

HEWITT TEXAS

CITY COUNCIL MEETING AGENDA

October 7, 2019

Workshop/Regular Meeting - 6:30/7:00 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

Vacant – 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 **Workshop** meeting of the governing body of the City of Hewitt will be held on the **7th day of October, 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:

1. Call meeting to order.
2. Special presentation by Midway ISD Superintendent Dr. George Kazanas regarding the Midway ISD 2019 Bond Election.
3. Adjourn.

I, the undersigned authority, do hereby certify that the above notice of meeting of the governing body of the City of Hewitt, Texas was posted on the Public Notice Board located in front of City Hall at 3:00 AM/PM on October 2, 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

AMENDED AGENDA **NOTICE OF MEETING** **OF THE GOVERNING BODY**

Notice is hereby given that a **Regular** meeting of the governing body of the City of Hewitt will be held on the **7th day of October, 2019, at 7:00 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:

In order to address the Council on any item, you must complete a Speaker's Request Form and submit to the City Secretary prior to the start of the Council meeting. Comments on non-agenda items must be made only during the citizens' comments agenda item. Council may not comment publicly on issues raised during citizen comments that are not listed on the Agenda but may direct the City Manager to resolve or request the matter to be placed on a future agenda. Such public comments shall not include any "deliberation" as defined by Chapter 551 of the Government Code, as now or hereafter amended.

Pursuant to HB 2480, effective September 1, 2019: For all non-public hearing items that are on the agenda, citizens can speak immediately prior to the time that the item is considered by the Council. However, in order for the Presiding Officer to recognize your request to speak on that agenda item, you must have identified that agenda item on the Speaker Request Form turned into the City Secretary.

All comments must be directed to the Presiding Officer, rather than an individual Council Member or city staff. Comments are limited to five (5) minutes and must pertain to the subject matter listed on the Speaker's Request Form.

1. Call meeting to order.
2. Pledge of Allegiance to the U.S. Flag
3. Special presentation to the Hewitt Police Department for achieving designation as Texas Best Practices Recognized Agency by the Texas Police Chiefs Association.
4. Consider approval of minutes of the City Council Workshop/Regular Meeting of September 16, 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 interviews and consider appointment(s) to the Parks & Beautification Committee.
7. Administer Oath of Office to newly appointed members to the Parks & Beautification Committee.
8. To authorize and ratify the purchase of a replacement heat pump unit for the training room of the Hewitt Public Safety Facility.
9. Consider Resolution No. 2019-16 submitting candidate nominations for the McLennan County Appraisal District Board of Directors for the years 2020-2021.
10. Consider Resolution No. 2019-17 authorizing an Agreement for the Reservation of Raw Water and Sale & Delivery of Treated Water – Wholesale Customer with the City of Waco, Texas through September 30, 2045, and authorizing the City Manager to execute all necessary documents to complete transaction.

11. Consider authorizing the City Manager to sign an agreement for electric rates for a term of 90 months thru Hudson Energy, as brokered by EMEX.
12. Discussion, consideration and possible action on Ward 2 City Council vacancy, including but not limited to: action, if any, to be taken to fill vacancy; appointment; appointment processes; and other matters relating to any of the above.
13. **Executive Session:** The Council will convene into Executive Session in accordance with the following provisions: A closed meeting will be held pursuant to Section 551.087 of the Government Code (V.T.C.A.) so that the Council may deliberate regarding Economic Development negotiations **AND** Section 551.074 of the Government Code (V.T.C.A.) so that Council may deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee (Council Vacancy – Ward 2).
14. Adjourn

I, the undersigned authority, do hereby certify that the above notice of meeting of the governing body of the City of Hewitt, Texas was posted on the Public Notice Board located in front of City Hall at 9:35 AM/PM on October 3, 2019.

CITY OF HEWITT



Lydia Lopez, TRMC/CMC
City Secretary

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HEWITT TEXAS

NOTICE OF MEETING OF THE GOVERNING BODY

Notice is hereby given that a **Regular** meeting of the governing body of the City of Hewitt will be held on the **7th day of October, 2019, at 7:00 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 to the Hewitt Police Department for achieving designation as Texas Best Practices Recognized Agency by the Texas Police Chiefs Association.
4. Consider approval of minutes of the City Council Workshop/Regular Meeting of September 16, 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.*
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7. Administer Oath of Office to newly appointed members to the Parks & Beautification Committee.
8. To authorize and ratify the purchase of a replacement heat pump unit for the training room of the Hewitt Public Safety Facility.
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11. Consider authorizing the City Manager to sign an agreement for electric rates for a term of 90 months thru Hudson Energy, as brokered by EMEX.
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14. Adjourn

I, the undersigned authority, do hereby certify that the above notice of meeting of the governing body of the City of Hewitt, Texas was posted on the Public Notice Board located in front of City Hall at 3:00 AM/PM on October 2, 2019.

CITY OF HEWITT

A handwritten signature in blue ink, appearing to read "Lydia Lopez", is written over the printed name and title.

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.



COUNCIL AGENDA ITEM FORM

MEETING DATE: September 16, 2019

AGENDA ITEM #: 4

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Consider approval of minutes of the City Council Workshop/Regular Meeting of September 16, 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 September 16, 2019 – 6:30 PM/7:00 PM

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

Note: Matthew Mevis was present in the audience; however, due to submission of his resignation did not participate.

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, Human Resources Generalist Jessica Higgins, 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 Wholesale Water Contract with City of Waco.**
City Manager Bo Thomas provided a detailed presentation on the new proposed Wholesale Water contract with the City of Waco. He highlighted contract specifications on reservation charges, demand charges for peak and plant expansion and volumetric charges. General discussion was held concerning level of the aquifers, Water Districts, Southern Trinity Groundwater District, and raising the level of the lake. City Manager Bo Thomas advised that the Waco City Council would be acting on the contract tomorrow evening. The current contract expires on September 30, 2019, and this item would be brought forward to Council for action at the next meeting.
3. **Adjourn.**
MOTION: Council Member Bill Fuller moved to adjourn the meeting at 6:50 PM.
SECOND: Council Member Michael Bancale
AYES: Fuller, Bancale, Wachtendorf, Fortenberry, Bruce, and Turner
NAYES: None
ABSENT: None
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 led the Pledge of Allegiance.

3. **SPECIAL PRESENTATION OF LIBRARY READING AWARDS.**

Library Director Waynette Ditto briefed the audience on the success of the Summer Reading Program. Mayor Charlie Turner assisted with the presentation medals. The following participants received their awards and medals:

Kids

Benjamin Dulock
Olivia Dulock
Harper Davis
Charlie Davis
Harrison Davis
Macy Pell
Oakley Powell
Ava Kirk
Ethan Pell

Tweens

AuroraHope Sara Sickles
Kordelia Lawson
Molly Stripling
Hudson Kuykendall
Dylan Patel
Adeline Clark
Kate Eaton
Allen Terrell

Teens

Abby Neyhard
Brody Myott
Emone Leveston

A drawing was held for the Adult Readers for a \$50 gift card to Barnes and Nobles. The winner was Tyrun Busby.

4. **SPECIAL RECOGNITION OF NEWLY HIRED EMPLOYEES.**

HR Generalist Jessica Higgins introduced Fleet Mechanic Richard Enderson
Utilities Director Kevin Reinke introduced Utilities Field Assistants Edward Stence and Brett Culpepper
Fire Chief Lance Bracco introduced Firefighter Marco Lozano

5. **CONSIDER APPROVAL OF MINUTES OF THE COUNCIL REGULAR MEETING OF August 26, 2019.**

MOTION: Mayor Pro Tem Wilbert “Walky” Wachtendorf moved approval of the minutes as presented but to allow for corrections.

SECOND: Council Member Bill Fuller

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

NAYES: None

ABSENT: None

MOTION PASSED.

Mayor Charlie Turner reordered the agenda as follows:

14. **MOTION TO ACCEPT RESIGNATION FROM MATTHEW MEVIS AND OUTLINE A PROCESS TO FILL VACANCY IF DESIRED.**

City Manager Bo Thomas announced that Council Member Matthew Mevis sent an email dated September 6, 2019, submitting his resignation. He then noted the process outlined in the Charter to fill a vacancy. Mr. Thomas further advised that over the weekend that Mr. Mevis sent another email asking to rescind his resignation. After City Attorney Mike Dixon’s extensive research and consulting with McLennan County Elections Office, Secretary of State’s Office, and General Counsel with the Texas Municipal League, it was determined that Mr. Mevis’ resignation could not be rescinded per the Texas

Election Code which states that a resignation is effective within eight days after received. Mayor Charlie Turner inquired on whether the Council had to take action at this time or make an appointment. Mayor Pro Tem Wilbert “Walky” Wachtendorf asked if Mr. Mevis was eligible to be re-appointed to the position he vacated. Mayor Pro Tem Wachtendorf stated his preference was to appoint if possible and avoid the expense of a special election. City Attorney Mike Dixon responded to Council inquiries. Mayor Turner advised that he would be reluctant to support anything without reassurance that the City was complying with the laws. City Attorney to research the ability to reappoint. **No action was taken.**

6. **HEAR VISITORS ON MATTERS PERTAINING TO CITY BUSINESS.** Under the Texas Open Meetings Act, the Council is prohibited from discussing, responding, or acting on any comments or items that have not been properly posted on the agenda. Beth Oakley, 708 Angel Fire Drive, appeared to recommend that the Council accept the resignation of Matthew Mevis and not rescind his resignation. Bob Potter, 409 W Wall Street, appeared to suggest that the Council consider the reappointment of Matthew Mevis. Matthew Mevis, 167 Topaz Circle, expressed appreciation for the ability to serve the city.
7. **PRESENTATION OF REPORT FROM CITY ENGINEER MILES WHITNEY, P.E.**
 - Update on pending utility projects.
 - Update on pending street projects.
 - Update on pending drainage projects.
8. **BRIEFING AND DISCUSSION CONCERNING FINANCIAL STATEMENTS ENDING AUGUST 31, 2019.** City Manager Bo Thomas stated that Finance Director Lee Garcia had distributed the August Financial Statements. No questions were asked.
9. **AUTHORIZE THE PURCHASE OF RIFLE RESISTANT PLATE CARRIERS FOR THE OFFICERS OF THE HEWITT POLICE DEPARTMENT.**

City Manager Bo Thomas and Police Chief Jim Devlin presented.

MOTION: Council Member Michael Bancale moved to approve and authorize the purchase of rifle resistant plate carriers and ballistic armor for all Hewitt Police Officers.

SECOND: Mayor Pro Tem Wilbert “Walky” Wachtendorf

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

NAYES: None

ABSENT: None

MOTION PASSED.
10. **CONSIDER RESOLUTION NO. 2019-14 AMENDING THE RULES OF PROCEDURE ALLOWING FOR AND STIPULATING TO WHEN AND HOW THE COUNCIL MAY BE ADDRESSED PRIOR TO VOTING ON AN ITEM.**

City Manager Bo Thomas presented this item which is in response to passage of HB 2840 that allows citizens the ability to speak on any non-public hearing items on the agenda, includes a slight revision to the Speaker’s Request Form, and allows for three (3) minutes to address the Council. General discussion concerning three minute time limit.

MOTION: Council Member Steve Fortenberry moved to approve and authorize Resolution No. 2019-14 amending the City of Hewitt's rules of procedure subject to amending time limit to five (5) minutes.

SECOND: Council Member Michael Bancalè

AYES: Fuller, Bancalè, Fortenberry, Bruce, and Turner

NAYES: Wachtendorf

ABSENT: None

MOTION PASSED.

11. CONSIDER ORDINANCE NO. 2019-20 AUTHORIZING AMENDMENTS AND MODIFICATIONS TO THE CITY OF HEWITT'S APPENDIX B –

SUBDIVISIONS OF THE CODE OF ORDINANCES TO COMPLY WITH HB

3167. City Manager Bo Thomas and City Attorney Mike Dixon presented amendments. Mr. Thomas noted that a complete copy of the exhibits (Engineering specifications) were not provided in packet but are included.

MOTION: Council Member Bill Fuller moved to approve Ordinance 2019-20.

SECOND: Council Member Steve Fortenberry

AYES: Fuller, Bancalè, Wachtendorf, Fortenberry, Bruce, and Turner

NAYES: None

ABSENT: None

MOTION PASSED.

12. CONSIDER ORDINANCE NO. 2019-21 AUTHORIZING AMENDMENTS AND MODIFICATIONS TO THE CITY OF HEWITT'S FLOODPLAIN ORDINANCE BASED UPON CHANGES TO THE NATIONAL FLOOD INSURANCE

PROGRAM (NFIP). City Manager Bo Thomas presented and advised that the amended language in the ordinance will provide the citizens of Hewitt the ability to maintain their flood insurance at the most advantageous rate. City Engineer Miles Whitney, P.E., noted the changes were specifically recognizing the new rate maps.

MOTION: Council Member Bill Fuller moved to approve Ordinance 2019-21.

SECOND: Council Member Michael Bancalè

AYES: Fuller, Bancalè, Wachtendorf, Fortenberry, Bruce, and Turner

NAYES: None

ABSENT: None

MOTION PASSED.

13. CONSIDER ORDINANCE NO. 2019-22 APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC") AND ATMOS ENERGY CORP. MID-TEX DIVISION REGARDING THE COMPANY'S 2019 RATE REVIEW MECHANISM FILING

City Manager Bo Thomas presented.

MOTION: Council Member Bill Fuller moved to approve Ordinance 2019-22.

SECOND: Mayor Pro Tem Wilbert "Walky" Wachtendorf

AYES: Fuller, Bancalè, Wachtendorf, Fortenberry, Bruce, and Turner

NAYES: None

ABSENT: None

MOTION PASSED.

ADDENDUM ITEM

13. A CONSIDERATION AND APPROVAL OF RESOLUTION NO. 2019-15 PROVIDING FOR ISSUANCE OF CITY-OWNED CELL PHONES TO THE MAYOR AND COUNCILMEMBERS FOR THE CONDUCT OF CITY BUSINESS, AND PROVIDING FOR OTHER RULES AND UNDERSTANDINGS AMONGST THE MAYOR AND COUNCILMEMBERS AS TO USE OF THE CELL PHONES.

City Manager Bo Thomas presented a summary of rules. City Attorney Mike Dixon recommended Council use these cell phones for city business.

MOTION: Council Member Steve Fortenberry moved to approve Resolution No 2019-15 providing issuance of city-owned cell phones to Mayor and Council Members for the conduct of city business.

SECOND: Council Member Eric Bruce

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

NAYES: None

ABSENT: None

MOTION PASSED.

- 15. Executive Session:** Mayor Charlie Turner announced the Council would convene to Executive Session at 8:36 PM pursuant to Section 551.074 of the Government Code (V.T.C.A.) so that the Council may deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee (City Manager's Evaluation).

The Council recessed the Executive Session at 9:02 PM.

16. ADJOURN.

MOTION: Council Member Bill Fuller moved to adjourn the meeting at 9:05 PM.

SECOND: Council Member Michael Bancale

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

NAYES: None

ABSENT: None

MOTION PASSED.

