

Table of Contents

Agenda	3
Item 2b - Change Order - Water Well No. 8 (Project Number WF1097966)	
No. 2b - Coversheet revised	6
Change Order.	8
Map	9
Item 2c - Barron Road Widening Phase 2 (Project Number ST- 1026)- Advanced Funding Agreement with TxDOT	
No. 2c - Coversheet revised	10
Resolution.	11
Map	12
Item 2d - College Station Utilities Dispatch Design Contract and a Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds From Debt	
No. 2d - Coversheet revised	13
Resolution.	14
Project Map	15
Reimbursement Resolution	16
Item 2e - Carters Creek Wastewater Treatment Plant Headwork and a Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds From Debt	
No. 2e - Coversheet revised	19
Resolution.	20
Map	21
Reimbursement Resolution	22
Item 2f - Change Order #2 on Contract #09-308 with Landscape USA for the Annual Landscape Maintenance of 27 Municipal Sites	
No. 2f - Coversheet Landscapes revised	25
1 - Change Order #2 Landscape USA	26
Item 2g - 2010 NIMSCAST / TRRN Certification	
No. 2g - Coversheet revised	28
2010 NIMSCAST & TRRN Certification letter.	29
Item 2h - Water Conservation Incentive Program	
No. 2h - Coversheet revised	30
Resolution.	31
No. 1 - Public Hearing and Consideration of Budget Amendment # 2	
No. 1 - Coversheet revised	34
Listing.	35
Ordinance.	38
No. 2 - BVSWMA Bylaws	
No. 2 - Coversheet revised	39
Resolution.	40
Bylaws	41

No. 3 - CSISD Development Regulations

No. 3 - Coversheet revised	59
AG opinion	60
Agreement Matrix	63



Mayor
Ben White
Mayor Pro Tem
Dave Ruesink
City Manager
Glenn Brown

Council members
John Crompton
James Massey
Dennis Maloney
Katy-Marie Lyles
Lawrence Stewart

Agenda
College Station City Council
Regular Meeting
Thursday, March 25, 2010 at 7:00 PM
City Hall Council Chamber, 1101 Texas Avenue
College Station, Texas

1. Pledge of Allegiance, Invocation, Consider absence request.

Hear Visitors: A citizen may address the City Council on any item which does not appear on the posted Agenda. Registration forms are available in the lobby and at the desk of the City Secretary. This form should be completed and delivered to the City Secretary by 6:30 pm. Please limit remarks to three minutes. A timer alarm will sound after 2 1/2 minutes to signal thirty seconds remaining to conclude your remarks. The City Council will receive the information, ask staff to look into the matter, or place the issue on a future agenda. Topics of operational concerns shall be directed to the City Manager.

Consent Agenda

Individuals who wish to address the City Council on a consent or regular agenda item not posted as a public hearing shall register with the City Secretary prior to the Mayor's reading of the agenda item. Registration forms are available in the lobby and at the desk of the City Secretary. The Mayor will recognize individuals who wish to come forward to speak for or against the item. The speaker will state their name and address for the record and allowed three minutes. A timer will sound at 2 1/2 minutes to signal thirty seconds remaining for remarks.

2. Presentation, possible action and discussion of consent agenda items which consists of ministerial or "housekeeping" items required by law. Items may be removed from the consent agenda by majority vote of the Council.

a. Presentation, possible action, and discussion of Minutes for City Council Workshop and Regular Meeting, March 11, 2010.

b. Presentation, possible action, and discussion on a change order to the Construction Contract 09-267 with Alsay, Inc. in the amount of \$91,500, for the construction of the Well No. 8.

c. Presentation, possible action, and discussion on a resolution to approve an Advance Funding Agreement (AFA) between the City of College Station and the Texas Department of Transportation for improvements to the intersection of State Highway 40 and Barron Road.

d. Presentation, possible action, and discussion concerning a resolution awarding the professional services contract (Contract No. 10-153) to Brown Reynolds Watford Architects, Inc. in the amount not to exceed \$138,915.00 for professional services for the College Station Utilities (CSU) Dispatch Design Project (WF1073340), and approval of a resolution declaring intention to reimburse certain expenditures with proceeds from debt.

e. Presentation, possible action, and discussion on a Professional Services Contract with Bury+Partners, Inc., in the amount of \$117,698, for the preliminary design of the Carters Creek Wastewater Treatment Plant Headworks, and approval of a resolution declaring intention to reimburse certain expenditures with proceeds from debt.

f. Presentation, possible action, and discussion regarding Change Order #2 in the amount of \$28,612.00 on Landscape and Irrigation Maintenance Contract #09-308 with Landscape, USA.

g. Presentation, possible action, and discussion regarding the 28 FY2009 NIMS Implementation Objectives. The city has completed and is compliant with the FY2009 NIMSCAST Implementation Objectives and Metrics for Local Governments and is registered with the Texas Regional Response Network (TRRN) with all deployable equipment with a value of \$5,000 or more purchased with Homeland Security Grant Program funds entered into the TRRN.

h. Presentation, possible action, and discussion approving a resolution for the Water Conservation Incentive Program.

Regular Agenda

Individuals who wish to address the City Council **on a regular agenda item not posted as a public hearing** shall register with the City Secretary prior to the Mayor's reading of the agenda item. The Mayor will recognize you to come forward to speak for or against the item. The speaker will state their name and address for the record and allowed three minutes. A timer will sound at 2 1/2 minutes to signal thirty seconds remaining for remarks.

Individuals who wish to address the City Council on an item **posted as a public hearing** shall register with the City Secretary prior to the Mayor's announcement to open the public hearing. The Mayor will recognize individuals who wish to come forward to speak for or against the item. The speaker will state their name and address for the record and allowed three minutes. A timer alarm will sound at 2 1/2 minutes to signal thirty seconds remaining to conclude remarks. After a public hearing is closed, there shall be no additional public comments. If Council needs additional information from the general public, some limited comments may be allowed at the discretion of the Mayor.

If an individual does not wish to address the City Council, but still wishes to be recorded in the official minutes as being in support or opposition to an agenda item, the individual may complete the registration form provided in the lobby by providing the name, address, and comments about a city related subject. These comments will be referred to the City Council and City Manager.

1. Public Hearing, presentation, possible action, and discussion on an ordinance Budget Amendment #2 amending ordinance number 3202 which will amend the budget for the 2009-2010 Fiscal Year results in a net reduction of overall expenditures in the amount of \$2,074,944.
2. Presentation, possible action, and discussion of a resolution approving Bylaws of Brazos Valley Solid Waste Management Agency, Inc.

- 3. Presentation, possible action, and discussion regarding the proposed approach to applying the City of College Station's development standards and regulations to College Station Independent School District projects.
- 4. Adjourn.

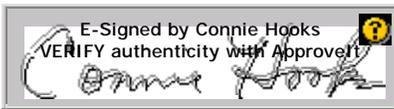
If litigation issues arise to the posted subject matter of this Council Meeting an executive session will be held.

APPROVED:

City Manager

Notice is hereby given that a Regular Meeting of the City Council of the City of College Station, Texas will be held on the Thursday, March 25, 2010 at 7:00 PM at the City Hall Council Chambers, 1101 Texas Avenue, College Station, Texas. The following subjects will be discussed, to wit: See Agenda.

Posted this 22nd day of March, 2010 at 2:00 p.m.



