and issuing permits to all industrial users required to obtain a permit; (3) conducting inspections, sampling, and analysis of permitted industrial users; (4) reviewing and approving plans; (5) assisting with record keeping; (6) drafting and issuing all appropriate enforcement action as outlined in the Waco's approved enforcement response plan and provided for in the Customer's sewer use ordinance; (7) publishing the annual list of significantly noncompliant industries, as required by the regulations, and (8) performing any other technical or administrative duties Waco and Customer mutually agree are appropriate. Expenses incurred by Waco in those efforts shall be expenses of the Pretreatment Program and shall be paid for as provided in Section 4.
- 2.2 Enforcement.** Each Customer has the ultimate responsibility for the enforcement of the Pretreatment Program within its corporate boundaries. Each Customer agrees to take whatever steps are necessary to implement and enforce its sewer use ordinance and Waco's local limits.
- a. Each Customer agrees to only discharge wastewater into Waco Wastewater Treatment and Collection Facilities that meets the required federal, state, and local standards.
 - b. If Waco determines that a problem or issue exist with regards to the quality of the wastewater at the POTW headworks, each Customer agrees to monitor the quality of sewage that it discharges into Waco Wastewater Treatment and Collection Facilities as requested by Waco to determine the source of the problem and to eliminate the problem.
 - c. If it can be shown that the source of wastewater that was the cause of the fine or penalty being assessed is specific to a Customer, that Customer shall be responsible for payment of the fine or penalty assessed for violating state or national sewage quality standards and/or the local standards for Admissible Wastes and Inadmissible Wastes, including List of Prohibited Discharges and Technically Based Local Limits.
 - d. Each Customer agrees to monitor any work that its employees may conduct

in and around the Waco Wastewater Treatment and Collection Facilities. If a violation of state or federal law and the local standards for Admissible Wastes and Inadmissible Wastes, including List of Prohibited Discharges and Technically Based Local Limits, is caused directly or indirectly by a particular Customer or its employees or contractors, that Customer shall be responsible for payment of any fine or penalty assessed

- e. Each Customer will take all actions necessary to ensure that industrial users within its boundaries comply with the approved pretreatment program. Each Customer shall take all appropriate enforcement action as outlined in Waco's approved enforcement response plan and provided for in the Customer's sewer use ordinance.
 - i. No enforcement action will be issued by Waco without the letter being reviewed and signed by the Customer. Each Customer has ten (10) business days to submit the signed letter back to Waco for submittal to the affected users.
- f. Each Customer shall take emergency action to stop or prevent any discharge that presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination of Waco Wastewater Treatment and Collection Facilities. The Customer shall notify Waco of such actions in advance of taking action, or as soon as possible thereafter if advance notice is not possible.
- g. Waco is specifically authorized to take emergency action to stop or prevent any discharge that presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination of Waco Wastewater Treatment and Collection Facilities. Waco shall notify Customer in advance of taking action if possible, or as soon as possible thereafter if advance notice is not possible.

2.3 Industrial Waste Survey. Customer will assist Waco in maintaining current information on industrial users located in its jurisdiction. Industrial Waste Surveys will be conducted every three (3) years, or more frequently as needed. Waco will contact Customer no less than twice a year to inquire regarding new industrial users. Waco will send surveys to new industrial users on an approved form.

2.4 Inspections and Sampling. Waco may, with notice to Customer, conduct inspections and sampling at any industrial user's facility located within Customer's jurisdictional boundary, as it deems necessary. Where practicable, Waco will provide notice at least forty-eight (48) hours in advance of a planned inspection to Customer. Customer may accompany Waco personnel during inspections conducted under this program within the Customer's jurisdictional boundary. Waco will inspect permitted industrial users a minimum of once (1) per pretreatment year and

sample a minimum of twice (2) per pretreatment year.

- 2.5 Records.** Copies of all records related to the Pretreatment Program shall be provided to Waco within fourteen (14) days of the completion or creation of the records, except if otherwise provided for in this Contract

Section 3

Sewer Use Agreement / Permit

3.1 Industrial Users.

- a. New Industrial User. Before any new industrial user, including users who are subject to categorical pretreatment standards or who are classified as Significant Industrial Users, discharges into the Internal Collection Facilities of a Customer, the Customer agrees to provide 90 (ninety) days written notice to Waco of its intent to provide service to any new user who meets the definition of Significant Industrial User (SIU) and will ensure the new industrial user has obtained a sewer use permit, as applicable.
- b. Existing User.
 - i. Industrial users subject to a sewer use permit are required to monitor their discharges to determine when changes occur in the volume or character of the discharge. If the criteria set out in two (ii) or three (iii) below are met, the industrial user shall notify Waco and the Customer whose Internal Collection Facilities the user discharges into.
 - ii. Customer will require that if an existing industrial user increases the volume or load in its discharge above limits specified in a Sewer Use Permit or changes the character of its discharge from that stated in the application for its Sewer Use Permit, the existing industrial user will notify Waco of the change.
 - iii. If an industrial customer does not have a Sewer Use Permit, but changes its discharges so that it falls within the definition of a user subject to categorical pretreatment standards or a Significant Industrial User, Customer will require that industrial user to communicate this change to Waco.
 - iv. Waco will notify the Customer if Waco determines whether a Sewer Use Permit or an amendment to an existing Sewer Use Permit, is required.