Approved: _____

ATTEST:

Lydia Lopez, City Secretary

Charles D. Turner, Mayor



AGENDA ITEM #5 – HEARING OF VISITORS

PROCEDURES FOR CITIZEN PARTICIPATION AT MEETINGS

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HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: October 7, 2019

AGENDA ITEM #: 6

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Conduct interviews and consider action on appointments to the Parks & Beautification Committee.

STAFF RECOMMENDATION/ITEM SUMMARY:

Conway Briscoe and Jamie McKinney have submitted applications for service on the Parks and Beautification Committee. Both will be present should the Council desire to interview. These positions are for unexpired terms ending in December of 2020.

SUGGESTED MOTION:

"I move approval of the appointment of Conway Briscoe and Jamie McKinney to the Parks and Beautification Committee."

ATTACHMENTS:

Applications

APPLICATION FOR BOARDS & COMMISSIONS TO THE CITY OF HEWITT

The City of Hewitt appreciates your interest in serving the community. A listing of the boards and commissions is found behind your application. Appointments are made during the year as vacancies occur. This is great opportunity for you to play a vital role in shaping your community.

NAME OF APPLICANT: CONWAY BRISCOE
HOME ADDRESS: 602 MADISON CIR HEWITT, TX 76643
DAYTIME TELEPHONE NUMBER: 972-750-1378 E-MAIL ADDRESS: cb3rd@yahoo.com

PLEASE CHECK APPROPRIATE STATEMENTS: ☒ I reside within the city limits of Hewitt, Texas.*
☐ I do ☒ I do not . . . own property located in Hewitt, Texas.

* **IMPORTANT** - - By checking this box and signing this form, you are indicating that your legal residence or domicile - your home and fixed place of habitation to which you intend to return after any temporary absence - is located within the city limits of Hewitt, Texas.

LENGTH OF TIME APPLICANT HAS RESIDED IN THE HEWITT CITY LIMITS: 3 YEARS

PLEASE INDICATE BELOW HOW YOU WOULD LIKE TO SERVE THE CITY OF HEWITT. (**IMPORTANT**: IF MORE THAN ONE AREA IS INDICATED, **NUMBER YOUR PREFERENCES** WITH "1" BEING YOUR FIRST CHOICE, "2" BEING YOUR SECOND CHOICE, ETC.). PLEASE SEE REVERSE SIDE FOR DESCRIPTIVE INFORMATION.

- ☐ Board of Adjustment (must be resident and owner of property in Hewitt)
☐ Civil Service Commission (must be resident of Hewitt)
☐ Library Board (must be resident of Hewitt)
☒ Parks and Beautification Committee (must be resident of Hewitt)
☐ Planning and Zoning Commission (must be resident and owner of property in Hewitt)

OTHER WAYS YOU SERVE YOUR COMMUNITY: _____

SPECIAL INTERESTS/SKILLS/EXPERIENCE/EDUCATION YOU FEEL MAY BE HELPFUL: _____

OCCUPATION/EMPLOYER: MANAGER OF FRANCHISE TECHNOLOGY INNOVATIONS/DREAM MAKER BATH + KITCHEN

REFERENCES (MUST BE HEWITT RESIDENTS): BRUCE EVANS TELEPHONE #: 254-640-2612
MICHELLE COHEN OUR TELEPHONE #: 319-400-9339

SIGNATURE OF APPLICANT: Conway Briscoe DATE: 9/18/19

Return Application to:
Lydia Lopez, City Secretary
200 Patriot Court
Hewitt, Texas 76643
Phone: 254-666-6171 - Fax: 254-666-6014
Email: citysecretary@cityofhewitt.com

OFFICE USE ONLY

Date interviewed by Council: _____
Date appointed by Council: _____
Date sworn in by Council: _____
Reappointed: _____
Term to expire: _____
Term to expire: _____

Revised: March 2019

APPLICATION FOR BOARDS & COMMISSIONS TO THE CITY OF HEWITT

The City of Hewitt appreciates your interest in serving the community. A listing of the boards and commissions is found behind your application. Appointments are made during the year as vacancies occur. This is great opportunity for you to play a vital role in shaping your community.

NAME OF APPLICANT: Jamie McKinney
HOME ADDRESS: 411 Karen St. Hewitt TX 76643
DAYTIME TELEPHONE NUMBER: 713 824 4603 E-MAIL ADDRESS: jou.mckinney@gmail.com

PLEASE CHECK APPROPRIATE STATEMENTS: ☒ I reside within the city limits of Hewitt, Texas.*
☐ I do ☒ I do not . . . own property located in Hewitt, Texas.

* **IMPORTANT** - - By checking this box and signing this form, you are indicating that your legal residence or domicile - your home and fixed place of habitation to which you intend to return after any temporary absence - is located within the city limits of Hewitt, Texas.

LENGTH OF TIME APPLICANT HAS RESIDED IN THE HEWITT CITY LIMITS: 7 years

PLEASE INDICATE BELOW HOW YOU WOULD LIKE TO SERVE THE CITY OF HEWITT. (**IMPORTANT**: IF MORE THAN ONE AREA IS INDICATED, **NUMBER YOUR PREFERENCES** WITH "1" BEING YOUR FIRST CHOICE, "2" BEING YOUR SECOND CHOICE, ETC.). PLEASE SEE REVERSE SIDE FOR DESCRIPTIVE INFORMATION.

 Board of Adjustment (must be resident and owner of property in Hewitt)
3 Civil Service Commission (must be resident of Hewitt)
2 Library Board (must be resident of Hewitt)
1 Parks and Beautification Committee (must be resident of Hewitt)
 Planning and Zoning Commission (must be resident and owner of property in Hewitt)

OTHER WAYS YOU SERVE YOUR COMMUNITY: Currently a member of Junior League of Waco

SPECIAL INTERESTS/SKILLS/EXPERIENCE/EDUCATION YOU FEEL MAY BE HELPFUL: Master's Degree in Social Work, history of chairing a committee, Interest in servant leadership

OCCUPATION/EMPLOYER: Social Worker with Central Tx VA

REFERENCES (MUST BE HEWITT RESIDENTS): Debra Bolt TELEPHONE #: 254-733-8199
Alonzo Cross TELEPHONE #: 713 551 3162

SIGNATURE OF APPLICANT: [Signature] DATE: 9.18.19

Return Application to:
Lydia Lopez, City Secretary
200 Patriot Court
Hewitt, Texas 76643
Phone: 254-666-6171 - Fax: 254-666-6014
Email: citysecretary@cityofhewitt.com

OFFICE USE ONLY

Date interviewed by Council: _____
Date appointed by Council: _____
Date sworn in by Council: _____
Reappointed: _____

Term to expire: _____
Term to expire: _____

Revised: March 2019

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: October 7, 2019

AGENDA ITEM #: 7

SUBMITTED BY: Lydia Lopez, City Secretary

ITEM DESCRIPTION:

Administer oath of office to the newly appointed members of the Parks & Beautification Committee.

STAFF RECOMMENDATION/ITEM SUMMARY:

City Secretary will administer oath to Conway Briscoe and Jamie McKinney.

ATTACHMENTS:

Oath of Office

Form #2204 Rev 9/2017

This space reserved for office use

Submit to:
SECRETARY OF STATE
Government Filings Section
P O Box 12887
Austin, TX 78711-2887
512-463-6334
FAX 512-463-5569
Filing Fee: None



OATH OF OFFICE

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS,
I, Jamie Mckinney, do solemnly swear (or affirm), that I will faithfully
execute the duties of the office of Parks and Beautification Committee of
the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws
of the United States and of this State, so help me God.

Signature of Officer

Certification of Person Authorized to Administer Oath

State of _____

County of _____

Sworn to and subscribed before me on this _____ day of _____, 20____.

(Affix Notary Seal,
only if oath
administered by a
notary.)

Signature of Notary Public or
Signature of Other Person Authorized to Administer An
Oath

Lydia Lopez

Printed or Typed Name



COUNCIL AGENDA ITEM FORM

MEETING DATE: October 7, 2019

AGENDA ITEM #: 8

SUBMITTED BY: Bo Thomas, City Manager

ITEM DESCRIPTION:

To authorize and ratify the purchase of a replacement heat pump unit for the training room of the Hewitt Public Safety facility.

STAFF RECOMMENDATION/ITEM SUMMARY:

The originally installed unit for the training room facility air conditioning and heating unit failed this summer. Staff went through a process to determine if any warranty remained on the original unit as well as repair costs to the original unit. After evaluating all options it was determined replacement would be the best option. Repair estimate was for \$8,970.

SUGGESTED MOTION:

I move approval of the purchase of a replacement heat pump unit for the Training Room of the Public Safety facility in an amount of \$12,400.

ATTACHMENTS:

Bids

**Mike
Staas**
SERVICES, INC.
Heating & Air Conditioning Department

"We Want You As A Customer For Life"

Main Office/Accounts Payable: 4914 Fort Ave, Waco, TX 76710

AC Location: 3325 N Robinson Dr, Waco, TX 76706

Voice: 254-757-0191 Fax: 254-732-4818

Project Summary

Date: 9-18-19

Bids to: Hewitt

Regarding: 5 ton break room area

Address: 100 Patriot Court

City-state: Hewitt, TX 76643

Phone # 254-666-0460 **email:** lbracco@cityofhewitt.com

Proposal 091819-08

Scope of Work

We hereby submit specifications and estimates for the following:

- To install a 5 ton Lennox Heat Pump (410a refrigerant, (460/3ph)) with curb adaptor, outside air dampers, hail guards, electrical reconnect and vision pro 8000 touchscreen thermostat.
- Includes use of crane.
- Current unit is a 9 ton Aeon, going to 5 ton as per owners request.

Sales Report

Equipment: Lennox

Capacity: 5 ton

Warranty on Compressor: Limited 5 years

Warranty on Parts: Limited 1 year

Warranty on Labor: One year labor during normal working hours.

Note: Work to be done during normal working hours.

- **Bid Amount:** \$ 12,400.00 Sales Tax Exempt

Contract Information

We propose hereby to furnish material and labor, complete in accordance with above specifications for the sum of twelve thousand four hundred dollars and zero cents.

- **Bid Good for 30 days**

Payment to be made as follows: **Half Down/ Remainder on Completion (or terms to be arranged)**

- **We do accept credit cards for your convenience with a 3% fee.**
- **Credit cards number must be included with signed contract**

All Materials is guaranteed to be as specified. All work to be completed in a workman like manner according to standard practices. Any alteration or deviations from above specifications involving extra cost will be executed only upon written order, and will become an extra charge over and above are estimate. All agreements contingent upon strikes, accidents, or delays beyond are control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by workman's compensation insurance. ALL LEGAL FEES INCURRED FOR NON-PAYMENT OF THIS ACCOUNT SHALL BE CHARGED TO THE CUSTOMER. LATE FEES ARE CHARGED AT 18%INTEREST. A LIEN WILL BE FILED IF NOT PAID ACCORDING TO TERMS: YOU HAVE A (3) DAY mWRITE OF RECESSION. DISCLOSE STATEMENT ATTACHED.

This contract is subject to Chapter 27, property code. The provision of that chapter may affect your right to recover damages arising from the performance of this contract. If you have a complaint concerning a construction defect arising from the performance of this contract and that defect has not been corrected through normal warranty service, you must provide notice regarding the defect to the contractor by certified mail return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law. The notice must refer to chapter 27, property code, and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by section 27.004-property code.

Authorized Signature

Alan Uptmore

Note: This Proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory an are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of acceptance

Signature

Signature

Spouse if applicable

M13911

TACLA022549C



A DIVISION OF LOCHRIDGE-PRIEST

TACLA28343C, TECL32275, M41036, TACLA24360C, TACLA28379C

PROPOSAL

Physical: 2901 East Industrial Blvd., Waco, Texas 76705

Mailing: PO Box 154187, Waco, Texas 76715

Phone: 254.772.0670

Fax: 254.772.0484

www.lochridgepriest.com

Date

9/10/19

Name

City of Hewitt

Address

200 Patriot Court

City Hewitt

ZIP

76643

Phone

Lance Bracco (254) 666-0460

Email

lbracco@cityofhewitt.com

Jobsite

Main Building Rooftop

LPI MEP PROPOSES TO PROVIDE LABOR AND MATERIALS TO :

Replace existing AAON 9T RTU that serves the training room and install a 5T Carrier electric RTU.

DUE UPON COMPLETION:

13,659.80

INCLUDE: Disconnect electrical from existing 9T Aeon unit, install curb adaptor to fit the new 5T Carrier RTU, reconnect electrical to fit new unit, economizer, thermostat, crane fees, check, test, and start-up.

EXCLUDE: Asbestos, lead, and mercury abatement, electrical power wiring, gas piping, energy management controls, sales tax, roof top work of any kind, patching and painting of any kind, changes to existing duct work.

TAX EXEMPT

PRICES ARE SUBJECT TO CHANGE AFTER 30 DAYS FROM DATE OF PROPOSAL

FULL PAYMENT IS DUE UPON EXECUTION OF PROPOSAL OR THE COMPLETION OF INSTALLATION, WHICHEVER OCCURS FIRST. We accept all major credit cards, cash or check. Make checks payable to Lochridge Priest, Inc.
WARRANTY: Standard Residential Warranty - 10 year parts coverage with online registration for complete systems from Lennox Industries and 1 year labor coverage by Lochridge Priest, Inc. Under 1st year workmanship warranty, normal maintenance of the system is not included which includes but is not limited to changing the filter, cleaning the condenser coil or clearing the drain line. These are items that must be performed at least semi-annually in order for Lochridge-Priest to cover under warranty. Drain lines that are not replaced will be flushed with chemical treatment (CLR) to remove biological growths and flushed with 2 gallons of water. LPI does not guarantee that biological growth will not reoccur and is not considered warranty unless line LPI replaces line completely. Under such circumstance, workmanship warranty would cover provided proper maintenance is being upheld by the customer. All manufacturer warranties have specific written terms, exclusions and conditions that are presented by the manufacturer as part of this sale. Purchaser will be provided a copy of all warranties as part of this sale and is expected to review these documents and understand these conditions. All Lennox warranties are available for your review online at the Lennox website. Customer must purchase a Service Agreement for the duration of any labor warranties extending beyond the first year. Standard Commercial Warranty - 5yrs Compressor, 1yr Parts, and 1yr Labor. Customer agrees that all invoices not paid within 30 days after due date will be subject to a late fee calculated at 6% simple interest prorated for the period of time that the invoices remain unpaid after the thirty-day period elapses.

ACCEPTED: _____

DATE: _____

Michael Warren, Commercial Sales

mwarren@lochridgepriest.com

FAX : 254.772.0484

Cell 254-340-8061

OFFICE : 254.772.0670

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: October 7, 2019

AGENDA ITEM #: 9

SUBMITTED BY: Bo Thomas, City Manager

ITEM DESCRIPTION:

Consider **Resolution No. 2019-16** submitting candidate nominations for the McLennan County Appraisal District (McCAD) Board of Directors for the Years 2020-2021.

STAFF RECOMMENDATION/ITEM SUMMARY:

Attached is a copy of the Board of Directors Eligibility requirements for service on the CAD Board. The attached resolution is the official format where nominees can be submitted to the Chief Appraiser. The deadline for submitting nominees is October 15, 2019. The voting entitlements will be sent within the next week or so once all the 2019 levies have been received from the County.