City Secretary

I, the undersigned, do hereby certify that the above Notice of Meeting of the Governing Body of the City of College Station, Texas, is a true and correct copy of said Notice and that I posted a true and correct copy of said notice on the bulletin board at City Hall, 1101 Texas Avenue, in College Station, Texas, and the City's website, www.cstx.gov. The Agenda and Notice are readily accessible to the general public at all times. Said Notice and Agenda were posted on March 22, 2010 at 2:00 p.m. and remained so posted continuously for at least 72 hours proceeding the scheduled time of said meeting.

This public notice was removed from the official posting board at the College Station City Hall on the following date and time: _____ by _____.

Dated this ____ day of _____, 2010 By _____

Subscribed and sworn to before me on this the ____ day of _____, 2010.

Notary Public – Brazos County, Texas My commission expires: _____

The building is wheelchair accessible. Handicap parking spaces are available. Any request for sign interpretive service must be made 48 hours before the meeting. To make arrangements call (979) 764-3517 or (TDD) 1-800-735-2989. Agendas may be viewed on www.cstx.gov. Council meetings are broadcast live on Cable Access Channel 19.

March 25, 2010
Consent Agenda Item No. 2b
Change Order
Water Well No. 8 - (Project Number WF1097966)

To: Glenn Brown, City Manager

From: Chuck Gilman, Director of Capital Projects

Agenda Caption: Presentation, possible action, and discussion on a change order to the Construction Contract 09-267 with Alsay, Inc. in the amount of \$91,500, for the construction of the Well No. 8.

Recommendation(s): Staff recommends approval of this change order.

Summary: Water Well No. 8 is currently in construction. This change order includes several items, and adds \$91,500.00 to the contract as follows:

- | | |
|--------------------|-----------------------------------|
| 1) \$72,700 | MCC enclosure |
| 2) \$12,000 | Air conditioner for MCC enclosure |
| 3) \$ 5,300 | Monitoring well |
| 4) <u>\$ 1,500</u> | Control panel changes |
| \$91,500 | Total change requested |

- 1) The labor, materials, services, and equipment to construct the Motor Control Center (MCC) enclosure and deliver the enclosure to the City of College Station in the amount of \$72,700. The City bought the MCC (equipment that controls the pump motors) from the General Services Administration (GSA) federal supply contract in an effort to save approximately 30% on the cost of the equipment and eliminate the contractor's mark-up on this equipment. In a similar fashion, the City attempted to save money on the MCC enclosure by purchasing the building directly from the manufacturer and eliminating the contractor's mark-up. The City solicited bids for the enclosure and received one bid in the amount of \$52,608. The bidder indicated they were quoting their standard terms and conditions, and their proposal did not include the cost to deliver the enclosure to College Station. The bidder was unwilling to provide a firm shipping cost. The City rejected the bid, and solicited bids for the enclosure again and received four bids ranging from \$33,495 - \$79,702. The low bidder proposed an enclosure that did not meet our specifications, the second and third lowest bidder included terms and conditions in their proposal that the City could not agree to, and the highest bidder was not within the budget allocated for the enclosure. After discussing the issue with the Purchasing Department, it was concluded the best approach is to shift the risk and supplier terms and conditions to the general contractor constructing the well, and develop a change order for City Council consideration to include the enclosure in the scope of work for Alsay, Inc. It should be noted that by shifting the responsibility of the enclosure to the general contractor, the construction contract is increasing by \$72,000, but the project budget is not changing.
- 2) Another item added to this contract is the addition of an air conditioner to the MCC enclosure in the amount of \$12,000. The original design had a single unit on one side of the building. In an effort to provide a more consistent flow of cold air in the building, it

was determined that a second air conditioner could be added to provide a longer service life of the equipment in the enclosure.

- 3) The control panel equipment changes in the amount of \$1,500 were requested by the Water Services Department to better integrate the system at the well site into the City's existing system.
- 4) The addition of the monitoring well was requested by the Brazos Valley Groundwater Conservation District (BVGCD). The BVGCD asked the City to convert the supply water well that Alsay, Inc. installed into a monitoring well. The District intends to use the monitoring well to monitor the aquifer. This change is \$5,300.

Also, this change order adds 5 rain days to the construction contract for the week of October 26, 2009.

Budget & Financial Summary: Change Order No. 1 will increase the contract amount by \$91,500 for a revised contract total of \$2,327,750. The current budget for this project is \$5,120,000. Funds in the amount of \$2,738,862 have been expended or committed to date, leaving a balance of \$2,381,138 for this change order and future expenditures. Project budget not expended will be reprogrammed to future water capital improvement projects.

Attachments:

- 1.) Change Order
- 2.) Project Location Map

OWNER: City of College Station
P.O. Box 9960
College Station, Texas 77842

CONTRACTOR: Alsay, Inc.
6615 Gant
Houston, Texas 77066
Ph: (281) 444-6960 Fax: (281) 444-7081

PURPOSE OF THIS CHANGE ORDER:
Item 1. Add contract days due to flooding of the Little Brazos River that rendered the site inaccessible.
Item 2. Modify contract to include MCC Enclosure as a Contractor supplied item. Original contract terms specified this as an Owner supplied piece of equipment.
Item 3. Add additional air conditioner to MCC Building.
Item 4. Modify control equipment manufacturer
Item 5. Convert temporary water supply well installed by Contractor to permanent monitoring well at the request of Brazos Valley Groundwater Conservation District.

ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
1	Days	Little Brazos River Flood Delay	\$0.00	235	240	\$0.00
2	LS	MCC Enclosure Supply	\$72,700.00	0	1	\$72,700.00
3	LS	MCC Enclosure Air Conditioner Addition	\$12,000.00	0	1	\$12,000.00
4	LS	Control Panel Equipment Changes	\$1,500.00	0	1	\$1,500.00
5	LS	Monitoring Well	\$5,300.00	0	1	\$5,300.00
					TOTAL	\$91,500.00

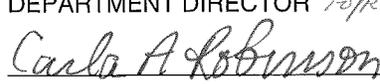
THE NET AFFECT OF THIS CHANGE ORDER IS A 4.08% INCREASE.