- 3.2 Sewer Use Permits.** Customer will allow Waco to implement and administer the Pretreatment program as outlined herein and as required by federal and state requirements. Waco will issue permits to all industrial users located within the Customer's jurisdiction as required.

- a. Permits will contain the information specified by Customer's Ordinance and 40 CFR Part 403.

- b. No permit will be issued by Waco without the draft permit being reviewed and signed by the Customer.

3.3 Outside Jurisdictional Boundaries. Before an industrial user located outside the jurisdictional boundaries of Customer discharges into Customer's Internal Collection Facilities, Customer and Waco will enter into an agreement with the industrial user regarding the discharges prior to any discharge into the Internal Collection Facilities of the Customer. Such agreement will be substantially equivalent to the requirements within this Contract.

Section 4

Cost of Industrial Pretreatment Program

4.1 Costs and Fees for Program. All costs of the program outlined within this Exhibit shall be considered a Waco Expense associated with the Waco Wastewater Treatment and Regional Collection Facilities and recovered through the Operations and Maintenance Rate, unless otherwise allowed for as follows:

- a. All administrative fees collected with applications (original applications or renewals) for Sewer Use Permits shall be deposited with Waco to pay costs associated with the Pretreatment Program.
- b. Waco will collect industrial waste surcharges outlined herein from Customer. Nothing in this Contract shall prohibit Customer from levying its own charges against an industrial customer within its jurisdictional boundary. Such charges levied by a Customer will be retained by Customer. All direct expenses related to the Pretreatment Program shall be billed directly to the Customer where the user is located. Through a Sewer Use Permit, an industrial user may be responsible for paying all direct costs either by paying the Customer or Waco, but the Customer shall be ultimately responsible and liable for the payment to Waco.
 - i. Direct expenses shall include, but are not limited to, costs for sampling and testing of samples. Direct expenses may also include monitoring, inspections, and surveillance procedures; reviewing accidental discharge procedures and construction; permit applications; filing appeals; consistent removal by Waco of pollutants otherwise subject to federal pretreatment standards, as applicable to a Customer.
 - ii. Customer shall have forty-five (45) days from receipt to pay a bill from Waco for direct expenses.

4.2 Allocation of Program Expenses. Expenses for the Pretreatment Program that are not paid for through the collection of administrative fees and direct expenses shall be considered part of the O&M fee under this Contract.

4.3 Classification of Program Expenses. All expenses associated with the Pretreatment Program paid for by Customer shall constitute reasonable and

necessary operating expenses of Customer's waterworks and wastewater system in accordance with Section 8.7 of this Contract

**WHOLESALE WASTEWATER CONTRACT
EXHIBIT C
SYSTEM CONNECTION POINTS**

Exhibit E - Page 38



WMARSS City Connections

WHOLESALE WASTEWATER CONTRACT

EXHIBIT D

List of Prohibited Discharges and Technically Based Local Limits

I. Prohibited Discharges:

- a. Wastewater having a temperature that would result in the total combined influent to the treatment plant to exceed a temperature of 104 degrees Fahrenheit.
- b. Wastewater having a pH value lower than 5.5 or higher than 10.5.
- c. Wastewater containing gasoline, benzene, naptha, fuel, oil, or other flammable or explosive liquid, solid or gas.
- d. Wastewater with a radioactive content greater than allowable by applicable provisions of the Texas Radiation Control Act, Article 4590 (f), Revised Civil Statutes of Texas, and the Texas Regulations for Control of Radiation issued thereunder.
- e. Wastewater, which alone or in conjunction with other wastewater, cause the wastewater entering the entry point into the Waco Wastewater Treatment and Regional Collection System to exceed a hydrogen sulfide concentration greater than 1.0 milligram per liter.
- f. Wastewater that will alone or in conjunction with other wastewaters cause the treatment plant influent (Headworks) to contain a toxic phenol concentration greater than 1.428 milligrams per liter.

II. Technically Based Local Limits:

- a. The combined volume of all industrial wastewaters discharged by industrial dischargers in the Waco Wastewater Treatment and Regional Collection System shall not contain the listed pollutants in excess of the loadings listed below without prior written approval from Waco. Waco will monitor for those pollutants as prescribed herein. Should the analysis indicate any of the pollutants listed are approaching or exceeding the Waco Wastewater Treatment and Regional Collection System Headworks Limits, Waco shall determine the source of the pollutants and require the generator to reduce or cease discharge of the pollutant and/or commence monitoring of the pollutant as required in the then applicable Waco Pretreatment Program. The following pollutant limits are established to protect against Pass Through and Interference. No person shall discharge wastewater containing in excess of the following:

Parameter	Central Plant		Bull Hide Plant	
	Maximum Allowable	Uniform Concentration	Maximum Allowable	Uniform Concentration

	Industrial Loading (MAIL) / (lbs/day)	Limit [TBLL] (mg/l)	Industrial Loading (MAIL) / (lbs/day)	Limit [TBLL] (mg/l)
Arsenic	0.71	0.03	0.0665	0.14
Cadmium	1.50	0.07	0.0268	0.06
Chromium	47.39	2.06	1.2553	2.69
Chrome (VI)	9.45	0.41	0.3836	0.82
Copper	17.51	0.76	0.4569	0.98
Cyanide	13.063	0.57	0.2236	0.48
Lead	8.25	0.36	0.2479	0.53
Mercury	0.09340	0.004	0.0118	0.03
Molybdenum	28.10	1.22	0.1194	0.26
Nickel	13.93	0.60	0.8592	1.84
Selenium	1.78	0.08	0.0517	0.11
Silver	10.92	0.47	0.5687	1.22
Zinc	43.62	1.89	1.0867	2.33

III. Surcharges

- a. Industrial wastewater, which alone or in conjunction with other wastewaters, causes the wastewater entering any entry point into the Waco Wastewater Treatment and Regional Collection Facilities to exceed limits established by the Waco City Council will be subject to surcharging if the conventional pollutant is not causing interference with the operation of the treatment works or could cause a violation of the Waco State or Federal discharge permit provisions.