SUGGESTED MOTION

I move approval of Resolution No. 2019-15 submitting candidate nominations for the McLennan County Appraisal District (McCAD) Board of Directors.

ATTACHMENTS:

McCAD Board of Directors Voting Procedures
McCAD Board of Directors Eligibility
Draft resolution

McLENNAN COUNTY APPRAISAL DISTRICT

2020-2021 BOARD OF DIRECTORS TAXING UNIT VOTING PROCEDURES

McLennan CAD Taxing Units:

It is again time to deliver the voting entitlements, for eligible taxing units, to nominate candidates for the five (5) positions serving on the McLennan County Appraisal District Board of Directors.

Each taxing unit is entitled to nominate, via resolution adopted by its governing body (sample enclosed), one (1) candidate for **each** of the five (5) open positions of the board of directors. The presiding officer of the governing body of each taxing unit shall submit the name and address of the unit's nominee(s) to the chief appraiser **before October 15th**. **Before October 30th**, the chief appraiser shall prepare a ballot, listing the candidates, and shall deliver a copy of said ballot to the presiding officer of each taxing unit that is entitled to vote.

Each governing body shall determine its vote, via resolution, and submit it to the chief appraiser **before December 15th**. Your voting entitlement may be cast for one candidate or it may be distributed amongst any number of candidates the governing body would like to choose. The chief appraiser shall count the votes, declare the five (5) newly elected board members, who received the largest, cumulative total votes and submit those results, **before December 31st**, to each governing body.

Please mark these important dates on your calendar for the governance of the McLennan County Appraisal District:

- **Before October 15th**: Each governing body will submit their choice of nominee names and addresses, via resolution, to the chief appraiser.
- **Before October 30th**: The chief appraiser will prepare and deliver a ballot to the presiding officer of each taxing unit.
- **Before December 15th**: Each governing body will vote, via resolution, and return the ballot to the chief appraiser.
- **Before December 31st**: The chief appraiser will send the election results to each governing body, as well as to the candidates.

There is a very small window of time in which to consider this issue. Please remember to include these procedures and dates on the agenda of your next scheduled meeting, in order to plan how your taxing unit would like to prepare for and act on this matter. Your vote is extremely important in order to ensure the continued dedicated leadership of this board.

As soon as we receive the 2019 tax levies from the McLennan County Tax Assessor Collector, (normally around the first of October), we will calculate each entities' voting entitlement. We will then send the voting entitlements, along with a ballot, to each taxing unit.

Respectfully submitted,



Andrew J. Hahn, Jr. RPA, RTA
Chief Appraiser

September 1, 2019-Igonzalez

P.O. Box 2297 • 315 S. 26th Street • Waco, Texas • (254) 752-9864 • (254) 754-2331 fax
www.mclennanacad.org

**MCLENNAN COUNTY APPRAISAL DISTRICT
BOARD OF DIRECTORS ELIGIBILITY**

Eligibility:

To be eligible to serve, a person must have resided in the appraisal district for at least two (2) years immediately preceding the date of taking office. The person may not be an employee of a taxing entity served by the appraisal district, but may be an elected official or a member of the governing body. A person may not be appointed if related within the second degree of consanguinity (blood) or affinity (marriage) to either an appraiser who appraises property for use in the appraisal district's appraisal review board proceedings or a tax representative who represents taxpayers for compensation before the appraisal district's appraisal review board. Owing delinquent taxes for more than 60 days after the date the person knew or should have known of the delinquency, disqualifies a person from serving on the CAD board of directors.

Term:

All directors, other than the county tax assessor collector, serves a two (2) year term, beginning on January 1st of an even-numbered year.

Meetings:

Meetings are held at least once a calendar quarter, at the convenience of the majority of the board.

Compensation:

Directors may not receive a salary, per diem, or other compensation. The appraisal district may reimburse for reasonable and necessary expenses incurred in the performance of a director's duties, if included in the appraisal district budget.

General Statement of Functions:

The board of directors has the following primary responsibilities:

- Establish the appraisal district's appraisal office;
- Adopt the appraisal district's annual operating budget;
- Contract for necessary services;
- Hire a chief appraiser;
- Hire a taxpayer liaison officer (districts in counties having a population of over 125,000); and
- Make general policy on the appraisal district's operation.

The board's authority over appraisals is limited. The board does not appraise property or review values on individual properties. The board has no authority to officially review ARB decisions. The board does have some authority over appraisals through its duties to contract and budget.

TAXING UNIT: _____

Resolution No. _____

**RESOLUTION OF CANDIDATE NOMINATIONS FOR THE McLENNAN COUNTY
APPRAISAL DISTRICT BOARD OF DIRECTORS FOR THE YEARS 2020-2021**

WHEREAS, Section 6.03 (g) of the Texas Property Tax Code, requires that each taxing unit entitled to vote may nominate by Resolution one candidate for each of the five positions to be filled and submit those nominations to the Chief Appraiser of the McLennan County Appraisal District before October 15, 2019.

THEREFORE, the _____ submits the following nomination(s) for Board of Directors of the McLennan County Appraisal District for 2020-2021:

1. _____
2. _____
3. _____
4. _____
5. _____

ACTION TAKEN this _____ day of _____, 2019, in _____ Session of the governing body of the above-mentioned taxing unit; as authorized under Section 6.03 of the Texas Property Tax Code, for the purpose of nominating candidates to the Board of Directors of the McLennan County Appraisal District.

ATTEST:

RESOLUTION NO. 2019-16

**RESOLUTION OF CANDIDATE NOMINATIONS FOR THE
McLENNAN COUNTY APPRAISAL DISTRICT BOARD OF
DIRECTORS FOR THE YEARS 2020-2021.**

WHEREAS, Section 6.03 (g) of the Texas Property Tax Code, requires that each taxing unit entitled to vote may nominate by resolution one candidate for each of the five positions to be filled and submit those nominations to the Chief Appraiser of the McLennan County Appraisal District before October 15, 2019.

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

That the Council submits the following nomination(s) for Board of Directors of the McLennan County Appraisal District for 2020-2021:

ACTION TAKEN this 7th day of October, 2019, in Regular Session of the governing body of the above mentioned taxing unit; as authorized under Section 6.03 of the Texas Property Tax Code, for the purpose of nominating candidates to the Board of Directors of the McLennan County Appraisal District.

CITY OF HEWITT

Charles D. Turner, Mayor

ATTEST:

Lydia Lopez, City Secretary



COUNCIL AGENDA ITEM FORM

MEETING DATE: October 7, 2019

AGENDA ITEM #: 10

SUBMITTED BY: Bo Thomas, City Manager

ITEM DESCRIPTION:

Consider Resolution No. 2019-17 authorizing an Agreement for the Reservation of Raw Water and Sale & Delivery of Treated Water – Wholesale Customer with the City of Waco, Texas through September 30, 2045, and authorizing the City Manager to execute all necessary documents to complete transaction.

STAFF RECOMMENDATION/ITEM SUMMARY:

As previously discussed, the Waco City Council approved the above agreement on September 17, 2019. This agreement will provide an alternative long term water supply source and also supplement the use of our existing underground water supply to provide water service to our customers.

SUGGESTED MOTION:

I move approval of Resolution No. 2019-17 authorizing an Agreement for Reservation of Raw Water and Sale & Delivery of Treated Water with the City of Waco, Texas, through September 30, 2045.

ATTACHMENTS:

Resolution
Agreement

RESOLUTION NO. 2019-17

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

That an Agreement for the Reservation of Raw Water and Sale & Delivery of Treated Water with the City of Waco, Texas, through September 30, 2045, is hereby authorized.

That the City Manager is hereby authorized to execute all documents necessary to complete this transaction.

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 7th day of October, 2019.

CITY OF HEWITT, TEXAS

Charles D. Turner, Mayor

ATTEST:

Lydia Lopez, City Secretary

APPROVED AS TO FORM & LEGALITY:

Michael W. Dixon, City Attorney

**AGREEMENT FOR THE RESERVATION OF RAW WATER AND SALE
& DELIVERY OF TREATED WATER - WHOLESALE CUSTOMER**

STATE OF TEXAS §
 §
COUNTY OF McLENNAN §

This Agreement ("Agreement") is made and entered into by and between the City of Waco, Texas (Waco), and City of Hewitt, Texas (Purchaser), acting by and through their authorized representatives, and hereinafter referred to jointly as "Parties."

RECITALS

WHEREAS, Purchaser owns, operates and maintains a distribution system to furnish water service to the customers within its service area and desires to have a long term water supply source to provide potable water to its customers; and

WHEREAS, at the present time, Waco has available a supply of Raw Water from which it can provide Treated Water, and owns, operates, and maintains facilities for storing, treating and transmitting Treated Water, both within and without the corporate boundaries of Waco; and

WHEREAS, it is deemed to be in the best interest of both Waco and Purchaser that said Parties do enter into a mutually satisfactory agreement by means of which Purchaser may reserve stored Raw Water and obtain Treated Water from Waco; and

WHEREAS, Purchaser and Waco recognize that the Demand Rate and Volumetric Rate to be paid by Purchaser for the Treated Water provided by Waco hereunder should be based on Waco's costs of providing such Treated Water to the Delivery Point(s).

NOW, THEREFORE, pursuant to *Chapter 791, Texas 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 subject to each and every term and condition of this Agreement, the Parties contract, covenant and agree as follows:

ARTICLE 1

Findings and Purpose

- 1.1 Recitals.** The recitals hereinabove set forth are incorporated herein for all purposes and are found to be true and correct.
- 1.2 Funds.** All obligations accepted by the Parties hereto will be paid from current funds available to the paying party in accordance with Chapter 791 of the Texas Government Code.
- 1.3 No Grant of Equity or Ownership.** No provision of this Agreement shall be construed to create any type of joint or equity ownership of any property or any partnership or joint venture. Neither this Agreement, nor any acts of the Parties

hereunder, nor Purchaser's payments, shall be construed as granting to or otherwise vesting in Purchaser any right, title, interest, or equity in the Waco Raw Water System nor in the Waco Treated Water System or any element thereof.

ARTICLE 2

Definitions and Interpretation

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

Adjusted Maximum Day Usage means Purchaser's actual Maximum Day Usage as adjusted for purposes of Section 3.5(b) of this Agreement to account for unprecedented usage of water by Purchaser during a temporary emergency condition that otherwise meets the criteria of Section 5.1(c) of this Agreement.

Agreement means this Agreement including the Raw Water Reservation unless Purchaser has not entered a Raw Water Reservation or the Raw Water Reservation is expressly excluded.

Cost of Service Study means that study performed annually pursuant to Section 5.2 (b) of this Agreement.

Day means a 24-hour period from 12:00 a.m. to 11:59 p.m. of each calendar day.

Demand Charge means the annual charge to be paid in twelve equal monthly installments for each year, calculated based on the Demand Rate applied to the Maximum Day Demand.

Demand Rate means the dollar amount per million gallons per day (MGD) applied to the Purchasers' declared Maximum Day Demand to calculate the Demand Charge.

Delivery Facility is any facility necessary for the transmission of Treated Water from the Waco Treated Water System that is on the Purchaser's side of the point of delivery that is constructed specifically to allow Waco to serve Purchaser.

Delivery Point(s) means the point(s) at which Waco agrees to deliver, and Purchaser agrees to receive, Treated Water under this Agreement, which points are established as provided in Sections 3.3 and 3.4 of this Agreement.

Excess Demand Charge means the charge assessed against Purchaser for exceeding the Maximum Day Demand approved as provided in Section 3.5(b) of this Agreement, which charge shall be determined and paid as provided in Section 5.1(c) of this Agreement during the rate year.

Fiscal Year is the fiscal year of Waco from October 1 through September 30. The Fiscal Year shall serve as the rate year.

Initial Maximum Day Demand means the estimated daily maximum usage specified in Section 3.5(a) of this Agreement.

Initial Maximum gallons per minute (GPM) means the estimated daily maximum usage specified in Section 3.5(a) of this Agreement divided by 1,440 minutes.

Initial Rates means the rates set for the initial fiscal year as provided in Section 5.2(a) of this Agreement.

Initial Term means the period commencing on the date by which all Parties have executed this Agreement and ending at midnight on September 30, 2045.

Maximum Day Demand means the estimated daily maximum usage declared by Purchaser, or determined in the absence of a declaration by Purchaser, and to the extent approved by Waco, all as provided in Section 3.5 of this Agreement.

Maximum Day Usage means the measured daily maximum usage as determined through Meter readings, subject to Section 4.3 of this Agreement with regard to Meter inaccuracy.

Maximum GPM Usage means the measured maximum per minute usage as determined through Meter readings, subject to Section 4.3 of this Agreement with regard to Meter inaccuracy.

Meter(s) means the metering facility or devices installed or to be installed at the Delivery Point(s) to measure the amount of Treated Water delivered to Purchaser by Waco as provided in this Agreement. Installation shall include a back flow device in order to prevent back flow of water into the Waco Treated Water System and a metered by-pass for maintenance purposes.

Minimum Annual Volume means the minimum annual water volume purchaser shall be obligated to receive from City of Waco and obligated to pay at the then current volumetric rate regardless of whether the Purchaser takes minimum volume.

Minimum Annual Volume Charge means the annual charge to be paid in twelve equal monthly installments for each year, calculated based on the Volumetric Rate applied to the Minimum annual volume.

Month means a calendar month.

Pass-through Fees mean any statutory or regulatory fee or assessment that is, or may be in the future, assessed on the subject matter of this Agreement which is not otherwise attributed to the Wholesale Customer Class in the Cost of Service Study. Such fees or assessments could include, but are not limited to, fees or assessments on Raw Water reserved, on water rights that support the amount of Raw Water reserved, and on Treated Water provided pursuant to this Agreement. Payment of Pass-through Fees is due and owing to Waco at the time the assessments being passed through are due and owing to be paid by Waco.

Raw Water means that water made available in Lake Waco through increasing Waco's authorized impoundment and diversion by Water Rights Permit No. 5094A, which has priority dates of September 12, 1986 and January 21, 1988.

Raw Water Reservation or *Reserved Raw Water* means Raw Water that is reserved by Purchaser as provided in Section 3.1 of this Agreement. The amount of Raw Water used under this Agreement shall be measured based on the Fiscal Year.

Raw Water Reservation Charge means the annual charge paid in twelve equal monthly installments for each year for reserving Raw Water as provided in Section 3.1 of this Agreement.

Treated Water means Raw Water treated by Waco so that it is potable water meeting the minimum quality requirements for human consumption as prescribed by the Texas Commission on Environmental Quality or other appropriate regulatory agency.

TCEQ means the Texas Commission on Environmental Quality.

Volume Charge means the charge calculated by applying the Volumetric Rate to the number of gallons of Treated Water provided to Purchaser by Waco as measured by the Meter(s) in excess of Minimum Annual Volume and billed on a monthly basis.