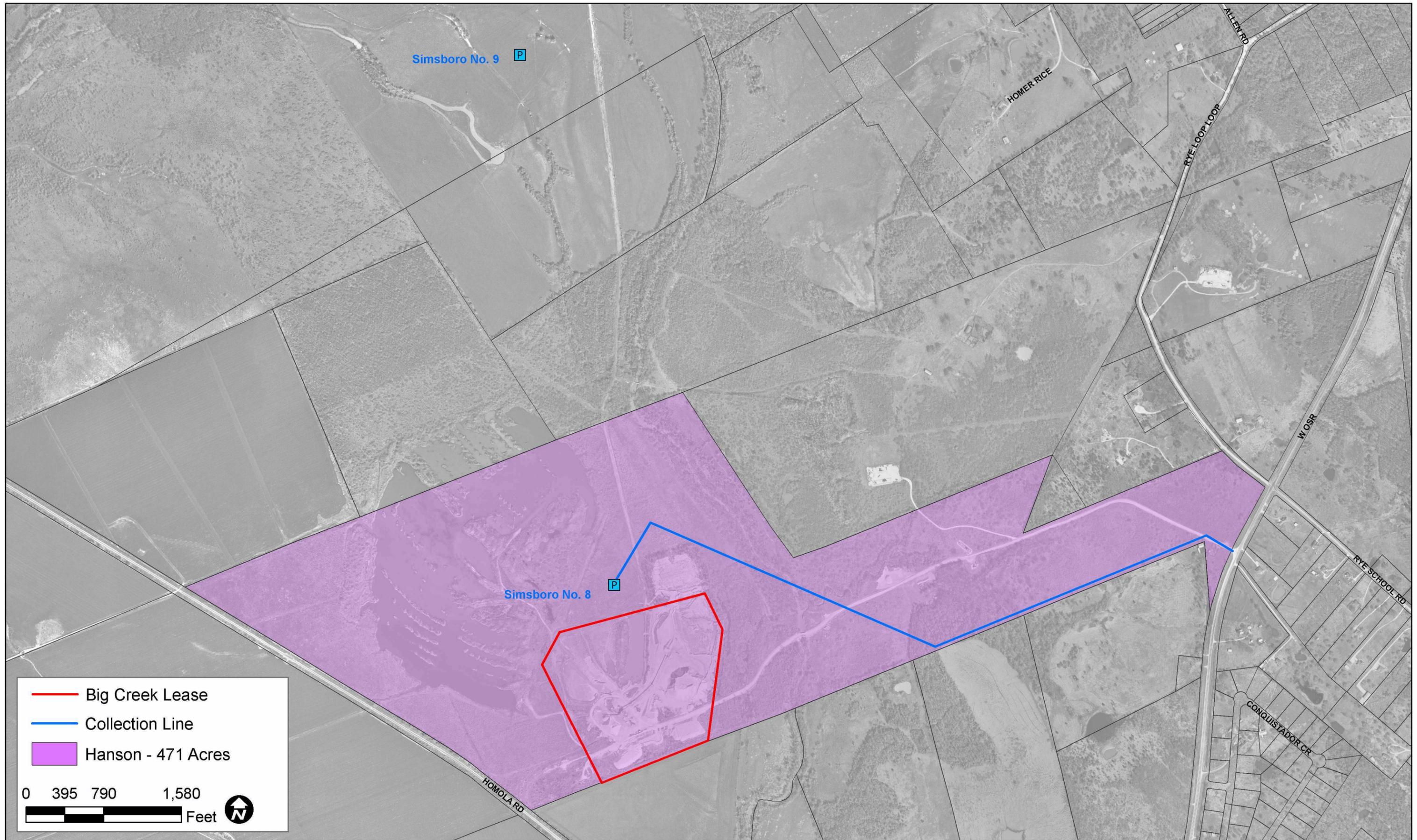
ORIGINAL CONTRACT AMOUNT	\$2,236,250.00	
Change Order No. 1	\$91,500.00	4.09% CHANGE
REVISED CONTRACT AMOUNT	\$2,327,750.00	4.09% TOTAL CHANGE

ORIGINAL CONSTRUCTION CONTRACT TIME	235
Construction Time Extension No. 1	5
Revised Contract Construction Time	240

SUBSTANTIAL COMPLETION DATE	05/21/10
Revised Substantial Completion Date	05/26/10

APPROVED

	02/24/10	_____ CHIEF FINANCIAL OFFICER	_____ DATE
	2/24/10	_____ CITY MANAGER	_____ DATE
	2/24/10		2/24/10
DEPARTMENT DIRECTOR <i>for CRG</i>	DATE	CONSULTANT ENGINEER	DATE
	_____ DATE	_____ MAYOR	_____ DATE
LEGAL DEPARTMENT	DATE	MAYOR	DATE
_____ CITY SECRETARY	_____ DATE		



March 25, 2010
Consent Agenda Item No. 2c
Barron Road Widening Phase 2 (Project Number ST-1026)
Advanced Funding Agreement with TxDOT

To: Glenn Brown, City Manager

From: Chuck Gilman, Director of Capital Projects

Agenda Caption: Presentation, possible action, and discussion on a resolution to approve an Advance Funding Agreement (AFA) between the City of College Station and the Texas Department of Transportation for improvements to the intersection of State Highway 40 and Barron Road.

Recommendation(s): Staff recommends approval of the resolution.

Summary: An AFA is required by TxDOT when the City connects to a State Roadway or make improvements in State right-of-way. The proposed improvements to the intersection of SH 40 and Barron have been discussed and coordinated with TxDOT. These improvements include a traffic signal, a deceleration lane for northbound traffic on William D. Fitch, 4 travel lanes between the northbound and southbound lanes of William D. Fitch, bike lanes through the intersection, curb and gutter, drainage improvements, and 6-foot wide sidewalks. TxDOT has approved the proposed work, and this Advance Funding Agreement. The improvements associated with the AFA are being completed as a part of the Barron Road Widening Phase 2 project.

Budget & Financial Summary: This agreement is required prior to the completion of the roadway improvements. The improvements that will be completed as a result of this agreement will be funded by the City, and are included in the budget for Barron Road Widening Phase 2.

Attachments:

- 1.) Resolution
- 2.) Advance Funding Agreement – On file in City Secretary's Office
- 3.) Project Location Map

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, ALLOWING THE MAYOR TO SIGN AN ADVANCE FUNDING AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE CITY OF COLLEGE STATION FOR CONSTRUCTION OF BARRON ROAD AT STATE HIGHWAY 40.

WHEREAS, the City Council of the City of College Station, Texas, supports the City plan to construct the Barron Road Widening Phase II project, consisting of widening Barron Road, constructing a deceleration lane and installing a traffic signal at the State Highway 40 and Barron Road intersection,

WHEREAS, the City Council of the City of College Station, Texas, agrees to fund the Barron Road Widening Phase II Project 100% of the value of the project; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

- PART 1: That the City Council hereby approves the Advance Funding Agreement.
- PART 2: That the City Council hereby approves of the Mayor signing the agreement.
- PART 3: That the City Council hereby agrees to fully fund the Barron Road Widening Phase II Project construction costs at the intersection of State Highway 40 and Barron Road.
- PART 4: That this resolution shall take effect immediately from and after its passage.

ADOPTED this 25th day of March, A.D. 2010.

ATTEST:

APPROVED:

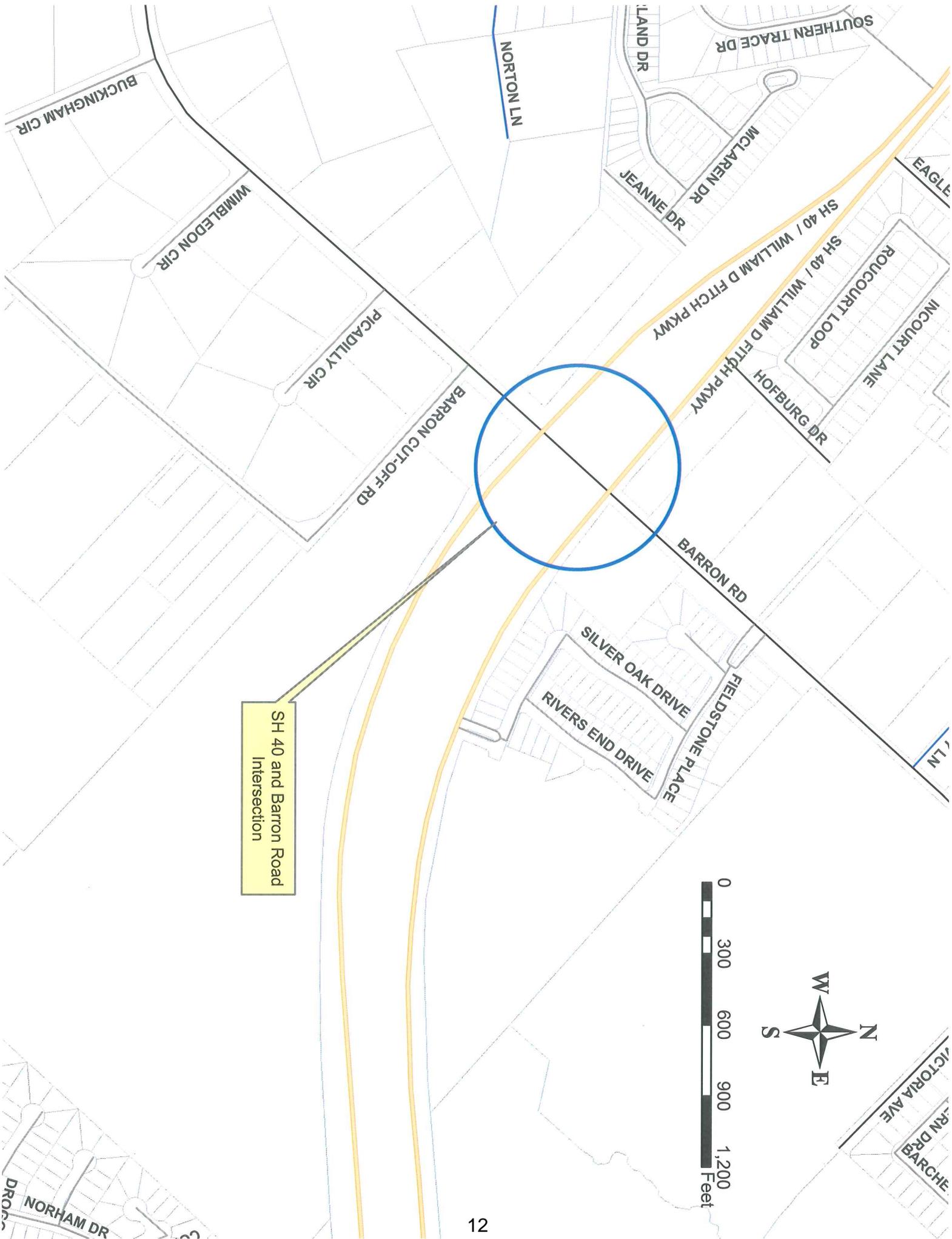
City Secretary

MAYOR

APPROVED:

Carla A. Robinson

City Attorney



March 25, 2010
Consent Agenda Item No. 2d
College Station Utilities Dispatch Design Contract
and a Resolution Declaring Intention to Reimburse Certain
Expenditures with Proceeds from Debt

To: Glenn Brown, City Manager

From: Chuck Gilman, Director of Capital Projects

Agenda Caption: Presentation, possible action, and discussion concerning a resolution awarding the professional services contract (Contract No. 10-153) to Brown Reynolds Watford Architects, Inc. in the amount not to exceed \$138,915.00 for professional services for the College Station Utilities (CSU) Dispatch Design Project (WF1073340), and approval of a resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Recommendation(s): Staff recommends Council approval of the resolution and award of the professional services contract to Brown Reynolds Watford Architects, Inc, and recommends approval of the resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Summary: This project is for the design of a new dispatch facility to be located northeast of the existing CSU administration building on Graham Road. The new dispatch facility is necessary due to some recent regulations enacted by the North American Electric Reliability Corporation (NERC) that require the building housing the dispatch operations and SCADA (Supervisory Control and Data Acquisition) equipment to be secure. The existing dispatch facility located inside the CSU administration building does not meet all of the NERC requirements. This new facility, expected to be approximately 2,800 SF, and meet all the requirements of the Unified Development Ordinance and the Non-Residential Architectural Standards.

Budget & Financial Summary: The budget for the design and construction of this project is currently \$1,200,000. This project is funded from the Electric Capital Improvement Projects Fund. The "Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt" is necessary for this item because the long term debt has not been issued for the project. The debt for the project is scheduled to be issued later this fiscal year and next fiscal year.

Attachments:

1. Resolution
2. Project Location Map
3. Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, SELECTING A PROFESSIONAL CONTRACTOR, APPROVING A PROFESSIONAL SERVICES CONTRACT AND AUTHORIZING THE EXPENDITURE OF FUNDS FOR THE COLLEGE STATION UTILITIES DISPATCH BUILDING.

WHEREAS, the City of College Station, Texas, solicited proposals for the design and construction phase services; and

WHEREAS, the selection of Brown Reynolds Watford Architects, Inc. is being recommended as the most highly qualified provider of the design and construction phase services; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That the City Council hereby finds that Brown Reynolds Watford Architects, Inc. is the most highly qualified provider of the services for College Station Utilities Dispatch Building Project on the basis of demonstrated competence and qualifications.

PART 2: That the City Council hereby approves the contract with Brown Reynolds Watford Architects Inc. for an amount not to exceed \$138,915.00 for the design phase services related to the College Station Utilities Dispatch Building Project.

PART 3: That the funding for this Contract shall be as budgeted from the Electric Capital Improvements Fund in the amount of \$200,000.00.

PART 4: That this resolution shall take effect immediately from and after its passage.

ADOPTED this _____ day of _____, A.D. 2010.

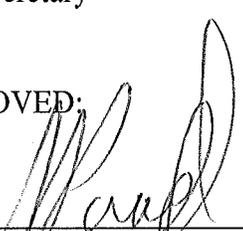
ATTEST:

APPROVED:

City Secretary

MAYOR

APPROVED:



City Attorney

CSU Dispatch Building Project Location Map



RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO REIMBURSE CERTAIN EXPENDITURES WITH
PROCEEDS FROM DEBT

WHEREAS, the City of College Station, Texas (the "City") is a home-rule municipality and political subdivision of the State of Texas;

WHEREAS, the City expects to pay expenditures in connection with the design, planning, acquisition and construction of the projects described on Exhibit "A" hereto (collectively, the "Project") prior to the issuance of obligations by the City in connection with the financing of the Project from available funds;

WHEREAS, the City finds, considers, and declares that the reimbursement of the City for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse itself for such payments at such time as it issues obligations to finance the Project;

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS THAT:

Section 1. The City reasonably expects it will incur debt, as one or more series of obligations, with an aggregate maximum principal amount not to exceed \$1,200,000, for the purpose of paying the aggregate costs of the Project.

Section 2. All costs to be reimbursed pursuant hereto will be capital expenditures. No tax-exempt obligations will be issued by the City in furtherance of this Statement after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

Section 3. The foregoing notwithstanding, no tax-exempt obligation will be issued pursuant to this Statement more than three years after the date any expenditure which is to be reimbursed is paid.

PASSED AND APPROVED THIS 25th DAY OF MARCH, 2010.