IV. Other

- a. Discharges must comply with the requirements of the Resource Conservation and Recovery Act Requirements as adopted by the State of Texas

WHOLESALE WASTEWATER CONTRACT

EXHIBIT E

Wastewater Surcharge Formula

In accordance with Section 8.1 of the Contract and the provisions of Section III, Exhibit D, Customers will be surcharged if their BOD, TSS, TP, and TKN Strengths exceed the normal strength loadings. The basis for the surcharge on waste shall be determined by the following formula:

$$\text{Total Surcharge} = S_1 + S_2 + S_3 + S_4$$

Where:

$$S_1 = \text{BOD Surcharge}$$

Where:

$$S_1 = T_1 + T_2 + T_3$$

Where:

$$T_1 = C_1 * V * 8.34 * R_1$$

$$T_2 = C_2 * V * 8.34 * R_2$$

$$T_3 = C_3 * V * 8.34 * R_3$$

Where:

T_1 = Tier 1 BOD strength to be surcharged defined as 240-1,000 mg/l. Total BOD strength less than the Tier 1 minimum will not be charged a Tier 1 rate.

T_2 = Tier 2 of BOD strength to be surcharged defined as 1,001-1,550 mg/l. Total BOD strength less than the Tier 2 minimum will not be charged a Tier 2 rate.

T_3 = Tier 3 of BOD strength to be surcharged defined as 1,551-5,000 mg/l. Total BOD strength less than the Tier 3 minimum will not be charged a Tier 3 rate.

$$C_1 = \text{Lessor of } (BOD - L_0) \text{ and } (L_1 - L_0)$$

$$C_2 = \text{Lessor of } (BOD - L_1) \text{ and } (L_2 - L_1)$$

$$C_3 = \text{Lessor of } (BOD - L_2) \text{ and } (L_3 - L_2)$$

BOD = Biochemical oxygen demand concentration measured in mg/l based on monthly grab sample

L_0 = Normal BOD Strength in mg/l defined as 240 mg/l

L_1 = Maximum Tier 1 BOD Strength in mg/l defined as 1,000 mg/l

L_2 = Maximum Tier 2 BOD Strength in mg/l defined as 1,550 mg/l

L_3 = Maximum Tier 3 BOD Strength in mg/l defined as 5,000 mg/l

V = Total Sewage Flow in millions of gallons during the billing period

8.34 = Pounds per gallon of water

R_1 = Tier 1 unit charge in dollars per liter for BOD

R_2 = Tier 2 unit charge in dollars per liter for BOD

R_3 = Tier 3 unit charge in dollars per liter for BOD

Where:

S_2 = TSS Surcharge

Where:

$S_2 = T_4 + T_5 + T_6$

Where:

$T_4 = C_4 * V * 8.34 * R_4$

$T_5 = C_5 * V * 8.34 * R_5$

$T_6 = C_6 * V * 8.34 * R_6$

Where:

T_4 = Tier 1 TSS strength to be surcharged defined as 307-1,850 mg/l. Total TSS strength less than the Tier 1 minimum will not be charged a Tier 1 rate.

T_5 = Tier 2 of TSS strength to be surcharged defined as 1,851-3,000 mg/l. Total TSS strength less than the Tier 2 minimum will not be charged a Tier 2 rate.

T_6 = Tier 3 of TSS strength to be surcharged defined as 3,001-4,000 mg/l. Total TSS strength less than the Tier 3 minimum will not be charged a Tier 3 rate.

C_4 = Lessor of (TSS - L_4) and ($L_5 - L_4$)

C_5 = Lessor of $(TSS - L_5)$ and $(L_6 - L_5)$

C_6 = Lessor of $(TSS - L_6)$ and $(L_7 - L_6)$

TSS = Total Suspended Solids concentration measured in mg/l based on monthly grab sample

L_4 = Normal TSS Strength in mg/l defined as 307 mg/l

L_5 = Maximum Tier 1 TSS Strength in mg/l defined as 1,850 mg/l

L_6 = Maximum Tier 2 TSS Strength in mg/l defined as 3,000 mg/l

L_7 = Maximum Tier 3 TSS Strength in mg/l defined as 4,000 mg/l

V = Total Sewage Flow in millions of gallons during the billing period

8.34 = Pounds per gallon of water

R_4 = Tier 1 unit charge in dollars per liter for TSS

R_5 = Tier 2 unit charge in dollars per liter for TSS

R_6 = Tier 3 unit charge in dollars per liter for TSS

Where:

S_3 = TP Surcharge

Where:

$S_3 = T_7 + T_8 + T_9$

Where:

$T_7 = C_7 * V * 8.34 * R_7$

$T_8 = C_8 * V * 8.34 * R_8$

$T_9 = C_9 * V * 8.34 * R_9$

Where:

T_7 = Tier 1 TP strength to be surcharged defined as 6-20 mg/l. Total TP strength less than the Tier 1 minimum will not be charged a Tier 1 rate.