Volumetric Rate means the dollar amount per 1,000 gallons applied to Purchaser's metered usage of Treated Water in order to calculate the Volume Charge. To the extent that Purchaser has not entered into a Raw Water Reservation pursuant to Section 3.1 of this Agreement in an amount that meets or exceeds Purchaser's needs, the Volumetric Rate will include a charge for Raw Water as provided in Section 5.1(a) of this Agreement.

Waco Raw Water System means all facilities, structures, improvements, property, rights, certificates of adjudication, permits, licenses, and other property of any nature whatsoever, now or hereafter owned by Waco, in connection with the storage, diversion, transportation, and delivery of Raw Water to Waco's water treatment facilities.

Waco Treated Water System means all facilities, structures, improvements, property, rights, permits, licenses, and other property of any nature whatsoever, now or hereafter owned by Waco, in connection with the diversion, storage, transportation, treatment, and delivery of Treated Water.

Water means either Raw Water or Treated Water, or both Raw and Treated Water, as indicated by the context in which the word appears.

Water Rate Study means the most recent study prepared by NewGen Strategies and Solutions LLC, which sets forth the methodology used to calculate the Initial Rates under this Agreement. Said study is subject to review and update as provided in Section 5.2. An electronic copy of the rate model and its accompanying manual will be provided to representatives of Purchaser as stated in Section 5.2. The water rates to be in effect are set out in **Exhibit B** to this Agreement and are subject to change as provided in this Agreement.

Wholesale Customer Class means the class of customers or purchasers to whom, under the terms of a specific agreement, Waco sells and provides Treated Water for re-sale.

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

- (a) Unless otherwise stated, reference to any document, other than a license, certificate of adjudication or water rights permit, means the document as amended or supplemented from time to time.
- (b) Reference to any party or governmental regulatory agency means that entity and its successors and assigns.
- (c) Misspelling of one or more words in this Agreement shall not void the Agreement. Such misspelled words shall be read so as to have the meaning apparently intended by the Parties.
- (d) Words of any gender used in this Agreement shall be held and construed to include any other gender.
- (e) Words in the singular number shall be held to include the plural, unless the context otherwise requires.
- (f) 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.

ARTICLE 3

Water Provided Under Agreement

3.1 Reservation of Raw Water. Purchaser hereby reserves from Waco, and Waco agrees to reserve as Raw Water available for the supply of Treated Water to Purchaser for the Initial Term of this Agreement, 1.75 million gallons per day (MGD), or approximately 1,960 acre-feet per year of Raw Water held by Waco in Lake Waco. To the extent available, the reserved water will only come from Lake Waco under Waco's authorized impoundment and diversion by Water Rights Permit No. 5094A. Purchaser acknowledges that it has no entitlement to water from Waco beyond this amount unless expressly provided otherwise in this Agreement. This acknowledgement survives termination of the Agreement. A Raw Water Reservation entered in this Section 3.1 is entered only in conjunction with provision of Treated Water by Waco under this Agreement. This Agreement does not grant to Purchaser nor imply any right to access Raw Water in place or to use of Raw Water other than as expressly provided in this Agreement. Nor does this Agreement create any obligation of Waco to deliver Raw Water to Purchaser or for Purchaser's use. Waco is not responsible for knowing the total water supply that Purchaser must have to fulfill TCEQ requirements. It is the Purchaser's responsibility to obtain the total amount of water Purchaser needs to fulfill TCEQ requirements.

- (a) In calculating the amount of Raw Water used in a Fiscal Year, the loss factor assumed and incorporated in the rate model is 1% for raw water to treated water delivered to Purchaser's meter.

- (b) Purchaser may request that this agreement be amended to increase or decrease the Raw Water Reservation. Such a request is only effective if a written amendment to this Agreement is executed by both parties.
 - (1) Within its sole discretion, Waco shall make the decision on whether to agree to an increase based on the availability of water to meet current customer needs and the requests received for the water. If an increase occurs, then it will only be in effect for the fiscal year in which it is approved—*unless the written amendment says otherwise*—then the amount will decrease back to the original amount (listed above) at the end of the applicable fiscal year.
 - (2) Waco shall make the decision on whether to approve a request for a decrease and will not unreasonable deny a request for a decrease. If a decrease occurs, it will remain in effect into future fiscal years, unless the written amendment says otherwise.

3.2 Treated Water.

- (a) **Delivery and Acceptance.** Except as limited in this Agreement, Waco agrees to furnish and sell to Purchaser Treated Water delivered under the operating pressure prevailing in the Waco Treated Water System at the Delivery Point(s). Purchaser agrees to accept delivery under the conditions of this Agreement and to pay for the Treated Water in accordance with the terms herein.
- (b) **Source of Supply and Capacity.** Waco's agreement to make Treated Water available is limited to the extent that Raw Water, as that term is defined in this Agreement, is available and the extent to which capacity is available in the Waco Treated Water System, as determined pursuant to Section 3.5 of this Agreement.
- (c) **No Minimum Pressure Guaranteed.** Notwithstanding anything in this Agreement to the contrary or any statutory or regulatory requirement that may be applicable to Purchaser's delivery of water to Purchaser's retail customers or any approved request under 3.4(a)(1), Waco does not represent or guarantee to Purchaser that Treated Water provided to Purchaser under this Agreement will be provided at any specific minimum pressure at the Delivery Point(s), and Waco is under no obligation with respect thereto. Purchaser understands and acknowledges that maintaining a certain water pressure in Purchaser's delivery system may require the use of storage or pumps within Purchaser's system. Waco will not be providing water pressure to Purchaser's system.
- (d) **Interruption of Service for Maintenance.** Notwithstanding anything in this Agreement to the contrary or any statutory or regulatory requirement that may be applicable to Purchaser's delivery of water to Purchaser's retail customers, Waco shall be entitled at any and all times to install, repair, maintain, and replace such equipment or devices or to take any other action under emergency conditions (including, reduction or cessation of water service to Purchaser) as

necessary or appropriate to allow Waco at all times to maintain a minimum pressure as required by law at all retail service locations directly served by the Waco System. Waco may install at the metering location appropriate devices to monitor and enforce all or any of these limitations. Waco agrees, to the extent reasonable under the circumstances of the interruption of service, that Waco will provide advance notice to Purchaser of such interruption so that Purchaser may better make allowance within its storage and delivery system to accommodate the interruption and that Waco will use due diligence to restore service pursuant to this Agreement.

3.3 Treated Water Delivery Point(s) and Valves.

- (a) **Delivery Point(s).** Subject to the conditions set forth herein, Waco agrees to deliver Treated Water to Purchaser at the Delivery Point(s) specified in **Exhibit A** attached hereto and incorporated herein for all intents and purposes. The location of each Delivery Point specified in Exhibit A is mutually agreed upon by and between the Purchaser and Waco, and such Delivery Point(s) shall not be moved or relocated except as provided in Section 3.4 of this Agreement.
- (b) **Valves at Delivery Points.** All valves releasing water from the Waco Treated Water System to Purchaser shall be operated by Waco. Purchaser shall not handle, adjust, obstruct or block access to those valves.

3.4 New, Relocated or Expanded Delivery Point(s).

- (a) **Improvements for Purchaser.**
 - (1) If Purchaser desires a new or relocated Delivery Point, or if improvements to an existing Delivery Point are necessary to satisfy an approved request by Purchaser to increase the amount of Treated Water provided under this Agreement, or to increase the pressure at which Treated Water is provided, Purchaser shall submit a request in writing to Waco for approval, which approval shall not be withheld unreasonably. If Waco approves the request, Waco and Purchaser shall mutually determine where the Delivery Point will be located and whether Waco or Purchaser will be responsible for constructing the improvements. Without regard to whether Purchaser or Waco assumes responsibility for the construction of the improvements, Purchaser shall be responsible for all of the costs of the improvements, including any costs to acquire any needed easements or right-of-way.
 - (2) If Waco is to construct all necessary improvements, Waco will provide Purchaser with a description of the improvements to be constructed and an estimate of the costs for the improvements for Purchaser's written approval, which approval shall not be withheld unreasonably. During the construction, Purchaser may, but is not obligated to, inspect improvements under construction. Purchaser shall be responsible for paying for the entire cost of the improvements, including the acquisition of any easements or right-of-way prior to beginning

construction. . Purchaser may, but is not obligated to, make a final inspection and approval after construction of the improvements are completed.

- (3) If Purchaser is to construct the necessary improvements, Purchaser will submit documents to acquire rights-of-way and will submit plans for the construction of the improvements to Waco for approval prior to any construction being done, which approval shall not be withheld unreasonably. If Waco approves the documents and plans submitted, Waco will give the Purchaser notice of said approval in writing. During the construction, Waco may, but is not obligated to, inspect improvements under construction. All costs for the construction of the improvements, including the costs for any easements and/or rights-of-way, shall be borne by Purchaser. Waco shall perform a final inspection prior to completion of construction of the improvements; approval by Waco is required before construction can be deemed complete. Further approval by Waco is required before the improvements may be used.
- (4) Improvements will be constructed in accordance with Waco standard specifications.
- (b) **Improvements for Waco Treated Water System.** If Waco determines that a new, relocated or expanded Delivery Point is required for the primary benefit of the Waco Treated Water System, Waco shall acquire easements and/or rights-of-way and construct all necessary improvements. The costs of the improvements, including any costs to acquire easements or right-of-way shall not be a direct cost to Purchaser but shall be attributed in the Cost of Service Study, including to the Wholesale Customer Class, as appropriate.
- (c) If the Parties cannot reach an agreement on the approvals necessary to implement this Section 3.4, the Parties agree that they will submit the contested issue to non-binding mediation pursuant to Section 11.1 of this Agreement.
- (d) **Property of Waco.** Any acquired easements and/or rights-of-way shall name Waco as a grantee for the portion of the easement and/or right-of-way on Waco's side of the Delivery Point and metering device. Upon the completion of construction and final approval by Waco of any new, relocated or improved Delivery Point, the constructed improvements shall become the property of Waco to and through the Meter(s). *To and through the meters* is hereby defined as piping connected to the inlet of the meter, the meter itself, the meter vault and hatch, automated meter reading equipment, pipe stands or supports, and any other ancillary devices as required to operate and read the water meter.

3.5 Estimated Treated Water Requirements.

- (a) **Initial Maximum Day Demand.** Purchaser's Initial Maximum Day Demand is 2,000,000 gallons per day or a maximum GPM of 1,500. This declaration of

the Initial Maximum Day Demand and Maximum GPM shall be in effect until September 30, 2017. Notwithstanding the provisions of Section 3.2(b) of this Agreement, Waco agrees to maintain capacity in the Waco Treated Water System to make the Initial Maximum Day Demand and Maximum GPM available during the Initial Term of this Agreement.

- (b) **Declaration and Approval of Maximum Day Demand and Maximum GPM.** On or before August 30th of each year, Waco will provide to Purchaser documentation showing Purchaser's Maximum Day Demand and Maximum GPM and rate structure for Treated Water calculated in gallons per day for the twelve-month period beginning on October 1st of the current year and ending September 30th of the following year. Purchaser will have 10 calendar days to respond to the documentation provided by Waco.
- (1) In no event shall the declared amount be less than the greater of Purchaser's current Maximum Day Demand and Maximum GPM (or Initial Maximum Day Demand and Maximum GPM, if that is the most current) or the Purchaser's highest Adjusted Maximum Day Usage actually experienced during the term of this Agreement.
 - (2) Purchaser may declare its estimated Maximum Day Demand and Maximum GPM; said declaration must occur on or before August 1st of each year. *In no event will the (declared) Maximum Day Demand or Maximum GPM be acceptable at amounts lower than the current allowances.*
 - (3) The declared Maximum Day Demand and Maximum GPM are subject to review and written approval by Waco as to reasonableness and as to the availability, after taking Waco's water needs into account, of Raw Water and capacity in the Waco Treated Water System. Approval by Waco shall not be unreasonably withheld or delayed.
 - (4) If Waco does not receive declarations (of Maximum Day Demand and/or Maximum GPM) or if Waco does not approve the declared Maximum Day Demand and Maximum GPM, then Waco will determine the Maximum Day Demand and Maximum GPM by whichever of the following is greater:
 - 105% of the most current Maximum Day Demand and Maximum GPM; or
 - 105% of the highest Adjusted Maximum Day Usage and Maximum GPM actually experienced during the term of this Agreement.
 - (5) Purchaser may object to the determination by giving notice to Waco of that objection within ten (10) days of receiving Waco's written notice regarding the Maximum Day Demand and Maximum GPM. If Purchaser cannot resolve its disagreement with Waco regarding the Maximum Day Demand and Maximum GPM, Purchaser may terminate this contract by written notice to Waco within thirty (30) days of

Waco's written notice regarding the determined Maximum Day Demand and Maximum GPM. This termination shall be considered a termination by mutual consent as provided for in Section 8.1.

- (6) The approved Maximum Day Demand and Maximum GPM shall be the amount used for the Fiscal Year to be in effect and Purchaser shall be responsible for Excess Demand Charges as provided in Section 5.1(c) of this Agreement. If, in the future, the City has an AMI System, said System will determine the Maximum Day Demand and Maximum GPM.
- (c) **Minimum Annual Volume Determination.** Purchaser's Initial Minimum Annual Volume is 638,750,000 gallons. This declaration of the Initial Minimum Annual Volume shall be in effect until September 30, 2020. Notwithstanding the provisions of Section 3.2(b) of this Agreement, Waco agrees to maintain capacity in the Waco Treated Water System to make the Initial Minimum Annual Volume available during the Initial Term of this Agreement.
- (a) **Adjustment to Minimum Annual Volume.** On or before August 30th of each year, Waco will provide to Purchaser documentation showing Purchaser's new Minimum Annual Volume and volumetric rate structure for Treated Water calculated per 1000 gallons for the twelve-month period beginning on October 1st of the current year and ending September 30th of the following year. Purchaser will have 10 calendar days to respond to the true-up provided by Waco.
- (1) In no event shall the Annual Minimum Volume be less than the greater of Purchaser's current Annual Minimum Volume (or Initial Minimum Annual Volume, if that is the most current) or the Purchaser's highest Annual Volume Usage actually experienced during the term of this Agreement.

ARTICLE 4

Metering and Rate of Flow Control

- 4.1 **Treated Water Measurement and Control.** Except as allowed under Section 3.4, Waco shall install a Meter and appropriate valves, back flow prevention, flow controllers, and other appropriate equipment at the Delivery Point(s) to measure and control the amount of Treated Water delivered to Purchaser under the terms of this Agreement.
 - (a) If and when an AMI System is installed in Waco, Purchaser will pay for any and all products needed to bring Purchaser's meter(s) onto Waco's AMI System, along with all installation costs thereof. Waco reserves the right to replace any existing meter with an AMI-compatible meter or device.
 - (b) All associated one-time costs in the purchase and installation of a Meter and related equipment shall be reimbursed to Waco by Purchaser within thirty (30)

days after notification in writing by Waco to Purchaser of the amount due, which notification shall not be given until after the Meter is operational. Such reimbursement shall be separate from and in addition to the all other charges for Water provided under this Agreement as set forth herein.

- (c) The Meter and other equipment shall be owned, operated, and maintained by Waco.