Ben White, Mayor

ATTEST:

Connie Hooks, City Secretary

(Seal)

APPROVED:



McCall, Parkhurst & Horton L.L.P.
Bond Counsel

Exhibit "A"

The projects to be financed that are the subject of this Statement are:

The Design and Construction of a New Utility Dispatch Facility located at the CSU site of Graham Road

March 25, 2010
Consent Agenda Item No. 2e
Project Number WF1223116
Carters Creek Wastewater Treatment Plant Headworks
and a Resolution Declaring Intention to Reimburse Certain
Expenditures with Proceeds From Debt

To: Glenn Brown, City Manager

From: Chuck Gilman, Director of Capital Projects

Agenda Caption: Presentation, possible action, and discussion on a Professional Services Contract with Bury+Partners, Inc., in the amount of \$117,698, for the design of the Carters Creek Wastewater Treatment Plant Headworks, and approval of a resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Recommendation(s): Staff recommends approval of the professional services contract, and recommends approval of the resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Summary: The scope of the Carters Creek Wastewater Treatment Plant Headworks is for design and construction of upgrades to the existing headworks facility. With the projected design budget of \$117,698, Bury+Partners, Inc. was contacted to submit a proposal for designing the project based upon their prior experience of designing other headworks facilities through the Request for Qualification 10-20 process. This report will outline options the City has to more efficiently upgrade the treatment plant headworks system. A detailed design contract will be brought forth at a later date for approval.

Budget & Financial Summary: The budget for this project is currently \$2,500,000. No funds have been expended or committed to date. The P.O. for the project design is \$117,698.00. This item replaces the standard terms, conditions and specifications that were attached to the P.O. with those in the Professional Services Contract and requires no additional funds.

The "Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt" is necessary for this item because the long term debt has not been issued for the project. The debt for the project is scheduled to be issued later this fiscal year and next fiscal year.

Attachments:

- 1.) Resolution
- 2.) Project Location Map
- 3.) Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, SELECTING A PROFESSIONAL CONTRACTOR, APPROVING A PROFESSIONAL SERVICES CONTRACT AND AUTHORIZING THE EXPENDITURE OF FUNDS FOR THE CARTER CREEK WASTEWATER TREATMENT PLANT HEADWORKS PROJECT.

WHEREAS, the City of College Station, Texas, solicited proposals for the preliminary engineering report phase services; and

WHEREAS, the selection of Bury+Partners, Inc. is being recommended as the most highly qualified provider of the preliminary engineering report services; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That the City Council hereby finds that Bury+Partners, Inc. is the most highly qualified provider of the services for Carter Creek Wastewater Treatment Plant Headworks Project on the basis of demonstrated competence and qualifications.

PART 2: That the City Council hereby approves the contract with Bury+Partners, Inc. for an amount not to exceed \$117,698.00 for the preliminary engineering report design phase related to the Carter Creek Wastewater Treatment Plant Headworks Project.

PART 3: That the funding for this Contract shall be as budgeted from the Water Services Fund in the amount of \$117,698.00.

PART 4: That this resolution shall take effect immediately from and after its passage.

ADOPTED this _____ day of _____, A.D. 2010.

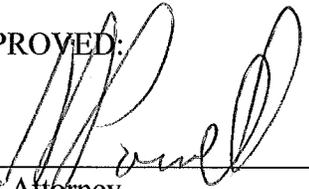
ATTEST:

APPROVED:

City Secretary

MAYOR

APPROVED:



City Attorney

CARTER CREEK WWTP HEADWORKS



RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO REIMBURSE CERTAIN EXPENDITURES WITH PROCEEDS FROM DEBT

WHEREAS, the City of College Station, Texas (the "City") is a home-rule municipality and political subdivision of the State of Texas;

WHEREAS, the City expects to pay expenditures in connection with the design, planning, acquisition and construction of the projects described on Exhibit "A" hereto (collectively, the "Project") prior to the issuance of obligations by the City in connection with the financing of the Project from available funds;

WHEREAS, the City finds, considers, and declares that the reimbursement of the City for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse itself for such payments at such time as it issues obligations to finance the Project;

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS THAT:

Section 1. The City reasonably expects it will incur debt, as one or more series of obligations, with an aggregate maximum principal amount not to exceed \$2,500,000, for the purpose of paying the aggregate costs of the Project.

Section 2. All costs to be reimbursed pursuant hereto will be capital expenditures. No tax-exempt obligations will be issued by the City in furtherance of this Statement after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

Section 3. The foregoing notwithstanding, no tax-exempt obligation will be issued pursuant to this Statement more than three years after the date any expenditure which is to be reimbursed is paid.

PASSED AND APPROVED THIS 25th DAY OF MARCH, 2010.

Ben White, Mayor

ATTEST:

Connie Hooks, City Secretary

(Seal)

APPROVED:



McCall, Parkhurst & Horton L.L.P.
Bond Counsel

Exhibit "A"

The projects to be financed that are the subject of this Statement are:

Design and Construction of Upgrades to the Carter Creek Wastewater Treatment Plant Headworks Facility

March 25, 2010
Consent Agenda Item No. 2f
Change Order #2 on Contract #09-308 with Landscape USA for the Annual
Landscape Maintenance of 27 Municipal Sites

To: Glenn Brown, City Manager

From: David Schmitz, Assistant Director, Parks and Recreation Department

Agenda Caption: Presentation, possible action, and discussion regarding Change Order #2 in the amount of \$28,612.00 on Landscape and Irrigation Maintenance Contract #09-308 with Landscape, USA.

Recommendation(s): Staff recommends approval of Change Order #2 to Landscape and Irrigation Maintenance Contract #09-308 with Landscape, USA in the amount of \$28,612.00.

Summary: Change Order #2 adds the annual landscape maintenance functions for the soon to be completed streetscape and irrigation projects for Barron Road Phase II, Eagle Avenue, and W.D. Fitch Parkway Phase II. The change order also includes the areas along Texas Avenue Phase II due to the recent installation of streetscape along that project, and expands the scope of turf maintenance for Northgate Park due to the acquisition of additional property.

Additionally, in an effort to reduce the impact to the budget, the Change Order reduces the turf maintenance standards on 7 sites by moving from 39 annual turf mows to 29, for a savings of \$15,900. The remaining twenty sites in the contract are already at 29 or 19 annual mows dependant on the site's service level. It should be noted that this same type of reduction was done on a second grounds maintenance contract for a savings of \$8,424. (Total increase to budget of \$20,188.)

The net increase to this change order is \$28,612. The cumulative percent change on the contract is 4.6% if Change Order #2 is approved. Change Orders to this contract in excess of \$25,000 require City Council Approval.

Budget & Financial Summary: The addition of the three street projects and the expansion of scope for Northgate Park and Texas Avenue Phase II are unfunded in the Fiscal Year 2010 budget. The reduction in turf maintenance standards for the sites maintained by this contract has been identified as a means to help reduce the demand on the Fiscal Year 2010 budget. The original contract amount and Change Order #1 were approved by City Council in October 2009. Change Order #1 eliminated turf weed control and fertilization functions and reduced the number of monthly irrigation system inspections from two to one.