T_8 = Tier 2 of TP strength to be surcharged defined as 21-35 mg/l. Total TP strength less than the Tier 2 minimum will not be charged a Tier 2 rate.

T_9 = Tier 3 of TP strength to be surcharged defined as 36-750 mg/l. Total TP strength less than the Tier 3 minimum will not be charged a Tier 3 rate.

C_7 = Lessor of $(TP - L_8)$ and $(L_9 - L_8)$

C_8 = Lessor of $(TP - L_9)$ and $(L_{10} - L_9)$

C_9 = Lessor of $(TP - L_{10})$ and $(L_{11} - L_{10})$

TP = Total Phosphorus concentration measured in mg/l based on monthly grab sample

L_8 = Normal TP Strength in mg/l defined as 6 mg/l

L_9 = Maximum Tier 1 TP Strength in mg/l defined as 20 mg/l

L_{10} = Maximum Tier 2 TP Strength in mg/l defined as 35 mg/l

L_{11} = Maximum Tier 3 TP Strength in mg/l defined as 750 mg/l

V = Total Sewage Flow in millions of gallons during the billing period

8.34 = Pounds per gallon of water

R_7 = Tier 1 unit charge in dollars per liter for TP

R_8 = Tier 2 unit charge in dollars per liter for TP

R_9 = Tier 3 unit charge in dollars per liter for TP

Where:

S_4 = TKN Surcharge

Where:

$S_4 = T_{10} + T_{11} + T_{12}$

Where:

$T_{10} = C_{10} * V * 8.34 * R_{10}$

$T_{11} = C_{11} * V * 8.34 * R_{11}$

$T_{12} = C_{12} * V * 8.34 * R_{12}$

Where:

T_{10} = Tier 1 TKN strength to be surcharged defined as 36-80 mg/l. Total TKN strength less than the Tier 1 minimum will not be charged a Tier 1 rate.

T_{11} = Tier 2 of TKN strength to be surcharged defined as 81-130 mg/l. Total TKN strength less than the Tier 2 minimum will not be charged a Tier 2 rate.

T_{12} = Tier 3 of TKN strength to be surcharged defined as 131-1,250 mg/l. Total TKN strength less than the Tier 3 minimum will not be charged a Tier 3 rate.

C_{10} = Lessor of $(TKN - L_{12})$ and $(L_{13} - L_{12})$

C_{11} = Lessor of $(TKN - L_{13})$ and $(L_{14} - L_{13})$

C_{12} = Lessor of $(TKN - L_{14})$ and $(L_{15} - L_{14})$

TKN = Total Kjeldahl Nitrogen concentration measured in mg/l based on monthly grab sample

L_{12} = Normal TKN Strength in mg/l defined as 35 mg/l

L_{13} = Maximum Tier 1 TKN Strength in mg/l defined as 80 mg/l

L_{14} = Maximum Tier 2 TKN Strength in mg/l defined as 130 mg/l

L_{15} = Maximum Tier 3 TKN Strength in mg/l defined as 1,250 mg/l

V = Total Sewage Flow in millions of gallons during the billing period

8.34 = Pounds per gallon of water

R_{10} = Tier 1 unit charge in dollars per liter for TKN

R_{11} = Tier 2 unit charge in dollars per liter for TKN

R_{12} = Tier 3 unit charge in dollars per liter for TKN

Exhibit F

Schedule Showing Final Payoff of Funding Agreements

Payoff Amounts as of October 1, 2019:

City	Principal	Interest Rate	Interest	Total Payoff
City of Bellmead	\$71,528.16	3.651476%	\$435.31	\$71,963.47
City of Hewitt	40,044.06	3.651476%	243.70	40,287.76
City of Robinson	87,030.25	3.651476%	529.65	87,559.90
City of Woodway	102,388.53	3.651476%	623.12	103,011.65

Estimated Sources for Funding Agreement Payoff:

City	Debt Service Escrow Deposits	WMARSS Reserve Funds	Total
City of Bellmead	\$15,478.77	\$56,484.70	\$71,963.47
City of Hewitt	9,358.25	30,929.51	40,287.76
City of Robinson	18,765.53	68,794.37	87,559.90
City of Woodway	22,069.25	80,942.40	103,011.65