4.2 Control of Rate of Flow. The rate at which Treated Water is withdrawn by Purchaser from the Waco System shall be regulated by rate-of-flow controllers, pumps, or other approved methods. The rate of withdrawal shall be controlled so that the maximum rate shall not exceed the Maximum Day Demand or Maximum GPM, unless Waco receives a written request from Purchaser and Waco approves that request in writing. Notwithstanding anything in this Agreement to the contrary, approval of a request to increase the rate of flow and of the length of time the request will be met, will be at Waco's sole discretion. Waco will respond to the request within ninety-six (96) hours of receiving the request. If Waco approves the request, Waco will make the adjustments within forty-eight (48) hours of responding to the request. Agreement by Waco to adjust the rate of flow does not increase the Maximum Day Demand established for the Fiscal Year then in progress as provided in Section 3.5.

- (a) Limiting the delivery of Treated Water with a rate of flow controller so that the amount delivered does not exceed the Maximum Day Demand or Maximum GPM implies limiting the flow of Treated Water to Purchaser at a uniform rate over a twenty four hour period so that Purchaser receives its Maximum Day Demand. To deal with demands on its system, Purchaser may need to fill water storage tanks (ground or elevated) by diverting at a higher rate of flow over a shorter time period. A Purchaser may request that Waco agree to a protocol that allows for a non-uniform rate of Treated Water delivery and provides for Treated Water delivery at a higher gallons per minute rate over a shorter period of time to fill storage tanks.
 - (1) Waco agrees to work with Purchaser to determine a delivery protocol that will satisfy Purchaser's needs without negatively impacting Waco's ability to deliver Treated Water to Waco's retail customers or other wholesale customers. Any delivery protocol agreed to by the parties shall be memorialized by a written document signed by both parties.
 - (2) Purchaser can request changes to any agreed protocol, but such changes are subject to Waco's approval.
 - (3) If a protocol is agreed to by Waco, Waco has the right to revise the protocol if necessary to assure the delivery of Treated Water to Waco's retail customers or other wholesale customers. Waco shall attempt to give Purchaser at least thirty (30) days written notice of any changes. But, if a particular event requires an immediate change, Waco shall notify Purchaser by telephone (followed by written notice) of change as

soon as information regarding the need for the change is made available to the Waco Utility Director.

- (4) If Waco agrees to such a protocol, the higher rate will not allow the Purchaser to exceed their Maximum Day Demand. If Purchaser exceeds the Maximum Day Demand, then the Excess Demand Charge will be assessed.
- (5) If Purchaser exceeds the increased GPM, then Waco will take necessary measures to limit Purchaser's flow back down to the allowed GPM and will assess a fee against Purchaser (as provided by Waco's Budget Fee Schedule for the applicable rate year). Waco reserves the right, as necessary, to adjust or limit the flow to protect the pressure within the system.

4.3 Calibration of Meters and Flow Control Devices.

- (a) **Annual Testing.** Waco shall routinely test Meter(s) and flow control devices for accuracy. Meters and flow control devices will be serviced and calibrated as necessary, but no less frequently than once during each twelve (12) month period. Copies of the results of such calibration and all related information shall be provided to Purchaser within ten (10) business days. Purchaser shall have access to the Meter(s) and flow control devices at all reasonable times; provided, however, that any reading, calibration or adjustment to such Meter(s) and flow control devices shall be done by employees or agents of Waco, or other mutually approved third party calibration agent, in the presence of representatives of Purchaser and Waco, if so requested by Purchaser. Notification of any proposed test shall be provided to the Purchaser at least seventy-two (72) hours prior to such test being conducted and Purchaser may observe such test, if so desired.
- (b) **Inaccuracy.** Upon any calibration of a Meter, if it is determined that the accuracy of such Meter(s) is found to fail American Water Works Association water metering standards, then the registration of such Meter(s) shall be corrected according to this subsection. The registration of the flow as determined by such defective Meter(s) shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable. If the time such inaccuracy began is not ascertainable, then the registration of such Meter(s) shall be corrected for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months. All Meter(s) will be properly sealed, and the seals shall not be broken unless representatives of both Purchaser and Waco have been notified and given a reasonable opportunity to be present.
- (c) **Meter out of Service - No Readings.** If any Meter used to determine the flow of Treated Water to Purchaser is out of service or out of repair so that the amount of Treated Water metered cannot be ascertained or computed from the

reading thereof, the Treated Water delivered during the period such Meter is out of service or out of repair shall be estimated and agreed upon by Purchaser and Waco upon the basis of the best data available. The basis for estimating such flow includes, but is not limited to, extrapolation of past patterns of flow for said Meter under similar conditions. In the event that Purchaser and Waco cannot agree on the extrapolated estimate of Treated Water volume delivered before the payment due date, Purchaser will make payment to Waco based on the same month in the previous year on or before the payment due date. Notwithstanding anything in this Agreement to the contrary, only after making such payment, may Purchaser request that a dispute under this Section be submitted to non-binding mediation as provided in Section 11.1 of this Agreement. Waco's acceptance of such payment does not waive Waco's right to request that any remaining dispute regarding the amount of payment due be submitted at any time to non-binding mediation as provided in Section 11.1 of this Agreement.

4.4 Meter Reading.

- (a) Waco will read all Meter(s) provided for herein at monthly intervals, and Purchaser and Waco shall have free access to read these respective Meter(s) daily, if either party so desires. It shall be the duty of both Purchaser and Waco to give immediate notice, each to the other, should any Meter(s) be found not functioning properly. Upon such notice; Waco shall make repairs to such Meter(s) promptly. The expense of such repairs shall be included in Waco's operating and maintenance costs and attributed generally to the Wholesale Customer Class.
- (b) Purchaser shall have access to records on the Meter(s) readings during reasonable business hours and shall be furnished a copy of readings upon request.
- (c) If Purchaser has more than one point of connection to the Waco Treated Water System, the sum of all Meter(s) readings and rates of flow shall be used for the purpose of calculating the Volume Charge and other charges as provided in Section 5.3 of this Agreement.

ARTICLE 5

Fees, Billing and Payment

5.1 Charges for Water.

- (a) **Raw Water.** A Purchaser who has entered into a Raw Water Reservation as provided in Section 3.1 of this Agreement shall pay a Raw Water Reservation Charge. To the extent that the Raw Water Reservation so entered is in an amount that meets or exceeds the amount of Treated Water Purchaser receives from Waco, no capital cost for Raw Water shall be included in the Volumetric Rate such Purchaser pays for Treated Water. A Purchaser who has not entered into a Raw Water Reservation as provided in Section 3.1 of this Agreement and a Purchaser whose Raw Water Reservation is not in an amount that meets or exceeds the amount of Treated Water Purchaser receives from Waco, shall pay capital costs for Raw Water as part of the Volumetric Rate for Treated Water.
- (b) **Treated Water.** Purchaser shall pay to Waco the applicable fees and charges for the Treated Water delivered by Waco, including, but not limited to, Late Fees, Demand Charge, and Volume Charge. To the extent Purchaser uses Treated Water in excess of the amount of Treated Water derived from the Reserved Raw Water, Purchaser shall pay for the excess Raw Water at a rate four (4) times the rate of Raw Water in the Fiscal Year Fee Schedule in effect at the time the overage occurs.
- (c) **Excess Demand Charge.** If Purchaser's actual Maximum Day Usage exceeds the Maximum Day Demand established under Section 3.5 of this Agreement by more than 10%, Purchaser shall also pay to Waco the Excess Demand Charge.
- (1) The Excess Demand Charge shall be calculated by subtracting the Purchaser's Maximum Day Demand from the Purchaser's actual Maximum Day Usage to determine the Excess Demand.
- (2) The Excess Demand, stated in MGD, shall be applied to the rate year's Demand Charge expressed in dollars per million gallons per day and then multiplied by a factor of 1.5 times. (In other words, if there were excess usage, then the 1.5 factor would be applied to the excess use only.) For example:
- The Maximum Day Demand is 1 million.
 - There is Excess Demand on Day Y of 2 million gallons. *So the Adjusted Maximum Day usage for Day Y is 3 million gallons.*
 - The TOTAL amount charged for Day Y would be:
The Maximum Day Demand multiplied by the regular rate
+
The Excess Demand amount multiplied by the regular rate multiplied by 1.5 (2 million gallons x regular rate x 1.5)

- (3) Purchaser shall be notified within thirty (30) days of Waco's determination that Purchaser has exceeded its Maximum Day Demand by a factor greater than 10%.
 - (4) Purchaser shall be provided a statement of the Excess Demand Charge billing on or before November 1st of the subsequent rate year with full payment due within thirty (30) days from delivery of such statement as provided in Section 12.4 of this Agreement.
 - (5) During a temporary emergency condition created by unforeseeable mechanical failure, including failure at an active groundwater well, or by unprecedented high rate of Treated Water usage, such as might result from a major fire or a major water main break, it may be necessary that Treated Water be withdrawn from the Waco System at a rate of usage in excess of that required for the Maximum Day Demand or Maximum GPM. **It is agreed that the Excess Demand Charge that normally would be applicable shall not apply for such bona fide emergency withdrawals provided that Waco is notified in writing within 48 hours of the occurrence of an emergency condition and the emergency condition is alleviated as soon as possible.**
 - A. Purchaser shall notify Waco in writing within 48 hours of an occurrence that Purchaser believes is a bona fide temporary emergency. The notice shall describe conditions that resulted in Purchaser's claim of a temporary emergency and the steps being taken to alleviate the condition. Once that condition is ended, Purchaser shall advise Waco in writing.
 - B. Waco shall review the notice from Purchaser claiming an emergency condition and may request additional information. Waco shall determine whether it agrees that the circumstances constitute a temporary emergency. Waco shall notify Purchaser of its decision in writing within ten (10) days of the end of the condition.
 - (6) In any event, the Volume Charge for all Treated Water delivered shall be due and payable as described elsewhere in this Agreement.
- (d) **Pass-through Fees.** Purchaser shall pay to Waco any Pass-through Fees that are or may become applicable.

(e) **Fee Reductions.**

- (1) **Continuous Period No Water.** If Waco is unable to deliver Treated Water to Purchaser for a period of ten (10) continuous days, Waco shall make a pro rata reduction in the monthly Demand Charge that Purchaser is required to pay for the month in which Treated Water was not delivered to Purchaser.
- (2) **Reduced Amount Delivered.** Over the period of a month, if Waco is unable to deliver an average per day of at least 25% of the 1,200,000 gallons per day as stated in Section 3.1 because of issues related to (a) Waco's maintenance or repair of facilities or (b) rationing or reduction imposed under Section 6.3, then Waco shall make a pro rata reduction in the monthly Demand Charge..

5.2 Water Rates.

- (a) **Rates for Initial Fiscal Year Under Agreement.** Upon the effective date of this Agreement, the Initial Rates in effect for Raw Water (as part of the Volumetric Rate), the Volumetric Rate, and the Demand Rate, shall be as set out in **Exhibit B**.
- (b) **Annual Cost of Service Study and Subsequent Annual Rates.** The rate for Raw Water (as part of the Volumetric Rate), the Volumetric Rate, and the Demand Rate, shall be recalculated in a Cost of Service Study and set annually prior to the beginning of a new fiscal year.
- (c) **Rate Methodology.** The Initial Rates and subsequent annual rates that Purchaser pays to Waco for Water shall be calculated in accordance with the methodology described and contained within the Water Rate Study, except as provided in Section 5.2(d) below. The rate methodology set forth in the Water Rate Study and used to set the Initial Rates is hereby specifically agreed to between Waco and Purchaser. That methodology includes the following principles:
 - (1) The "Cash Basis" methodology for rate setting;
 - (2) The "Base/Extra Capacity" cost allocations methodology, as sanctioned by the American Water Works Association;
 - (3) Except those for Raw Water and water treatment plant as described below, common-to-all capital costs based upon the embedded costs incurred by Waco at the time of rate determination;
 - (4) To the extent that Purchaser has not reserved an amount of Raw Water pursuant to Section 3.1 of this Agreement in an amount that meets or exceeds the amount of Treated Water Purchaser receives from Waco, Raw Water capital costs determined based upon the incremental cost incurred by Waco to increase the stored raw water availability in Lake Waco above 455 msl;

- (5) Water treatment plant capital costs determined based upon the incremental cost incurred by Waco to increase or replace water treatment plant capacity beyond 60 MGD; and
 - (6) Cost of Service Study based on Waco's Budget for the rate year and utilizing Waco's latest water system operating characteristics adjusted for Purchaser's Maximum Day Demand.
- (d) **Review and Update of Rate Methodology.** Every five years during the term of this Agreement, the rate methodology contained in the Water Rate Study will be reviewed and modified at the option of Waco to reflect changed circumstances and ensure that Waco is recovering the cost of providing service under this Agreement. Review of the rate methodology will be conducted in consultation with the Water System Advisory Committee. Waco shall, to the extent practicable, provide at least three months' notice of the issues under review prior to any modification pursuant to this Section. Review and update of the rate methodology under this subsection will not change the amount of the Raw Water Reservation Charge established in Section 3.1 of this Agreement.
- (1) A majority of the members of the Water System Advisory Committee may request that Waco review the rate methodology by filing a written request with Waco. Upon receipt of such a request, Waco shall call a meeting of the advisory committee before issuing a decision on whether to review the methodology.
- (e) Waco will make the user's manual for the Water Rate Study and an electronic copy of the rate model available to Purchaser at Purchaser's request.

5.3 Billing and Payment.

- (a) **Monthly Billing Statements.** Each month during the term of this Agreement, Waco shall read the Meter(s) measuring Treated Water being provided to Purchaser. Waco shall prepare and deliver to Purchaser a billing statement showing Purchaser's raw water reservation charge, volume charge, plant expansion charge, and peak charge.
 - (1) If and when year-to-date cumulative volume exceeds the initial declared Annual Minimum Volume, such excess will be multiplied by the Volumetric Rate to calculate the Volume Charge in excess of the Minimum Annual Volume charge.
 - (2) Waco would then prepare and deliver to Purchaser a billing statement showing the Minimum Annual Volume monthly charge, Volume Charge for all Treated Water delivered in excess of Annual Minimum Charge, if any, along with the monthly Raw Water Reservation Charge, the monthly Demand Charge, any Pass-through Fees that may be applicable and any Late Fees that may be imposed on previous charges and fees pursuant to subsection (c) of this Section.
- (b) **Payment.** Purchaser shall make payment by the twentieth (20th) day after delivery of the monthly billing statement by Waco as provided in Section 12.4

of this Agreement. Payment shall be considered late if not received by Waco by the 20th day after delivery of said bill, unless a protest or dispute is filed as provided in Section 5.4.

- (c) **Late Fees.** If Purchaser is late in the payment of any charge or fee due and payable to Waco under this Agreement, late payments shall bear per annum interest at a rate equal to the lesser of four percentage points (4%) above the Prime Interest Rate as published in the Wall Street Journal on the day said statement becomes delinquent, or the maximum allowed by law to be charged to Purchaser.
- (d) **Default by Non-payment.** If any charges or fees remain unpaid at the expiration of ninety (90) days after delivery of the statement as provided in Section 12.4 of this Agreement Purchaser shall be in default under this Agreement, and Waco may invoke the remedies specified herein.