Original contract amount:	\$ 265,787.00	approved 10/08/2009
Change Order #1:	(\$ 40,836.00)	approved 10/08/2009
<u>Change Order #2:</u>	<u>\$ 28,612.00</u>	(\$44,512 increase less \$15,900 reduction)
Revised Contract Amount	\$ 253,563.00	

Attachments:

1. Change Order #2

P.O.#100281

CHANGE ORDER NO. 2
 CONTRACT #09-308
 PROJECT #N/A

DATE: 03/08/2010
 PROJECT DESCRIPTION: Annual Landscape Maintenance
 For 27 sites

OWNER:

City of College Station
 P.O. Box 9960
 College Station, Texas 77842

CONTRACTOR:

Landscapes, USA
 3201 Industrial Terrace Suite 100
 Austin, TX 78758

Ph: 979.778.2800

Fax:

PURPOSE OF THIS CHANGE ORDER:

- Item 1: Expansion of mowing, new tree care, and irrigation checks for Texas Avenue Phase II
- Item 2: Expansion of mowing for Northgate Park
- Item 3: Addition of annual maintenance functions for WD Fitch Phase II
- Item 4: Addition of annual maintenance functions for Eagle Avenue
- Item 5: Addition of annual maintenance functions for Barron Road Phase I
- Item 6: Reduce existing sites with 39 mows/year to 29 mows/year

ITEM NO.	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
1	lot	Texas Avenue Phase II	\$ 7,495.00	1	1	\$ 7,495.00
2	lot	Northgate Park	\$ 570.00	1	1	\$ 570.00
3	lot	WD Fitch Phase II	\$ 19,012.00	0	1	\$ 19,012.00
4	lot	Eagle Avenue	\$ 9,780.00	0	1	\$ 9,780.00
5	lot	Barron Road Phase I	\$ 7,655.00	0	1	\$ 7,655.00
6	lot	Annual mowing reduction	(\$15,900.00)	1	1	\$ (15,900.00)

THE NET AFFECT OF THIS CHANGE ORDER IS A 10.76% Increase.

ORIGINAL CONTRACT AMOUNT	\$265,787.00	
Change Order No. 1	\$ (40,836.00)	(15.36) % of Original Contract Amount
Change Order No. 2	\$ 28,612.00	10.76 % of Original Contract Amount
Change Order No. 3	\$ _____	_____ % of Original Contract Amount
REVISED CONTRACT AMOUNT	\$253,563.00	

ORIGINAL CONTRACT TIME

Change Order No. 1 Time Extension or Reduction
Change Order No. 2 Time Extension or Reduction
Change Order No. 3 Time Extension or Reduction

Days

N/A
N/A
N/A
N/A

REVISED CONTRACT TIME

ORIGINAL SUBSTANTIAL COMPLETION DATE 09/30/2010
REVISED SUBSTANTIAL COMPLETION DATE 09/30/2010

APPROVED:

Ken Conrad 3/12/10
LANDSCAPE, USA Date

N/A
CONSTRUCTION CONTRACTOR Date

N/A
PROJECT MANAGER Date

N/A
CITY ENGINEER Date

Marcus F. Conover 3/15/10
DEPARTMENT DIRECTOR/ ADMINISTRATOR Date

[Signature]
CHIEF FINANCIAL OFFICER Date

[Signature]
CITY ATTORNEY Date

CITY MANAGER Date

MAYOR Date

CITY SECRETARY Date

March 25, 2010
Consent Agenda Item No. 2g
2010 NIMSCAST / TRRN Certification

To: Glenn Brown, City Manager

From: Robert Alley, Fire Chief

Agenda Caption: Presentation, possible action, and discussion regarding the 28 FY2009 NIMS Implementation Objectives. The city has completed and is compliant with the FY2009 NIMSCAST Implementation Objectives and Metrics for Local Governments and is registered with the Texas Regional Response Network (TRRN) with all deployable equipment with a value of \$5,000 or more purchased with Homeland Security Grant Program funds entered into the TRRN.

Recommendation(s): Staff recommends the Chief Elected Official approve the 2010 NIMSCAST / TRRN Certification letter.

Summary: The City of College Station has been awarded Homeland Security program grant for 2010 through TDEM. To be eligible to receive 2010 Homeland Security Grant Program funds the city must document that it is compliant with the FY2009 NIMSCAST Implementation Objectives and Metrics, and be a registered user of the Texas Regional Response Network.

Budget & Financial Summary: There is no budget impact.

Attachments:
2010 NIMSCAST / TRRN Certification Letter

2010 NIMSCAST & TRRN CERTIFICATION

Req.#	Init.	Certification
1	<input type="checkbox"/>	I certify that my jurisdiction has completed the 28 FY2009 NIMS Implementation Objectives and has completed and is compliant with the FY2009 NIMSCAST Implementation Objectives and Metrics for Local Governments. <u>(REQUIRED FOR ELIGIBILITY)</u>
2	<input type="checkbox"/>	I certify that my jurisdiction is registered with the Texas Regional Response Network (TRRN). <u>(REQUIRED FOR ELIGIBILITY)</u>
3	<input type="checkbox"/>	I certify that my jurisdiction has entered all deployable equipment with a value of \$5,000 or more purchased with Homeland Security Grant Program funds has been entered into the TRRN. I certify that my jurisdiction does not have deployable equipment with a value of \$5,000 or more purchased with Homeland Security Grant Program funds.

Print Name of City, County, or Tribe: **City of College Station, Texas**
 Print Name of Chief Elected Official: **Ben White**
 Title: **Mayor**

Signature: _____
 Date: _____

ATTEST:

 City Secretary
 Date: _____

APPROVED:

 City Manager
 Date: _____

 City Attorney
 Date: _____

 Chief Financial Officer
 Date: _____

March 25, 2010

Consent Agenda Item No. 2h

Water Conservation Incentive Program

To: Glenn Brown, City Manager

From: Dave Coleman, Director of Water Services Department

Agenda Caption: Presentation, possible action, and discussion approving a resolution for the Water Conservation Incentive Program.

Recommendation: Staff recommends approval of the resolution.

Summary: On April 23, 2009 College Station City Council approved our Water Conservation Plan with updated targets and goals to satisfy TCEQ requirements and to ensure our City is prudently managing our most precious resource.

Measures undertaken to achieve the goals of the water conservation goals are:

- Use reclaimed water (treatment plant effluent) to irrigate Veteran's Park
- Routine audits of water system losses
- Implementation of inclined water rate structure
- Improve verification of water meter accuracy and make repairs
- Educated the public regarding irrigation practices and landscape water management
- In 2010: Promote the use of water-saving fixtures with an incentive program

This last item is now recommended for implementation. The attached Resolution spells out the goals and methods of the incentive program, which is to provide rebates to our Citizens for the purchase of low-flow plumbing fixtures and rain harvesting barrels. This program will reduce the City's usage of potable water, and will help promote Water Conservation concepts in the media. For these reasons, staff recommends approval.

Staff will provide a progress update on the water conservation program at the April 22 City Council workshop session.

Budget & Financial Summary: Funding in the amount of \$4,000 for FY 10 is available in the Water Fund for the incentive program.

Attachment:
Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING A REBATE INCENTIVE PROGRAM TO PROMOTE WATER USE EFFICIENCY.

WHEREAS, the City Council of the City of College Station, Texas, adopted an amended Water Conservation Plan with water use targets and conservation goals on April 23, 2009; and

WHEREAS, such amended plan included adding rebate programs to be implemented in fiscal year 2010; and

WHEREAS, the City Council of the City of College Station, Texas, recognizes that conservation is an important strategy for maintaining a reliable water supply for the future; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That the facts and recitals set forth in the preamble of this resolution are hereby declared true and correct,

PART 2: That the City Council hereby approves a water conservation rebate incentive program, guidelines for which are attached hereto as Exhibit A;

ADOPTED this 25th day of March, A.D. 2010.