Exhibit G

Schedule of Unfunded Construction Projects

189

Project #	Description	PO Balances Remaining	Projects Not Yet Started/Billed
P Billings WMR034	Sinkhole @ MLK & Herring #2	\$ 437,616.68	\$ 16,082.41 \$ 19,277.01 \$ 10,187.72 \$ 12,279.52 \$ 357,594.10 \$ 17,163.33 \$ 5,032.59 \$ 437,616.68 A
\$ PRESENTED			
NYS	Central Plant Electrical - REDUCED AMOUNT SLUDGE LAGOON CLEANING (NEW FOR PERMIT/EQ BASIN)	\$ 223,900.00 \$ 10,153.87 \$ 10,462.85 \$ 5,541.53 \$ 7,599.17 \$ 179,764.81 \$ 9,144.08 \$ 1,233.69 \$ 223,900.00	
WMR036	South Plant Blower Improvements	\$ 1,400,000.00	\$ 1,286.72 \$ 1,325.62 \$ 702.79 \$ 963.44 \$ 22,782.07 \$ 1,158.82 \$ 156.29 \$ 28,375.75
NYS	Main Lift Station Rehab - REDUCED AMOUNT 30" HERRING SAG AND 24" HERRING OFFSET (NEW EMERG.)	\$ 1,170,000.00	\$ 53,059.50 \$ 54,674.10 \$ 28,957.50 \$ 39,709.80 \$ 939,369.60 \$ 47,782.80 \$ 6,446.70 \$ 1,170,000.00
NYS	Digester B Cover	\$ 650,000.00	\$ 74,827.50 \$ 77,104.50 \$ 40,837.50 \$ 56,001.00 \$ 1,324,752.00 \$ 67,386.00 \$ 9,091.50 \$ 1,650,000.00
NYS	Chlorine & Sulfur Dioxide Equip. Replace	\$ 500,000.00	\$ 22,675.00 \$ 23,365.00 \$ 12,375.00 \$ 16,970.00 \$ 401,440.00 \$ 20,420.00 \$ 2,755.00 \$ 500,000.00
NYS	Rotary Drum Thickener	\$ 1,150,000.00	\$ 52,152.50 \$ 53,739.50 \$ 28,462.50 \$ 39,031.00 \$ 923,312.00 \$ 46,966.00 \$ 6,336.50 \$ 1,150,000.00
Total 2018 CIP Remaining		\$ 48,231.70	\$ 307,122.59 \$ 316,468.07 \$ 167,614.32 \$ 229,851.41 \$ 5,437,324.49 \$ 276,579.69 \$ 37,315.18 \$ 6,772,275.75 B
TOTAL BILLINGS REMAINING (2018 CIP + MLK SINKHOLE)			\$ 323,205.00 \$ 335,745.08 \$ 177,802.04 \$ 242,130.93 \$ 5,794,918.59 \$ 293,743.02 \$ 42,347.77 \$ 7,209,892.43 A+B
2018 CIP Already Paid: WMR036 – South Plant Blower Total 2018 CIP As Presented			\$ 24,204.41 \$ 24,940.93 \$ 13,209.68 \$ 18,114.59 \$ 428,516.51 \$ 21,797.31 \$ 2,940.82 \$ 533,724.25 C
			\$ 331,327.00 \$ 341,409.00 \$ 180,824.00 \$ 247,966.00 \$ 5,865,841.00 \$ 298,377.00 \$ 40,256.00 \$ 7,306,000.00 B+C

Exhibit H

Schedule of "Reserve Funds"

Name of City	Estimated Reserve Funds at September 30, 2019
City of Bellmead ^(Note 1)	\$373,310.00
City of Woodway ^(Note 1)	305,232.00
City of Robinson ^(Note 1)	164,995.00
City of Lacy Lakeview	230,036.00
City of Hewitt ^(Note 1)	291,700.00
City of Lorena	73,361.00
City of Waco	10,392,514.00
Total Estimated Reserve Funds	\$11,831,148.00

(Note 1) - The estimated reserve funds displayed above for cities with Funding Agreements is net of the estimated amounts necessary to complete payment of the final outstanding amounts pursuant to Section 4.2 and Exhibit F of this Agreement.



CITY OF WACO
www.waco-texas.com

Water Utility Services

Post Office Box 2570
Waco, Texas 76702-2570
254/750-8040
Fax: 254/750-8032

October 19, 2017

City of Bellmead
Bo Thomas, City Manager
Bellmead, TX. 76705

Dear Bo,

Attached you will find information related to the upcoming WMARSS work session scheduled for October 25, 2017 from 10:00am to 1:00pm. The matrix provides information about the three options that have been proposed.

After reviewing all the options, discussing with bond and financial advisors, and multiple meetings by the Board, I have come to the realization that Waco purchasing WMARSS offers all Members the best solution.

- Contractually, capacity for the Cities would be fully protected.
- Member Cities would be made financially whole and the bonds retired.
- Waco would issue CO's for any bonding with Waco's bond rating. Bonds at a more favorable market rate – which benefits all Cities.
- Employees remain City of Waco employees. Staff has been very concerned about this.
- Containment of staffing cost. No need for additional accountants, engineers, legal, information technology, human resources, administrative support, lab analysis.
- All regulatory liability becomes Waco's.
- Payments for service would be an expense.
- Grants and low interest loans would be available to Waco that would benefit all the wholesale customers.
- Many regional systems are set up this way.
 - Ft Worth
 - Dallas
 - Austin
 - Weatherford
 - Tyler

I arrived at this conclusion after reviewing the challenges with continuing to govern WMARSS with an interlocal agreement and there are equally significant concerns with a Public Utility Agency (PUA).

The interlocal:

- Limits our ability to apply for and receive grants and low interest loans.
- Is difficult to manage seven cities and seven city councils.
- Concerns of Waco's compensation for managing the plant.
- If Waco bonds for all members, the members can treat their payments as an expense but Waco cannot.
- Attorney General would likely not allow Waco to bond for more than its ownership interest.

The PUA:

- Increases the cost of service.
- Increases the cost of bonding.
- Uncertainty of employees.
- Appointing board members who may not vote in a City's interest.
- Contract revenue bonds for small amounts garner little interest.

Over the course of the next ten years, I expect WMARRS capital improvements to meet or exceed \$100,000,000. Included in these improvements is the need for additional plant capacity at Bullhide, interceptor repair and replacements, lift station repair and replacements, improvements at Central Plant including modernization of several systems.

Any action forward would require the WMARSS Board to agree to contract for an analysis of each Member City's bonds and the terms associated with each bond. This will take time but is necessary for any course of action to continue to progress.