5.4 **Billing Questions and Disputes.**

- (a) **Statement Dispute; Protest.** If Purchaser has a protest or dispute concerning a statement, Purchaser shall notify Waco in writing within fifteen (15) days of delivery of said statement to Purchaser as provided in Section 12.4 of this Agreement. Purchaser shall pay the portion of the statement that is not being disputed or protested. Upon written notification, 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 and will not be subject to the penalties (such as Late Fess and Excess Demand Charge) stated herein. The written notice of the protest or dispute shall be delivered to Waco as provided in Section 12.1 within fifteen (15) days of delivery of said statement, or Purchaser's protest or dispute shall be considered waived.
 - (1) The Parties will negotiate in good faith to resolve the dispute. The Parties agree to submit any dispute that is not so resolved to non-binding mediation as provided in Section 11.1 of this Agreement.
 - (2) If the Parties cannot resolve the dispute within forty five (45) days of Purchaser notifying Waco of its dispute or protest, Purchaser shall deposit the disputed amount in an interest bearing escrow account at a nationally recognized banking institution in McLennan County, Texas, until such time as the dispute or protest is resolved.
- (b) **Inspection and Audit.** Complete records and accounts required to be maintained by each Party shall be kept for a period of five (5) years. Each Party shall at all times, upon notice, have the right at reasonable times to examine and inspect said records and accounts during normal business hours. If required by any law, rule or regulation, a Party shall make said records and accounts available to federal and/or state auditors

- 5.5 **Rate Case and Mediation Expense.** Purchaser and Waco recognize and agree that Waco may enter into other wholesale water supply agreements with other customers, including, but not limited to, other cities, water districts, and retail public utilities. To the extent that any mediation proceeding or any legal or administrative proceeding is

hereafter instituted by Waco or by Purchaser or any other wholesale water customer of Waco, which proceeding in any way relates to the terms, the rates, the methodology set forth in the Water Rate Study, or the methodology or rate model used in performing the Cost of Service Study to establish rates related to water provided by Waco under this Agreement or any agreement with similar terms and provisions for the reservation of Raw Water and/or provision of Treated Water, Purchaser 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 Purchaser, except to the extent that a regulatory authority finds that the rate case expenses incurred by Waco were not reasonable and necessary.

ARTICLE 6

Restrictions and Conditions

- 6.1 Resale of Treated Water.** Purchaser and Waco agree that the Treated Water supplied to Purchaser by Waco shall be used solely by Purchaser to meet the reasonable water supply needs of Purchaser's retail potable water customers within the Purchaser's boundaries and extraterritorial jurisdiction or service area defined by Purchaser's Certificate of Convenience and Necessity (CCN), whichever is more expansive.
- (a) Amendment to Certificate of Convenience and Necessity.** Purchaser agrees that it will not amend its CCN to increase its service area within the extraterritorial jurisdiction of Waco without the prior written consent of Waco.
 - (b) If an Area is in Waco's Certificate of Convenience and Necessity** and Waco has the ability to serve the Area, then Waco reserves the right to serve said Area, even if Purchaser has a Certificate of Convenience and Necessity to serve the Area.
- 6.2 No Assignment of Raw Water Reserved Without Waco Consent.** Purchaser and Waco agree that Purchaser may not assign or transfer its Raw Water Reservation, in whole or in part, or commit Raw Water under that reservation as available for use by others, without obtaining the prior written approval of Waco. Unless otherwise provided in Waco's approval, and then only to the extent so provided, such written consent by Waco shall in no way change the terms of this Agreement or impose any additional obligations on Waco to Purchaser or its assigns or transferees. In no event may Purchaser assign or transfer its Raw Water Reservation in whole or in part to a third party who has not also entered into a written Raw Water Reservation with Waco, nor shall any such assignment or transfer be for less than the remaining term of the Agreement nor for a price or under terms other than as provided in this Agreement. Upon any such transfer the amount of acre-feet specified under Section 3.1 of this Agreement shall be reduced accordingly.

6.3 Water Conservation and Demand Management.

- (a) **Water Conservation.** Purchaser shall cooperate with and assist Waco in its efforts to develop and implement plans, programs, and rules to develop water resources and to promote practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in use of water, or increase the recycling and reuse of water. This may include the development of any conservation or rationing plans by either Waco or Purchaser that may be necessary or appropriate to address operational constraints, whether or not the same are required by any state or federal regulatory agency. Purchaser agrees to develop and implement drought contingency and conservation plans or measures required by federal or state agencies or other regulatory jurisdictions, including but not limited to, 30 TAC Section 288.2(a)(2) and (3). Purchaser shall provide a copy of such plan to Waco within 90 days of execution of this agreement. Such plans shall be consistent with and as stringent as Waco's adopted plans. If Waco determines that Purchaser's plans do not meet this standard, Waco shall notify Purchaser of the deficiency in writing. Purchaser shall then amend its plans and resubmit the plans to Waco for review.
 - (1) If Waco amends its plans, programs, and rules, either at its own initiative or in response to state or federal laws or regulations, Waco shall deliver to Purchaser as provided in Section 12.1 a copy of its amendments within thirty (30) days of adoption. Purchaser shall have ninety (90) days from such delivery to review its plans, programs, and rules to determine if any amendment is needed and to forward any needed amendments to Waco for review as provided in Section 6.4(a).
- (b) **Demand Management.** If Waco shall manage demand through rationing the use of water to its retail customers, then a proportional rationing of water supplied to Purchaser by Waco shall be instituted, at Waco's option. Rationing does not relieve Purchaser from its obligation to pay the monthly Demand Charge, except as provided in Section 5.1(e). If Waco shall manage water demand by its retail customers through restrictions on water usage designed to obtain a certain percentage of reduction in water usage (such as limitations on outdoor watering), Waco may restrict treated water deliveries to Purchaser by the same percentage, unless Purchaser enforces the same restrictions as Waco on its retail customers. This rationing and/or restrictions by Waco may be enforced through the use of rate-of-flow controllers.
- (c) **Distribution of Water During Shortage.** Subject to the provisions of Section 3.2 of this Agreement, and for the sole purpose of compliance with Texas Water Code provisions for distribution of water during shortage due to drought or accident, the water supply to be divided between Waco and its wholesale customers is agreed to be that amount of Water that Waco reasonably can make available through treatment for potable purposes of any of the water that Waco is authorized to store and divert from Lake Waco as of the effective date of this Agreement.

- (d) **Minimum Amount of Water.** Notwithstanding anything in this Agreement to the contrary, Purchaser's right to reserve Raw Water, to reserve Initial Maximum Day Demand and GPM, or to receive any specific quantity of water under the Initial Term of this Agreement or renewal thereof, may be limited to the extent reasonable or necessary to make water available to Waco or to others in the Wholesale Customer Class, by the amount of water that Purchaser would have saved if Purchaser had operated its water system in compliance with applicable water conservation, drought management, or demand management plans. The extent of any such limitation will be determined by Waco in consultation with the Water System Advisory Committee and after notice to Purchaser.

6.4 Sanitary Sewer.

- (a) **Cooperation.** Inadequate and/or malfunctioning sanitary sewage facilities can create a nuisance situation that is dangerous to the health, safety and welfare of other persons in the area and can contaminate sources of surface or underground water. Purchaser agrees that it will cooperate with Waco in Waco's efforts to prevent or mitigate the impact of such facilities on area water resources.
- (b) **Connection.** Purchaser agrees that, *to the* extent allowed by law, it will require all *of* its customers, who are provided Treated *Water* from the Waco Treated Water System, to have adequate sanitary sewage facilities, including either a connection to a sewer system or on site sewage facilities [OSSF, i.e., septic tank system], that meet TCEQ requirements, as well as all requirements adopted by Purchaser, McLennan County and/or Waco through its Subdivision Ordinance (whichever applies).
- (c) **Disconnection.** If a customer of Purchaser has inadequate or malfunctioning sanitary sewage facilities or violates some provision of state law or local regulations regarding an OSSF, Purchaser will, to the extent allowed by law, disconnect water service to that customer (if the customer does not correct the problem after reasonable notice) until such time as adequate, properly functioning sanitary sewage facilities are provided or all violations of state law or local regulations are corrected. By adequate and/or proper functioning sanitary sewage facilities, it is meant a system handling sewage that meets all federal, state, and local standards.

- 6.5 **Federal and State Laws.** This Agreement is subject to all applicable federal and state laws and any applicable permits, amendments, orders, or 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, order, rule or regulation in any forum having jurisdiction. Purchaser and Waco mutually agree to abide by any changes in this Agreement made necessary by any new, amended, or revised state or federal regulation.

- 6.6 Support of Waco on Permits and Governmental Agency Approvals.** Purchaser shall actively support and assist Waco in obtaining permits and approvals from governmental agencies in order to protect, repair, maintain, replace, add to, supplement and/or enlarge the Waco Raw Water System and the Waco Treated Water System. Such support and assistance shall include, but is not limited to: providing information to Waco when requested by Waco in order to facilitate any permit or approval; providing written and oral statements of support and assistance or testimony, information, and evidence if appropriate and if requested by Waco in order to obtain any permit or approval; and taking all such other action as may be appropriate to support and assist Waco in obtaining any permit or approval. Support under this Section 6.8 does not extend to direct financial contribution to such efforts. The Parties acknowledge, however, that such costs as are incurred by Waco will be attributed in the Cost of Service Study, including to the Wholesale Customer Class, as appropriate.

ARTICLE 7

Term of Agreement & Extension

- 7.1 Effective Date.** The effective date of this Agreement shall be October 1, 2019.
- 7.2 Expiration of Agreement.** Subject to renewal as provided in this Agreement and unless otherwise terminated sooner as provided in this Agreement, this Agreement shall expire without necessity of other action **at midnight on September 30, 2045.** Upon expiration of this Agreement, Purchaser shall have no right to receive water from Waco and Waco is permanently released from any and all obligations to make Water available to Purchaser.
- 7.3 Renewal of Agreement.**
- (a) **Option to Renew.** Purchaser shall have the option to renew this Agreement, specifically including the Raw Water Reservation, for one (1) additional term of not less than twenty (20) years, upon conditions and at a price and rate as may be mutually agreed in writing by the Parties.
- (1) The quantity of Raw Water available for reservation by Purchaser under a renewal of this Agreement shall be in an amount not less than the amount of the Raw Water Reservation entered under the provisions of Section 3.1 of this Agreement for the Initial Term.
 - (2) The quantity of Treated Water available to Purchaser under a renewal of this Agreement shall be in an amount not less than the Initial Maximum Day Demand provided in Section 3.5(a) of this Agreement.
 - (3) Purchaser specifically acknowledges that the ability of Waco to renew this Agreement in an amount greater than the amount of the Raw Water Reservation and the Initial Maximum Day Demand in effect during the Initial Term of this Agreement is subject to Waco first determining in Waco's sole discretion that Waco is projected to have, for the term of the renewal, Raw Water and Treated Water available after meeting the

demands of Waco's existing and potential retail customers, including retail customers who purchase water at wholesale rates.

- (4) To the extent that Waco determines that, for the term of the renewal, it will have Raw Water and Treated Water available in excess of meeting the demands of Waco's existing and potential retail customers, Purchaser shall have the first opportunity to increase the quantity of water subject to renewal as provided in Subsection (b) of this Section.
 - (5) In the absence of renewal, and except as specifically provided to the contrary, this Agreement and the obligations of both Waco and Purchaser under this the Agreement shall end on the expiration date specified in Section 7.2 of this Agreement.
 - (6) Renewal is further subject to all state and federal laws and regulations that may limit Waco's and/or Purchaser's legal authority or ability to renew this Agreement.
- (b) **Opportunity to Increase Amount of Water Subject to Renewal.** If Purchaser chooses to renew under the provisions of Subsection (a) of this Section, then Purchaser's renewal shall be in the proportion that Purchaser's most recent Maximum Day Demand bears to the collective most recent Maximum Day Demands of the members of the Wholesale Customer Class that also have a right to or elect to receive additional water during the term of renewal.
- (c) **Notice of Intent to Renew.** Purchaser is required to give notice of its intent to renew this Agreement, specifically including the Raw Water Reservation, **on or before midnight on September 30, 2035**, being at least ten years prior to the expiration date. Notwithstanding anything in this Agreement to the contrary, Waco and Purchaser expressly agree that Purchaser's failure to provide notice of intent to renew on or before midnight on September 30, 2035 shall constitute Purchaser's determination and notice not to renew.
- (d) **Evidence of Replacement Supply upon Notice of Non-Renewal.** If on or before midnight on September 30, 2035, Purchaser does not provide Waco notice that it intends to renew, then also **on or before midnight on September 30, 2035**, Purchaser shall, for purposes of providing additional assurance to Waco that Purchaser will relinquish any reservation of Raw Water and will be disconnected from Waco's Treated Water System upon the expiration of this Agreement, provide Waco evidence that Purchaser has secured an alternative and sufficient water supply. Waco expressly may, but is not required to, enforce this requirement by any means available at law. Purchaser's failure to provide such evidence, or Waco's determination not to enforce this requirement, shall not affect the expiration of this Agreement.
- (e) **Payments Due Upon Expiration.** After expiration of the Agreement, Purchaser shall nonetheless pay Waco for all charges of any kind for Treated Water delivered pursuant to this Agreement, Demand and Excess Demand Charges and/or Raw Water Reservation Charges, Late Fees, and Pass-through

Fees as may be due and owing under the terms of this Agreement upon its expiration. In order to document the expiration of this Agreement, within thirty (30) days of expiration of this Agreement, Waco shall deliver to Purchaser a notice of expiration and a final monthly statement specifying all applicable charges for Treated Water delivered before the expiration of the Agreement, including all Volume Charges, Demand and Excess Demand Charges and/or Raw Water Reservation Charges, Late Fees and Pass-through Fees as accrued before the expiration of the Agreement. The failure of Waco to deliver such notice of expiration shall neither reinstate this Agreement nor relieve Purchaser from the obligation to pay all charges and fees that remain due and owing.

ARTICLE 8

Termination & Default

- 8.1 Termination by Mutual Consent.** This Agreement may be terminated in whole or in part by the mutual consent of the Purchaser and Waco, except that Purchaser may not maintain a Raw Water Reservation without also maintaining a right to receive Treated Water in an amount equal to or exceeding the Initial Maximum Day Demand. In the event of termination of this Agreement by mutual consent, all rights, powers, and privileges of Purchaser hereunder shall cease and terminate without necessity of further action. Upon termination of this Agreement by mutual consent, Purchaser shall have no right to receive Water from Waco and Waco is permanently released from any and all obligations to make Water available to Purchaser. Purchaser shall make no claim of any kind whatsoever against Waco, its agents or representatives, by reason of such termination or any act incident thereto. If the Parties agree to terminate this Agreement, Purchaser shall nonetheless pay Waco for all Volume Charges for Treated Water delivered pursuant to this Agreement, along with all applicable Demand and Excess Demand Charges and/or Raw Water Reservation Charges, Late Fees, and Pass-through Fees owed under the terms of this Agreement prior to termination. The provisions of this Section survive termination of the Agreement.
- 8.2 Default by Purchaser for Failure to Pay.** In the event Purchaser is in default under the terms of this Agreement, Waco may, upon twenty (20) days written notification to Purchaser, temporarily suspend the delivery of Treated Water to Purchaser. If, after the first day of suspension, Purchaser remains in default for a continuous period of ninety (90) days, Waco may, upon written notice to Purchaser, terminate this Agreement, including any Raw Water Reservation entered pursuant to Section 3.1 and as may be renewed or extended under Section 7.3 of this Agreement.
- (a) Waco shall advise Purchaser in writing immediately upon acceptance of the cure of any breach.
 - (b) If Waco terminates this Agreement, Purchaser shall nonetheless pay Waco for all Volume Charges for Treated Water delivered pursuant to this Agreement, along with all applicable Demand and Excess Demand Charges and/or Raw

Water Reservation Charges, Late Fees, and Pass-through Fees owed under the terms of this Agreement prior to termination. During the time that this agreement remains in effect, Purchaser shall continue to be obligated to pay said charges during the time Purchaser is in default. The provisions of this Subsection survive termination of the Agreement.