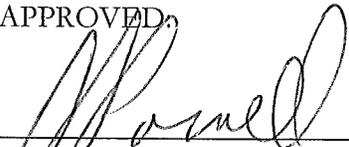
ATTEST:

APPROVED:

City Secretary

MAYOR

APPROVED:



City Attorney

EXHIBIT A

WATER CONSERVATION REBATE INCENTIVE PROGRAM

I. GENERAL GUIDELINES:

The following guidelines apply to all water conservation rebates offered by College Station Water Services:

1. Rebates are offered to College Station Utilities water customers with an account in good standing.
2. Submitting a Rebate Application in no way obligates the City of College Station or College Station Utilities to pay a rebate.
3. Rebates are offered on a first come/first serve basis and are subject to availability of funds. The rebate may be terminated at any time, without notice, by College Station Utilities.
4. Prior to issuance of a rebate, a representative from the City of College Station may conduct a site inspection to verify installation of the rebated item.
5. Qualifying products are selected based solely on water efficiency. The City of College Station does not endorse specific brands, products, or dealers; nor does it guarantee materials, workmanship, performance or durability of rebated products.
6. College Station Utilities is not responsible for the condition of the plumbing on customer's side of the meter, now or in the future.
7. The amount of rebate available is contingent upon budgeted available funds and is not guaranteed from year to year or from application to application. The City reserves the right to adjust the terms and conditions of the rebate within the parameters set forth herein.

II. RESIDENTIAL RAIN BARREL REBATE

The following guidelines apply to residential rain barrel rebate:

1. A dated and itemized receipt, together with a rebate application form, must be submitted to College Station Water Services within 90 days of purchase.
2. Prior to issuance of a rebate, a representative from the City of College Station may conduct a site inspection to verify rain barrel installation. The rain barrel must be installed and functional at the time of the inspection.
3. \$25 rebate per barrel or actual cost of barrel if less than \$25.
4. Limit rebate to two (2) barrels per household.
5. Barrel must be a new or refurbished barrel, sold for the purpose of storing water, with a capacity to hold 30 gallons or more.
6. Barrels must be screened to restrict access and prevent mosquitoes.
7. Water collected must be used for non-potable, non-drinking purposes.

III. RESIDENTIAL HIGH EFFICIENCY TOILET REBATE

The following guidelines apply for residential high efficiency toilet rebates:

1. Rebated toilets must be new Water-Sense labeled toilets.
2. The high efficiency toilet must be installed in the City of College Station water service area for use at such location.
3. A dated and itemized receipt, together with rebate application form, must be submitted to College Station Water Services within 90 days of purchase.

EXHIBIT A

4. The amount of rebate is as follows:
 - a. **HET Retrofit rebate:** 50% of the cost of a new Water Sense toilet and any parts sold with toilet (bolts, seat, wax ring, etc.) replacing an existing high-volume toilet (over 3 gallons per flush), up to \$100 per toilet.
 - b. **HET Upgrade rebate:** 25% of the cost of a new toilet and any parts sold with toilet (bolts, seat, wax ring, etc.) installed in new construction, up to \$50 per toilet.
5. Rebate amounts are based on the price of the toilet and associated parts before tax.
6. The rebate does not cover the cost of additional warranties or additional repairs related to removal or installation of toilet(s).
7. Applicant is responsible for disposing of old high flush toilet(s) in a manner to prevent further reuse.
8. Prior to issuance of a rebate check, a representative from the City of College Station may conduct a site inspection to verify toilet installation. The toilet must be installed and functional at the time of the inspection.
9. Limit one toilet per bathroom, two toilets total per household, for the lifetime of such household at that location.

IV. COMMERCIAL / MULTIFAMILY TOILET REBATE PROGRAM

The following guidelines apply for commercial and multifamily toilet rebate program:

1. Commercial water customers must submit an application and receive pre-approval before removing old toilets to be eligible for a rebate.
2. Upon application and approval, the city will mail a *Letter of Approval*. Retrofit must be completed & new toilets installed within **one year** of such letter of approval.
3. The amount of rebate is as follows:
 - a. **HET Retrofit rebate:** 50% of the wholesale cost of a new Water Sense toilet replacing an existing high-volume toilet over 3 gallons per flush.
 - b. **HET New Construction rebate:** 25% of the wholesale cost of toilets installed in new construction.
4. Rebate amounts are based on the price of the toilet and associated parts before tax.
5. The rebate does not cover the cost of additional warranties or additional repairs related to removal or installation of toilet(s).
6. Rebated toilets must be new Water-Sense labeled toilets and remain in place for use at such location. The most current listing of water sense labeled toilets is available at: <http://www.epa.gov/watersense/products/index.html>.
7. Applicant is responsible for installing the toilet(s).
8. Old high flush toilets must be destroyed so they cannot be reused.
9. Rebate checks must be issued in the name of the property owner as verified by tax records or the current utility account holder(s) or a third-party designated in the utility's billing system.

March 25, 2010
Regular Agenda Item No. 1
Public Hearing and Consideration of Budget Amendment # 2

To: Glenn Brown, City Manager

From: Jeff Kersten, Chief Financial Officer

Agenda Caption: Public Hearing, presentation, possible action, and discussion on an ordinance Budget Amendment #2 amending ordinance number 3202 which will amend the budget for the 2009-2010 Fiscal Year results in a net reduction of overall expenditures in the amount of \$2,074,944.

Recommendation(s): Staff recommends the City Council hold the public hearing on Budget Amendment #2 and approve the budget amendment ordinance.

Summary: In order to meet lower than anticipated revenues in FY10 staff has thoroughly reviewed departmental budgets and has proposed a net reduction of \$2,074,944 in overall expenditures. This includes reductions in expense categories such as travel, training, miscellaneous supplies, etc. as well as delays in hiring certain vacant positions.

Budget & Financial Summary: The result of this amendment is a net reduction of \$2,074,944 in overall budgeted expenditures.

Attachments:

1. Budget Amendment List
2. Ordinance

FY 10 Budget Amendment #2

Budget Reductions totaling \$2,074,944

GENERAL FUND:

- General Fund Revenues are projected to be lower than original budget for FY 10 by \$1,526,218.
- General Fund Expenditures need to be reduced for 3 reasons:
 - Lower revenues than budget – sales tax, franchise tax, interest earnings, other
 - Forecasting higher expenditures than budgeted - due to lower than anticipated turnover
 - Maintain the 15% fund balance policy
- General Fund Budget needs to be reduced by a net (\$1,536,141)
 - Remove budget for Pay Plan (\$273,000)
 - Reduce Equipment Replacement Transfers (\$467,887)
 - Department Budget Reductions net (\$795,254) - to keep forecasted expenditures within the revised budget:

§ Police (265,687)

- Hold positions open—Asst Chief, Parking Off, 2 Officers, Dispatch Asst (225,687)
- Reduce travel/training and miscellaneous supplies (30,000)
- Defer fit assessment for Training and Recruiting (10,000)

§ Fire 335,031

- Reduce travel/training, overtime, and miscellaneous supplies (47,572)
- Reduce tools, equipment and clothing supplies (17,397)
- Increase salary/benefits/overtime budget 400,000

§ Public Works (245,730)

- Eliminate Sealcoat program for the year (130,000)
- Reduce building and signal maintenance (92,000)
- Reduce travel/training (23,730)

§ Parks & Recreation (147,905)

- Reduce Starlight Music Series by 3 shows (36,000)
- Reduce travel/training and miscellaneous supplies (47,605)
- Hold positions open – Groundswoker, Forestry (39,910)
- Reduce grounds maintenance (24,390)

§ CIP Dept (7,000)

- Reduce travel/training (6,000)
- Reduce utilities (1,000)

§ Planning and Development (87,000)