The partnership and relationships we formed many years ago has been very successful in managing WMARSS, but we have outgrown the current governance and it is time to seek a long term and reliable solution.

After reviewing the information, please let me know if you have any questions or concerns that can be addressed prior to or at this meeting.

Sincerely,



Lisa Tyer
Director of Water Utility Services
City of Waco

	Interlocal	PUA	Waco
Staff employed by	City of Waco Employees	Contract with City of Waco and transition to PUA employees. **Staff is very concerned about this uncertainty.	City of Waco Employees
Staffing	26 staff members	Number of Staff/cost would increase. -Director -Finance - Legal -Human Resources - Administrative Support -Operators -Lab staff -Information Technology	- 26 staff members -Or Outsource Operations
Director	Oversight by Water Utility Services Director	Hire an Executive Director	Oversight by Water Utility Services Director
Finance	City of Waco Finance Department	-Hire staff for financial matters -or outsource	City of Waco Finance Department

Legal	-City of Waco Legal Department -contractual attorneys	-Hire counsel -or contract with attorneys	-City of Waco Legal Department -contractual attorneys
Human Resources	City of Waco Human Resource Department	-Hire Human Resource Services and Payroll Services -or contract for those services	City of Waco Human Resource Department
Administrative Support	City of Waco Water Office - Billing -Cashiers - Call Center -Resource Management Group	-Hire additional staff or contract for administrative support -Set up Billing Services -Cash/Credit Card Services -Work Order Management	City of Waco Water Office - Billing -Cashiers - Call Center -Resource Management Group
Operators	20 Operators and Mechanics for both Wastewater Treatment Plants. Study recommends hiring a minimum of 6 additional staff members.	Likely to hire at least 6 staff members.	20 Operators and Mechanics for both Wastewater Treatment Plants. Study recommends hiring a minimum of 6 additional staff members.

Laboratory Services	-Lab analysis is done at Mt. Carmel Treatment Plant - contract at other labs.	- Hire lab staff and equipment -contract lab Services out	-Lab analysis is done at Mt. Carmel Treatment Plant - contract at other labs.
Information Technology	-IT services are performed by the City of Waco's IT Department - SCADA services are contracted out	-Hire IT staff -Contract out IT services -Contract out SCADA services	-IT services are performed by the City of Waco's IT Department - SCADA services are contracted out
Bonds	- Each City finances their portion - Consults with their bond counsel	-Revenue Bonds -Hire bond counsel -Higher rates and cost	- City of Waco COs -City of Waco's Bond Counsel -Waco responsible for all bonding with purchase
Grants/Low Interest Loans	-Each City has to apply -Time consuming and complicated applications -Each City bonding	May or may not qualify for all grants and loans	- One application -One bonding

Facility	Staff located at - Central & Bullhide Wastewater Treatment Plants -Riverside Water Treatment Plant -Water Office -Mt. Carmel Water Treatment Plant -City Hall	Would have to lease or build additional space for staff.	Staff located at - Central & Bullhide Wastewater Treatment Plants -Riverside Water Treatment Plant -Water Office -Mt. Carmel Water Treatment Plant -City Hall																				
Expected Facility Improvements	<table><tr><td>2018</td><td>\$ 7,306,000.00</td></tr><tr><td>2019</td><td>\$ 20,000,000.00</td></tr><tr><td>2020</td><td>\$ 5,000,000.00</td></tr><tr><td>2021</td><td>\$ 6,000,000.00</td></tr><tr><td>2022</td><td>\$ 16,500,000.00</td></tr></table>	2018	\$ 7,306,000.00	2019	\$ 20,000,000.00	2020	\$ 5,000,000.00	2021	\$ 6,000,000.00	2022	\$ 16,500,000.00	Unknown	<table><tr><td>2018</td><td>\$ 7,306,000.00</td></tr><tr><td>2019</td><td>\$ 20,000,000.00</td></tr><tr><td>2020</td><td>\$ 5,000,000.00</td></tr><tr><td>2021</td><td>\$ 6,000,000.00</td></tr><tr><td>2022</td><td>\$ 16,500,000.00</td></tr></table>	2018	\$ 7,306,000.00	2019	\$ 20,000,000.00	2020	\$ 5,000,000.00	2021	\$ 6,000,000.00	2022	\$ 16,500,000.00
2018	\$ 7,306,000.00																						
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2022	\$ 16,500,000.00																						
2018	\$ 7,306,000.00																						
2019	\$ 20,000,000.00																						
2020	\$ 5,000,000.00																						
2021	\$ 6,000,000.00																						
2022	\$ 16,500,000.00																						
Regulatory	Each City has joint regulatory responsibility and liability.	PUA has the responsibility and liability.	City of Waco would have regulatory responsibility and liability.																				
Plant expansion	Each City has the opportunity to purchase additional capacity but only those purchasing have to pay for the expansion.	PUA Board would determine when and if expansion occurred.	City of Waco - contractual agree to expansions in each service contract - finance the expansion -bill the respective customer(s) an infrastructure rate based on expansion -would be an expense for the customer																				

Rates	Each City pays for O & M based off of the prior years flows.	PUA would determine the rates.	Each City would have the same volumetric rate but the capacity reservation rate and infrastructure rate would vary.
Governance	Each City has representation	Each City would appoint a board member who would serve out their term independent from the City	Advisory Board
Ownership Risk	Each City has -equity stake in the assets - a share of the liability -regulatory responsibility	The PUA would have an equity stake in the assets and liability. The City's, potentially, would have none.	City of Waco would own all -the assets - all the liability -all the regulatory responsibility