- (c) In the event of termination of this Agreement, all rights, powers, and privileges of Purchaser hereunder shall cease and terminate, Purchaser shall have no right to receive water from Waco, and Waco is permanently released from any and all obligations to make Water available to Purchaser. Purchaser 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. The provisions of this Subsection survive termination of the Agreement.

8.3 Defaults by Parties (other than Purchaser's Failure to Pay). If either Party is in default under the terms of this Agreement (except as addressed in Section 8.2 above), the other Party shall give the Defaulting Party notice in writing of the default. The Defaulting Party shall have thirty (30) days to cure the default.

- (a) If a Party put on notice of an alleged default does not believe it is in default, that Party shall respond in writing to the Party that gave notice within ten (10) days to explain its position on the alleged default. The Parties will negotiate in good faith to resolve the dispute. The Parties agree to submit any dispute that is not so resolved to non-binding mediation as provided in Section 11.1 of this Agreement if the dispute is not resolved within thirty (30) days from the date of the response to the Party that gave notice of the default.
- (b) If a Defaulting Party believes that curing the default will take longer than thirty (30) days, the Defaulting Party may make a written request for additional time. The request shall explain the need for the additional time and the amount of time needed. Approval of the additional time shall not be unreasonable withheld. The Party receiving the request shall respond in writing within seven (7) days to either deny the request or offer a modified time for curing the default. If no response is made, the request for time shall be deemed approved as submitted by the Defaulting Party.
- (c) The Defaulting Party shall give the other Party written notice when it has completed its actions to cure the default. The other Party shall within two (2) days advise the Defaulting Party in writing whether it accepts the actions as curing the default. This acceptance shall not be unreasonable withheld.
- (d) If a Party remains in default of the requirements of this Agreement for a period of one hundred eighty (180) days, the other Party may give notice in writing of its intent to terminate the Agreement on a specified date.
- (e) During the time that this agreement remains in effect, Purchaser shall continue to be obligated to pay said charges during the time Purchaser is in default.
- (f) The provisions of this Article survive termination of the Agreement.

- 8.2 Agreement Terminated under 8.3.** If the Agreement is terminated by either Party, Purchaser shall pay Waco for all accrued Volume Charges for Treated Water delivered pursuant to this Agreement, along with all applicable Demand and Excess Demand Charges and/or Raw Water Reservation Charges, Late Fees, and Pass-through Fees owed under the terms of this Agreement prior to termination. In the event of termination of this Agreement, all rights, powers, and privileges of Purchaser hereunder shall cease and terminate, Purchaser shall have no right to receive water from Waco, and Waco is permanently released from any and all obligations to make Water available to Purchaser.
- 8.3** The provisions of this Article survive termination of the Agreement.

ARTICLE 9

Force Majeure

- 9.1 Definition.** The term *Force Majeure* as used herein shall mean a cause or causes beyond the reasonable control of the Party claiming *Force Majeure*, and shall include but not be limited to natural disasters, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the United States of America or the State of Texas or any civil or military authority, insurrections, riots, epidemics, lightning, fires, hurricanes, storms, water quality events, floods, washouts, droughts, civil disturbances, explosions and breakage or accidents to machinery, pipelines, or facilities; however, lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any *Force Majeure* shall be remedied with all dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing Party or Parties when such settlement is unfavorable in the judgment of the Party having the difficulty.
- 9.2 Notice; Suspension of Obligations.** By reason of *Force Majeure*, if any Party hereto shall be rendered partially or wholly unable to carry out its obligations under this Agreement, then if such Party shall give notice in writing of such *Force Majeure* to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such *Force Majeure*, with the exception of the obligation of Purchaser to pay Raw Water Reservation charges, Demand Charges, Late Fees, and pass-through fees and charges and charges for services actually received from Waco hereunder, shall be suspended during the continuance of the inability then claimed, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

ARTICLE 10

Ownership, Liability, Indemnification and Insurance

- 10.1 Responsibility for Damages for Water.** Except to the extent provided otherwise in this Agreement, Waco shall be the owner of and responsible for **Raw Water** at all times. Except to the extent provided otherwise in this Agreement, Waco shall be the owner of and responsible for **Treated Water** only until it shall pass through the Meter(s) to the Delivery Point(s) at which time Treated Water becomes the property and responsibility of Purchaser. Unless otherwise provided in this Agreement, responsibility for damages arising from the improper treatment, transportation, and delivery of all Treated Water provided under this Agreement shall remain with Waco to the Delivery Point(s). Upon passing through the Meter(s), liability for all damages arising from improper transportation and delivery of the Treated Water after it leaves the Waco system shall pass to Purchaser. **For Treated Water, Waco's sole responsibility is to provide to Purchaser at the Delivery Point(s) potable water meeting the minimum quality requirements for human consumption as prescribed by the TCEQ or appropriate governing agency, or by federal and state law.**
- 10.2 Immunities under State Law.** Nothing in this Agreement shall be construed as waiving sovereign immunity or any other immunity to which Purchaser or Waco may be entitled to under state or federal law.
- 10.3 Purchaser's Insurance – Political Subdivision.** Upon request, a Purchaser that is a political subdivision of the State of Texas shall provide Waco with a copy of Certificate of Insurance evidencing insurance maintained by Purchaser to cover its sale of water.
- 10.4** Subject to Purchaser's right to maintain reasonable deductibles in such amounts as are approved by the City, Purchaser shall obtain and maintain in full force and effect for the duration of the services to be performed under the contract, and any extension hereof, at Purchaser's sole expense, insurance coverage written on an occurrence basis, IN THE FOLLOWING TYPES AND AMOUNTS:

Type	Amount
Workers' Compensation	Statutory
Employer's Liability	\$1,000,000/\$1,000,000/\$1,000,000
Comprehensive General Liability Including: • Premises/Operations • Independent Contractors • Products/Completed Operations • Personal & Advertising Injury	\$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

• Explosion, Collapse, Underground • Broad form property damage, to include fire legal liability	
Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	\$1,000,000 per occurrence or its equivalent on a combined single limit (CSL basis).
Professional Liability Insurance	\$500,000

All insurance policies except workers' compensation and employer liability will name the City of Waco as an additional insured.

Professional Liability Insurance: Any such policy of insurance and the Declarations Page therefore shall identify if coverage is being provided on an "occurrence" or "claims-made" basis. If this coverage is being provided on a claims-made basis, CONSULTANT must maintain this policy for a period of two (2) years after the completion of the project or shall purchase the extended reporting period or "tail" coverage insurance providing equivalent coverage for the same period of time.

10.5 Term of Policy. The required coverage must remain in effect for a two (2) year period following the expiration of the contract with the City.

10.6 Proof of Insurance Required.

Examination & Approval. All insurance policies shall be subject to the examination and approval of the City for their adequacy as to form and content, form of protection, and financial status of insurance company.

When to Submit. Prior to the commencement of any work or services under this contract, Purchaser shall furnish to the Risk Manager for City originals of completed certificates of insurance, policy endorsements, exclusions, and/or relevant extracts from the insurance policy, or copies of the policies, plainly and clearly evidencing such insurance. Thereafter new certificates, policy endorsements, exclusions, and/or relevant extracts from insurance policies, or policies shall be provided prior to the expiration date of any prior certificate, endorsement, or policy.

Insurers. Purchaser shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas and satisfactory to the City.

Additional Insured. Except for Workers' Compensation and Employers' Liability, the City, its elected officials, officers, servants, agents, volunteers and employees shall be named as additional insureds. No officer or employee, other than the Risk Manager, shall have authority to waive this requirement.

Other-Insurance Endorsement --All insurance policies are to contain or be endorsed to contain the following additional provisions:

1. "Other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy; and

2. Provide not less than ten (10) calendar days advance notice to the City of any suspension, cancellation, non-renewal or material change in coverage.

Agent Information. The certificate(s) must be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City.

Precondition to Performance & Basis for Termination. The City shall have no duty to pay or perform under the contract until such certificate(s), policy endorsements, exclusions, and/or relevant extracts from the insurance policy shall have been delivered to the City's risk manager. Purchaser understands that it is its sole responsibility to provide this necessary information to the City and that failure to timely comply with the requirements of this section shall be a cause for termination of this Agreement. If the City determines that it will deny payment, not perform, or terminate this contract because of the failure to provide certain information or documents, the City shall give Purchaser notice of that determination and allow Purchaser fifteen days to correct the deficiency.

Waiver of Subrogation. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

Notice of Cancellation, Non-renewal, Material Change. When there is a cancellation, non-renewal, or material change in coverage which is not made pursuant to a request by the City, Purchaser shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Purchaser knows of said change in advance, or ten (10) days' notice after the change, if the Purchaser did not know of the change in advance. Such notice must be accompanied by a replacement certificate(s) of insurance, policy endorsements, exclusions, and/or relevant extracts from the insurance policy.

- 10.7 INDEMNIFICATION. PURCHASER AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR THE SERVICES RENDERED PURSUANT TO THE CONTRACT AWARDED UNDER THIS REQUEST FOR BID AND HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, AGENTS, AND SERVANTS, OF AND FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTIONS OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, PERSONS AND ANY LOSSES FOR DAMAGES TO PROPERTY CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY, OR IN CONNECTION WITH, THE SERVICES TO BE RENDERED HEREUNDER, WHETHER OR NOT SAID CLAIMS, DEMANDS, CAUSES OF ACTIONS ARE CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND A PARTY TO THIS AGREEMENT, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND SOME OTHER THIRD PARTY. PURCHASER AGREES THAT ANY INSURANCE CARRIER INVOLVED SHALL NOT BE ENTITLED TO SUBROGATION UNDER ANY CIRCUMSTANCES AGAINST THE CITY, IT OFFICERS, OFFICIALS, AND EMPLOYEES.**

- 10.8 No Warranty on Raw Water.**

RAW WATER IS NON-POTABLE AND WACO MAKES NO WARRANTY OR REPRESENTATION WITH RESPECT TO THE QUALITY OR MINERAL CONTENT OF THE RAW WATER AND EXPRESSLY DISCLAIMS ANY WARRANTY AS TO ITS QUALITY, ITS MERCHANTABILITY, OR ITS FITNESS OR SUITABILITY FOR THE INTENDED PURPOSE. PURCHASER HAS SATISFIED ITSELF THAT SUCH WATER IS SUITABLE FOR ITS NEEDS. PURCHASER AGREES THAT ANY VARIATION IN THE QUALITY OR CHARACTERISTICS OF THE RAW WATER SHALL NOT ENTITLE PURCHASER TO AVOID OR LIMIT ITS OBLIGATION TO MAKE PAYMENTS PROVIDED FOR BY THIS AGREEMENT. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION CONTAINED IN THIS AGREEMENT.

10.9 Waco's Insurance. Upon request, Waco shall provide to Purchaser copies of Certificates of Insurance evidencing insurance maintained by Waco to cover its sale and treatment of water.

10.10 Return Flows. If Purchaser and Waco are each one of the cities that makes up the Waco Metropolitan Area Regional Sewer System (WMARSS), the WMARSS interlocal agreements and related documents shall control between Waco and Purchaser the ownership and other issues related to Return Flows to the extent provided for in said interlocal agreements and related documents.

ARTICLE 11

Dispute Resolution

11.1 Non-binding mediation. Each Party agrees that prior to filing a lawsuit or an administrative complaint with a regulatory agency on an issue related to the terms of this Agreement or otherwise related to water supply in lieu of this Agreement, the Party will submit the dispute to non-binding mediation. This provision survives termination of this Agreement.

ARTICLE 12

Notice and Delivery

12.1 Manner of Giving Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply, protest, advice, approval or consent herein provided or permitted to be given, made, or accepted by either Party to the other, must be in writing and may be given or be served by depositing the same in the United States Mail postpaid and registered or certified and addressed to the Party to be notified with

return receipt requested, or by delivering the same to the Mayor/City Manager or Chief Executive Office, or by prepaid telegram, when appropriate, addressed to the Party to be notified. Any such matter deposited in the mail in the manner hereinabove described shall become exclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the earlier of actual receipt of notice or the expiration of four (4) days after it is so deposited. Any such notice given in any other manner shall be effective only if and when received by the Party to be notified.

12.2 Notice to Waco.

Wiley Stem
City Manager
City of Waco
PO Box 2570
Waco, Texas 76702-2570

12.3 Notice to Purchaser.

Bo Thomas
City Manager
City of Hewitt
200 Patriot Court
Hewitt, Texas 76643

12.4 Delivery of Billing Statements. Delivery of a billing statement pursuant to Article 5 of this Agreement shall be considered effective on the earlier of the date that Waco deposits such statement in the United States regular mail or the date such statement is actually delivered to Purchaser by other means.

12.5 Change of Address. The Parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least five (5) days written notice to the other Party.

ARTICLE 13

Water System Advisory Committee

13.1 Creation of Advisory Committee. Purchaser's governing body shall annually appoint a representative to be a member of the Water System Advisory Committee, whose purpose is to consult with and advise Waco on matters pertaining to notice and renewal procedures under this Agreement, sustainability and conjunctive use of regional water resources including surface water and groundwater, water conservation, wholesale planning, improvements, grants, wholesale rate methodology and studies, administration, budgets, and additional wholesale customers, and such other issues that Waco and the Wholesale Customer Class shall agree to assign to it.

13.2 Procedures for Committee.

(a) The Committee may elect a person to preside as its chairperson.

- (b) The Committee shall meet as requested by Waco or as called to meet by the chairperson, but in no event less than once annually.
- (c) There shall be an annual meeting of the Committee in July of each year. Thereafter, meetings shall be called as requested by Waco or as called by the chairperson. The chairperson shall call a meeting if the chairperson receives a request signed by 50% of the Purchasers represented on the Committee.
- (d) Prior to any determination by Waco to significantly increase the treatment capacity in its Treated Water System, the Committee shall meet to advise Waco with regard to any adjustments that could be made with regard to the Maximum Day Demands of the Wholesale Customer Class in order to avoid additional costs.