(Revised 07/2019-City Manager)

Ordinance

CITY OF WACO

Council Date:	Originating Department:	Presentation By:	Reference #:
08/6/2019	Water Utilities	Lisa Tyler	11.4 – ORD-2019-485

Item:

Consider an ordinance: (1) authorizing an Interlocal Cooperation Agreement with the member cities of Waco Metropolitan Area Regional Sewerage System (WMARSS) (Bellmead, Hewitt, Lacy-Lakeview, Lorena, Robinson, and Woodway), including a Bill of Sale and Blanket Conveyance and a Quit Claim Deed, in order to convey WMARSS and most of its assets to the City of Waco, Texas, and including a Quit Claim Deed, in order to convey the remainder of WMARSS assets (certain WMARSS easements) to the Cities of Waco, Texas and Lorena, Texas, all in accordance with Texas Local Government Code, Chapter 253; (2) authorizing the City Manager to execute a Wholesale Wastewater Contract with each WMARSS member city in order for each member city to become a customer of the Waco-owned wastewater system; and (3) authorizing the City Manager to execute the conveyances, accept the WMARSS assets, to discontinue all WMARSS operations (including the City of Waco's participation on the WMARSS Board), and to execute all documents necessary to effectuate the conveyances and complete these transactions. **SECOND READING**

Background:

In 2004, the Cities of Bellmead, Lacy-Lakeview, Robinson, Waco, and Woodway obtained the regional wastewater system from the Brazos River Authority (BRA). The Waco Metropolitan Area Regional Sewerage System (WMARSS) was formed by these five cities by an Interlocal Cooperation Agreement.

Infrastructure and property conveyed from BRA to the five Cities included the Central Wastewater Treatment Plant located on Treatment Plant Road.

The City of Hewitt bought capacity in WMARSS later in 2004, followed by the City of Lorena purchasing capacity in WMARSS 2007. Over the last twelve years, WMARSS, with seven member Cities' involvement, has obtained property interests (such as property in fee simple and easements) and other assets (such as vehicles and equipment). WMARSS has constructed new infrastructure, including the Bull Hide Creek Treatment Plant, which was completed in 2012.

In the first interlocal agreement, Waco was designated as the operator of WMARSS (and has been designated Operator in every Interlocal Agreement between the Cities to date). WMARSS has been governed by these interlocal agreements for the operation and management of WMARSS facilities. Initially, this method of managing WMARSS was successful for all member Cities, but, over time, has proven to be inefficient and cumbersome. In 2016, Waco expressed concerns to the WMARSS Board about on-going challenges with the governance structure and the Board began to consider alternative structures. The WMARSS Board explored moving to a Public Utility Authority or transferring WMARSS to the City of Waco. Together, the WMARSS Board determined that transferring WMARSS to the City of Waco was the most seamless and cost effective choice. In 2018, a Letter of Intent was developed, signed, and approved by all WMARSS Board members to begin the process of transferring WMARSS and its assets to the City of Waco.

The WMARSS Board, along with their respective legal counsels, worked together to draft a termination agreement (with Quit Claim Deeds and necessary conveyance documents) and a wholesale wastewater customer contract.

This current ordinance authorizes the City Manager to terminate the operation and management agreements, to discontinue all WMARSS operations (including the City of Waco's participation on the WMARSS Board), to accept the conveyance of WMARSS assets to the City of Waco, and to allow the conveyance of certain WMARSS easements to the City of Waco and the City of Lorena, and then (simultaneously) to enter into wholesale wastewater contracts with each of the cities of Bellmead, Hewitt, Lacy Lakeview, Lorena, Robinson, and Woodway, in order for each of these Cities to become a customer of Waco's solely-owned wastewater system.

In accordance with Texas Local Government Code, Chapter 253, this conveyance is being authorized by Ordinance because it involves the conveyance of municipal property that is a site for a municipal building.

Attachments:

Ordinance (DOC)

Fiscal Impact:

- A balanced budget for WMARSS is proposed in the City's Fiscal Year 2019-20 Budget.
- Under the proposed termination agreement, the City of Waco will not pay cash consideration or assume bonded indebtedness of member cities in return for the transfer of their ownership interests in WMARSS system assets. Each City will continue to service any outstanding debt they have previously issued for WMARSS projects.
- Remaining unpaid balances of certain loans owed by 4 member cities to Waco's Wastewater Fund will be retired from those cities' available allocated shares of WMARSS working capital reserves. The aggregate principal amount of these loans is approximately \$300,000.00.
- After the completion of Waco's audit for Fiscal Year 2019, a calculation will be performed to determine whether there are amounts of certain surplus working capital reserves available to be returned to the other cities and to Waco's Wastewater Fund.
- Under the existing arrangement, each city individually issues bonds for, or otherwise provides funding for, their shares of WMARSS capital projects. Under the proposed arrangement, the City of Waco will be able to bond for 100% of future WMARSS capital project costs.
- Under the existing arrangement WMARSS member cities have shared in percentages of the operations and maintenance and capital project expenditures. Under the proposed arrangement, costs will be recovered through rates set for operations and maintenance, capital improvements, and capacity expansion. Waco has engaged NewGen Strategies and Solutions, LLC to calculate these rates.

Project Schedule:

ORDINANCE NO. 2019-__

AN ORDINANCE (1) AUTHORIZING AN INTERLOCAL COOPERATION AGREEMENT WITH THE MEMBER CITIES OF WACO METROPOLITAN AREA REGIONAL SEWERAGE SYSTEM (WMARSS) (BELLMEAD, HEWITT, LACY-LAKEVIEW, LORENA, ROBINSON, AND WOODWAY), INCLUDING A BILL OF SALE AND BLANKET CONVEYANCE AND A QUIT CLAIM DEED, IN ORDER TO CONVEY WMARSS AND MOST OF ITS ASSETS TO THE CITY OF WACO, TEXAS, AND INCLUDING A QUIT CLAIM DEED, IN ORDER TO CONVEY THE REMAINDER OF WMARSS ASSETS (CERTAIN WMARSS EASEMENTS) TO THE CITIES OF WACO, TEXAS AND LORENA, TEXAS, ALL IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE, CHAPTER 253; AND (2) AUTHORIZING THE CITY MANAGER TO EXECUTE A WHOLESALE WASTEWATER CONTRACT WITH EACH WMARSS MEMBER CITY IN ORDER FOR EACH MEMBER CITY TO BECOME A CUSTOMER OF THE WACO-OWNED WASTEWATER SYSTEM; APPROVING THE CONVEYANCES AND DIRECTING THE CITY MANAGER TO EXECUTE THE CONVEYANCES, DISCONTINUE ALL WMARSS OPERATIONS (INCLUDING THE CITY OF WACO'S PARTICIPATION ON THE WMARSS BOARD), ACCEPT THE WMARSS ASSETS, AND TO EXECUTE ANY DOCUMENTS NECESSARY TO EFFECTUATE THE CONVEYANCES AND COMPLETE THE TRANSACTIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SAVINGS CLAUSE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, in 2004, the Cities of Bellmead, Lacy-Lakeview, Robinson, Waco, and Woodway obtained the regional wastewater system from the Brazos River Authority (BRA), and said conveyance included infrastructure and real property; and

WHEREAS, the Waco Metropolitan Area Regional Sewerage System (WMARSS) was formed by these five cities by an Interlocal Cooperation Agreement; and

WHEREAS, the City of Hewitt bought capacity in WMARSS later in 2004, followed by the City of Lorena purchasing capacity in WMARSS 2007; and

WHEREAS, over the last twelve years, WMARSS, with seven member Cities' involvement, has been governed by interlocal agreements for the operation and management of WMARSS facilities; and

WHEREAS, this method of managing WMARSS, over time, has proven to be inefficient and cumbersome, and, in 2016, Waco expressed concerns to the WMARSS Board about on-going challenges with the governance structure and the Board began to consider alternative structures; and

WHEREAS, the WMARSS Board considered different governance options, and has determined that transferring WMARSS to the City of Waco was the most seamless and cost effective choice; and

WHEREAS, in 2018, a Letter of Intent was developed, signed, and approved by all WMARSS Board members to begin the process of transferring WMARSS and its assets to the City of Waco,

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

Section 1. That the Waco City Council hereby authorizes an Interlocal Cooperation Agreement with the member cities of Waco Metropolitan Area Regional Sewerage System (WMARSS) (Bellmead, Hewitt, Lacy-Lakeview, Lorena, Robinson, and Woodway), including a Bill of Sale and Blanket Conveyance and a Quit Claim Deed, in order to convey WMARSS and most of its assets to the City of Waco, Texas, and including a Quit Claim Deed, in order to convey the remainder of WMARSS assets (certain WMARSS easements) to the Cities of Waco, Texas and Lorena, Texas, all in accordance with Texas Local Government Code, Chapter 253.

Section 2. That the Waco City Council hereby authorizes the City Manager to execute a Wholesale Wastewater Contract with each WMARSS member city in order for each member city to become a customer of the Waco-owned wastewater system.

Section 3. That the Waco City Council hereby approves the conveyances and directs the City Manager to execute the conveyances, as set forth above, and to accept the WMARSS assets, to discontinue all WMARSS operations (including the City of Waco's participation on the WMARSS Board), and to execute any documents necessary to effectuate the conveyances and complete the transactions.

Section 4. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 5. If any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions

of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionally, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 6. That is hereby officially found and determined that the meeting at which this ordinance 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

FIRST READING: this 16th day of July, 2019.

SECOND READING: this 6th day of August, 2019.

Kyle Deaver, Mayor
City of Waco, Texas

ATTEST:

Esmeralda Hudson, City Secretary

APPROVED AS TO FORM & LEGALITY:

Jennifer Richie, City Attorney

Talking Points

Waco Metropolitan Area Regional Sewerage System Transfer to Waco

- Regional cooperation through the Waco Metropolitan Area Regional Sewerage System (WMARSS) has supported growth and protected the environment while maintaining affordable rates for customers.
- A new structure is being proposed that will continue these benefits for the region while at the same time making the management, permitting and financing for wastewater treatment projects more efficient and affordable.
- Under the plan the cities will transfer their interest in the WMARSS facilities to the City of Waco and maintain services through contracts with Waco.
- The transfer will not result in any immediate changes to the rates each city pays for services or charges its residents and businesses.
- Financing of large projects will be more cost effective with just one city selling bonds as opposed to each city incurring the expense of selling bonds.
- It will also be easier to apply for grants or low interest loans as a single entity instead of as seven different cities operating through interlocal agreements.
- All cities will continue to participate in an advisory board for operations.