ARTICLE 14

Miscellaneous Provisions

- 14.1 Governing Law.** This Agreement shall be governed by the applicable law of the State of Texas and due performance by each Party or any action arising under this Agreement shall lie in McLennan County, Texas. Jurisdiction and venue shall be in McLennan County, Texas, and each of the Parties submit to personal jurisdiction in the state district courts in such county.
- 14.2 Not a Permit.** The Parties acknowledge that this Agreement is not a permit for purposes of Texas Local Government Code Chapter 245.
- 14.3 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.
- 14.4 Entire Agreement; Supersedes All Others.** 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. Specifically, any prior agreement executed between these parties , related to the provision of Treated Water from Waco to Purchaser, is voluntarily terminated by agreement of the parties on the effective date of this Agreement. 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.
- 14.5 Partial Invalidity.** If any term of this Agreement is held to be invalid in any judicial action, the remaining terms will be unaffected.
- 14.6 Duty to Review and Revise.** The Parties will review and revise this Agreement to ensure compliance with the federal and state laws and rules and regulations as necessary.

- 14.7 Survival.** Any provision that by its terms survives the termination of this contract shall bind the Parties' legal representatives, heirs, and assigns as set forth herein.
- 14.8 Assignment.** This Agreement shall not be assignable by either Party without the prior written consent of the other Party nor in contravention of any other provisions contained herein.
- 14.9 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. This Agreement shall not be construed as creating any rights in any third party or any duty to any third party.
- 14.10 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.

IN WITNESS WHEREOF, the Parties have executed and attested this Agreement by their officers thereunto duly authorized as of the date signed.

CITY OF WACO, TEXAS

BY: _____
Wiley Stem, City Manager

Date Signed: _____

APPROVED AS TO FROM & LEGALITY:

Jennifer Richie, City Attorney

APPROVED:

Paul Cain, Assistant City Manager

APPROVED:

Lisa Tyer, Director of Water Utilities

City of Hewitt , TEXAS
("Purchaser")

By: _____
Bo Thomas, City Manager

ATTEST:

_____, City Secretary

Date Signed: _____

Exhibit B
City of Waco Water Utilities
Wholesale Water Supply Contract Specifications
For Fiscal Year Ending September 30, 2020
City of Hewitt

	MGD	Cost/MGD	Costs	Terms
Reservation Charges				
1 Reservation for Raw Water (\$172.24 per acre foot during contract term)	1.75	\$ 208,867	\$ 365,517	Annually for 25 years
Demand Charges				
2 Reservation for Peak (Max)	2.00	\$ 171,324	\$ 342,648	For Year 2020
3 Reservation for Plant Expansion	2.00	\$ 54,103	\$ 108,206	For Year 2020
Total Fixed Costs			\$ 816,371	
Volumetric Charges				
4 Volumetric Rate:		Cost/1000 Gal \$ 1.95		For Year 2020

Reservation for Raw Water does not change annually.

All rates except the Raw Water Reservation Rate are subject to annual adjustments.

Demand Charge Components - Reservation for Peak (Max) and Plant Expansion must be same MGD.

Reservation Charge - This charge is based upon the annual debt service for the Lake Waco Pool rise divided by the incremental water within the rise to produce a rate per acre foot or MGD. This rate is then applied to the specific MGD a wholesale customer wishes to reserve. Once set it does not change for the life of the contract and is paid in twelve equal monthly installments. If after the initial reservation the Wholesale customer wishes to reserve additional water the incremental amount of water would be subject to the current debt service. New customers contracting for water pay this charge at the highest historical annual debt service to avoid subsidization in the future.

Demand Charge - The Demand charge has two components. Both components are calculated annually based upon the customers designated Peak Day requirement and are subject to penalty if the customer exceeds it designated peak by 10% (Excess Demand Charge).

- (a) The first component is calculated based upon the customers designated Peak Day as a percentage of the Systems Peak Day for the annual period under the AWWA Base/Extra Allocation Methodology as set forth in the Cost of Service Model as contract and is applied to the pre expansion cost data and the current annual operating costs and is paid in twelve equal monthly installments.
- (b) The second component "Expansion Reservation" is calculated based upon the Expansion current annual Debt Service divided by the incremental Peak Day expansion capacity to arrive at a rate per MGD. This rate is then applied to the customers designated Peak Day and is paid in twelve equal monthly installments.

Volumetric Rate - This rate is billed monthly for actual volumes delivered to the wholesale customer based upon actual metered consumption. This rate is calculated by the Cost of Service Model again based upon the AWWA sanctioned Base/Extra Methodology. The rate basically reflects the systems annual operating and maintenance costs which are volume related (average day) versus costs incurred to meet Peak Day Demand as identified by the Cost of Service Model.

HEWITT TEXAS

COUNCIL AGENDA ITEM FORM

MEETING DATE: October 7, 2019

AGENDA ITEM #: 11

SUBMITTED BY: Bo Thomas, City Manager

ITEM DESCRIPTION:

Consider authorizing the City Manager to sign an agreement for electric rates for a term of 90 months thru Hudson Energy, as brokered by EMEX.

STAFF RECOMMENDATION/ITEM SUMMARY:

The City has the opportunity to lock into lower electric rates after the current contract expires in December 2021. Currently we are with Hudson Energy and our rate per kilowatt hour is .0453. The City has been with Hudson Energy since 2011. We were approached by EMEX, successor to the former brokers, TEA, with a Custom Analysis which you should have received in your council packet. Five electric providers bid on the city at various terms. Hudson has offered the best rates and we have had no problems working with them in the past. We have the option of locking into rates as low as .03750 for 7 1/2 years (90 months). Staff recommends accepting this rate of .3750 with Hudson Energy for the term of 90 months.

SUGGESTED MOTION:

"I move to authorize the City Manager to sign an agreement for electric rates for a term of 90 months thru Hudson Energy, as brokered by EMEX."

ATTACHMENTS:

Fixed Rate Analysis from EMEX.
Recent history of electric contracts and electric expense prepared by staff.

***PREPARED
EXCLUSIVELY FOR:***

City of Hewitt

Fixed Rate Analysis



EMEX

Energy Savings, Simplified.

EMEX Custom Pricing Analysis - Pricing Summary

Prepared For: City of Hewitt
Analysis Date: Tuesday, Oct 01, 2019
Start Month: Dec 2021
Account Size (kWh): 4,382,770
Utility Name: Oncor



Custom Savings Analysis

Your Current Supplier and Benchmark Price to Compare (PTC)							
Supplier Name	Quote Term (Months)	Quote Type	Energy Supply Price (\$/kWh)	Avg. Delivery Rate (\$/kWh)	Est. Bundled Rate (\$/kWh)	Est. Supply Pass-Through Cost	Est. Total Annual Cost
Hudson Energy	MTM	Fixed, All-In	\$0.04530	\$0.04581	\$0.09111	\$3,223.63	\$402,531.38
Top Energy Supply Quotes Obtained by EMEX							
Supplier Name	Quote Term (Months)	Quote Type	Energy Supply Price (\$/kWh)	Avg. Delivery Rate (\$/kWh)	Est. Bundled Rate (\$/kWh)	Est. Supply Pass-Through Cost	Est. Total Annual Cost
Direct Energy Business	42	Fixed, All-In	\$0.04030	\$0.04581	\$0.08611	Included	\$377,393.90
Direct Energy Business	54	Fixed, All-In	\$0.03946	\$0.04581	\$0.08527	Included	\$373,712.37
Direct Energy Business	66	Fixed, All-In	\$0.03879	\$0.04581	\$0.08460	Included	\$370,775.92
Hudson Energy	42	Fixed, All-In	\$0.03810	\$0.04581	\$0.08391	Included	\$367,751.81
Hudson Energy	54	Fixed, All-In	\$0.03780	\$0.04581	\$0.08361	Included	\$366,436.98
Hudson Energy	66	Fixed, All-In	\$0.03760	\$0.04581	\$0.08341	Included	\$365,560.42
Hudson Energy	78	Fixed, All-In	\$0.03750	\$0.04581	\$0.08331	Included	\$365,122.15
Hudson Energy	90	Fixed, All-In	\$0.03750	\$0.04581	\$0.08331	Included	\$365,122.15
MP2 Energy	42	Fixed, All-In	\$0.04258	\$0.04581	\$0.08839	Included	\$387,386.62
MP2 Energy	54	Fixed, All-In	\$0.04181	\$0.04581	\$0.08762	Included	\$384,011.88
MP2 Energy	66	Fixed, All-In	\$0.04101	\$0.04581	\$0.08682	Included	\$380,505.67
Reliant Energy	42	Fixed, All-In	\$0.04056	\$0.04581	\$0.08637	Included	\$378,533.42
Reliant Energy	54	Fixed, All-In	\$0.03977	\$0.04581	\$0.08558	Included	\$375,071.03
TXU Energy	42	Fixed, All-In	\$0.04013	\$0.04581	\$0.08594	Included	\$376,648.83
TXU Energy	54	Fixed, All-In	\$0.04005	\$0.04581	\$0.08586	Included	\$376,298.21
TXU Energy	66	Fixed, All-In	\$0.03915	\$0.04581	\$0.08496	Included	\$372,353.72
TXU Energy	78	Fixed, All-In	\$0.03850	\$0.04581	\$0.08431	Included	\$369,504.92
TXU Energy	90	Fixed, All-In	\$0.03795	\$0.04581	\$0.08376	Included	\$367,094.39
Estimated Annual Savings (90Mo. Term)					\$37,409.23	9.29%	
Estimated Savings Over Contract Term (90Mo. Term)					\$280,569.23		
Estimated Annual Savings (66Mo. Term)					\$36,970.95	9.18%	
Estimated Savings Over Contract Term (66Mo. Term)					\$203,340.25		

Actual savings may vary. Savings estimates are calculated according to actual or estimated benchmark pricing in relation to your historical energy consumption. All savings figures are based on current published utility tariffs or current third party supplier rates as provided to EMEX.

EMEX Custom Pricing Analysis - Pricing Addendum

Energy Usage Summary

Billing Month	Energy Usage
January	306,116
February	286,347
March	310,178
April	330,377
May	373,746
June	406,688
July	512,924
August	574,444
September	318,036
October	327,730
November	321,429
December	314,755
Total For All Months	4,382,770

Pricing Component Summary

Standard Items Included in EMEX Supply Rates**:

Wholesale Energy
Line Losses
ERCOT Ancillary Services & Fees
Renewable Energy Charge (REC)
Volumetric Swing (Value varies by supplier)
Nodal Reliability Unit Commitment (RUC)
Nodal Congestion (See Pricing Summary)

Items NOT Included in EMEX Supply Rates:

Utility Transmission & Distribution Charges
All State & Local Taxes

* Please consult with your EMEX Sales Associate for a complete list of items included in the quoted Supply Rate identified in the Pricing Summary.

Energy Account(s) Summary

No.	Account Number	Annual Usage	Rate Class	Service Address
1	See Attached Addendum			
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

Actual savings may vary. Savings estimates are calculated according to actual or estimated benchmark pricing in relation to your historical energy consumption. All savings figures are based on current published utility tariffs or current third party supplier rates as provided to EMEX.

EMEX Custom Pricing Analysis - Account Number Addendum

Please ensure all account numbers you wish to be contracted are included in the summary below:

[illegible]

Actual savings may vary. Savings estimates are calculated according to actual or estimated benchmark pricing in relation to your historical energy consumption. All savings figures are based on current published utility tariffs or current third party supplier rates as provided to EMEX.

HUDSON ENERGY - ELECTRIC CONTRACT HISTORY
2011 to present

	Term	Start	End	Fixed Rate	Avg Monthly	Annual Usage	Term Usage
1/27/2011 <i>Hudson Energy Contract</i> <i>Offer #H11012706019251</i>	48 months	6/7/2012	6/7/2016	0.0590	471,535	5,658,415	22,661,560
	Term	Start	End	Fixed Rate	Avg Monthly	Annual Usage	Term Usage
4/14/2016 <i>Hudson Energy Contract</i> <i>Applies to 699 Alliance Parkway - Commerce Park Water Plant</i> <i>Account # 104437200000288429</i>	12 months	4/15/2016	4/15/2017	0.0470	141,625	1,699,504	1,699,244
	Term	Start	End	Fixed Rate	Avg Monthly	Annual Usage	Term Usage
<i>In Effect thru 6/13/16 - 29 accts</i>							
12/5/2014 <i>Hudson Energy Contract</i> <i>Offer #H14120517854161, signed 12/5/14</i>	36 months	6/13/2016	6/13/2019	0.0535	342,512	4,110,148	12,291,695
	Term	Start	End	Fixed Rate	Avg Monthly	Annual Usage	Term Usage
6/3/2016 <i>Hudson Energy Contract</i> <i>Applies to 699 Alliance Parkway - Commerce Park Water Plant ONLY</i> <i>Offer #H16060322322562, signed 6/3/2016</i>	26 months	4/16/2017	6/11/2019	0.0470	124,810	1,497,723	3,110,054
	Term	Start	End	Fixed Rate	Avg Monthly	Annual Usage	Term Usage
<i>Takes Effect on 6/12/2019. Ends 12/31/2021</i>							
6/7/2017 <i>Hudson Energy Contract</i> <i>Offer #H16060722345530, signed 6/7/2017 (see City of Hewitt)</i>	31 months	6/12/2019	12/12/2021	0.0453	527,852	6,334,218	16,577,036

Total Electric Costs - by Budget Year - Oct thru Sept						
Department	2019	2018	2017	2016	2015	2014
Police Department	16,047	13,323	42,030	26,406	16,834	13,532
Community Services	-	94,195	104,893	74,898	89,425	94,660
Comm Srvs-Parks	2,144	-	-	-	-	-
Comm Srvs-Streets	98,289	-	-	-	-	-
Fire Department	13,506	13,323	14,010	9,981	14,952	6,210
Public Library	16,047	13,323	-	4,923	5,195	8,305
Administration	16,047	13,323	-	4,801	3,211	2,983
Utility Maintenance	266,869	268,796	294,057	324,859	311,406	321,137
Total Electric Costs	\$ 428,947	\$ 416,284	\$ 454,990	\$ 445,868	\$ 441,022	\$ 446,828



COUNCIL AGENDA ITEM FORM

MEETING DATE: October 7, 2019

AGENDA ITEM #: 12

SUBMITTED BY: Bo Thomas, City Manager

ITEM DESCRIPTION:

Discussion, consideration and possible action on Ward 2 City Council vacancy, including but not limited to: action, if any, to be taken to fill vacancy; appointment; appointment processes; and other matters relating to any of the above.

STAFF RECOMMENDATION/ITEM SUMMARY:

City Attorney Mike Dixon will present this item for Council discussion and provide follow-up information. This item allows the Council to discuss a process or appoint to fill the vacancy if desired.

The following is an excerpt of the Hewitt City Charter which provides direction to the Council for filling vacancies.

Sec. 2.6. - Vacancies.

Vacancies occurring on the council may be filled as follows:

- (a) The council may fill a vacancy by appointment only once in any twelve (12) month period. Any additional vacancies occurring within said twelve (12) month period must be filled by special election unless said vacancy occurs less than one hundred twenty (120) days before a regular city election, in which event such vacancy or vacancies may be filled by appointment to serve until the next regular city election.

SUGGESTED MOTION:

"I move to"

ATTACHMENTS:

None