- Hold positions open – CSR, GIS Tech (56,000)
- Convert interns to unpaid (13,000)
- Reduce OT in building inspections and travel/training (10,500)
- Reduce 1 of 2 neighborhood grant cycles (7,500)

§ Information Technology (120,027)

- Defer replacement of 16 PCs (28,223)
- Reduce equipment and hardware maintenance and defer upgrades (46,675)
- Reduce midrange hardware and software purchases (30,000)
- Reduce travel/training and miscellaneous supplies (15,129)

§ Fiscal Services (105,138)

- Hold position open – Accountant (33,398)
- Appraisal District payment less than anticipated (13,308)
- Reduce travel/training and miscellaneous supplies (58,432)

§ General Government (151,798)

- Mayor/Council (8,000)
 - Reduce travel/training (8,000)
- City Secretary Office (5,873)
 - Reduce overtime (901)
 - Reduce travel/training (2,000)
 - Reduce supplies, legal notices (2,972)
- City Manager Office (22,386)
 - Reduce travel/training (9,500)
 - Reduce overtime and temp/seasonal (10,386)
 - Reduce miscellaneous supplies (2,500)
- Legal (42,500)
 - Hold position open – Asst City Attorney (42,500)
- Economic Development (22,423)
 - Hold positions open – 2 ED Analysts (19,738)
 - Create trade show display in-house (2,685)
- Public Communications (26,616)
 - Reduce travel/training & memberships (13,305)
 - Reduce advertising (3,456)
 - Reduce miscellaneous supplies (9,855)
- Human Resources (24,000)
 - Reduce annual banquet (14,000)
 - Reduce in-house training misc supplies & printing (10,000)

OTHER FUNDS:

- Electric Fund Budget needs to be reduced by (\$188,209)
 - Reduce Starlight Music Series by 3 shows (40,000)
 - Reduce Safety Sparktacular electric program (13,000)
 - Reduce transfer to Christmas in the Park (40,000)
 - Reduce travel/training (15,500)
 - Reduce windpower marketing (10,000)
 - Reduce promotional materials and supplies (17,000)
 - Reduce admin special studies (5,000)
 - Reduce contribution to Equipment Replacement Fund (47,709)

- Water Fund Budget needs to be reduced by (\$103,096)
 - Reduce overtime (10,821)
 - Defer Impact Fee Study (19,836)
 - Reduce rebate program (4,000)
 - Defer potable reuse study (30,000)
 - Defer water wise program (13,000)
 - Defer instrument calibration changes (2,000)
 - Reduce chemicals costs (4,000)
 - Reduce travel/training (5,700)
 - Reduce contribution to Equipment Replacement Fund (13,739)

- Wastewater Fund Budget needs to be reduced by (\$93,395)
 - Reduce overtime (5,796)
 - Reduce supplies (500)
 - Defer Impact Fee Study (24,835)
 - Defer water wise program (15,000)
 - Defer grease samples for 1 year (2,700)
 - Reduce travel/training (9,300)
 - Reduce contribution to Equipment Replacement Fund (35,264)

- Sanitation Fund Budget needs to be reduced by (\$108,955)
 - Reduce travel/training (6,469)
 - Reduce contribution to Equipment Replacement Fund (102,486)

- Fleet Fund Budget needs to be reduced by (\$3,399)
 - Reduce travel/training (1,000)
 - Reduce contribution to Equipment Replacement Fund (2,399)

- Utility Customer Service Fund Budget needs to be reduced by (\$41,749)
 - Hold position open – Customer Service Rep (30,000)
 - Reduce overtime (8,000)
 - Reduce contribution to Equipment Replacement Fund (3,749)

ORDINANCE NO. _____

AN ORDINANCE (BUDGET AMENDMENT 2) AMENDING ORDINANCE NUMBER 3202 WHICH WILL AMEND THE BUDGET FOR THE 2009-2010 FISCAL YEAR AND AUTHORIZING AMENDED EXPENDITURES AS THEREIN PROVIDED.

WHEREAS, the City Council of the City of College Station, Texas, approved its Budget Ordinance for the 2009-2010 Fiscal Year on September 10, 2009; and

WHEREAS, the City Council of the City of College Station, Texas, desires to amend the approved Budget Ordinance; and

WHEREAS, this amendment was prepared and presented to the City Council and a public hearing held thereon as prescribed by law and the Charter of the City of College Station, Texas, after notice of said hearing having been first duly given; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

Part 1: That Part 1 of the Budget Ordinance for the 2009-2010 Fiscal Year is amended to read as follows:

"PART 1: That the proposed budget as amended by the City Council of the City of College Station, which is made a part hereof to the same extent as if set forth at length herein, is hereby adopted and approved, a copy of which is on file in the Office of the City Secretary in College Station Texas. Amended appropriations for fiscal year 2009-2010 for the General Fund are \$58,882,692; for the Electric Fund are \$90,548,986; for the Water Fund are \$19,434,526; for the Wastewater Fund are \$14,315,246; for the Sanitation Fund are \$6,667,488; for the Utility Customer Service Fund are \$2,230,727; and for the Fleet Maintenance Fund are \$1,542,327. All other appropriations as originally adopted and amended by the City Council remain in full force and effect."

Part 2: That this ordinance shall become effective immediately after passage and approval.

PASSED and APPROVED this _____ day of _____ 2010.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:

City Attorney

**March 25, 2010
Regular Agenda Item No. 2
BVSWMA Bylaws**

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: Presentation, possible action, and discussion of a resolution approving Bylaws of Brazos Valley Solid Waste Management Agency, Inc.

Recommendation(s): Staff recommends approval of the Resolution

Summary: City Council approved Articles of Incorporation for Brazos Valley Solid Waste Management Agency, Inc. (BVSWMA Inc.) on February 11, 2010 forming the local government corporation under Subchapter D of Chapter 431, Texas Transportation Code.

On March 3, 2010, the BVSWMA Inc. board of directors approved these bylaws. The bylaws were approved by the City of Bryan on March 9, 2010.

This resolution proposes the approval of Bylaws by the City of College Station for BVSWMA Inc. that will provide structure for the organization its board of directors and establish financial responsibilities, indemnification, a code of ethics and other provisions giving guidance to BVSWMA Inc.

Subsequent to the approval of these bylaws, BVSWMA Inc. intends to execute one or more agreements including but not limited to an "Operation Agreement" with the Cities under which each City will approve the specifics of each City's capital contribution to the Corporation in exchange for the right to use the BVSWMA and an "Asset Transfer and Debt Reimbursement Agreement" regarding the transfer of the assets of the BVSWMA.

In order to assure BVSWMA's compliance with purchasing rules, a statement referring to 431.101 (g) of the Transportation Corporation Act stating that the local government corporation must comply with all laws that the creating governments must comply with for procurement of design and construction of projects, will be included in the Operations Agreement.

Budget & Financial Summary:

Attachments:

1. Resolution
2. Bylaws

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING BYLAWS OF BRAZOS VALLEY SOLID WASTE MANAGEMENT AGENCY, INC.

WHEREAS, the City Council of the City of College Station, Texas, approved Articles of Incorporation for Brazos Valley Solid Waste Management Agency, Inc. (BVSWMA Inc.) on February 11, 2010 forming the corporation under the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the "Act"), and Chapter 394, Texas Local Government Code; and

WHEREAS, the City Council of the City of College Station, Texas, is presented with Bylaws providing a purpose, board of directors, officers, financial responsibilities, indemnification of the directors and officers, an executive director and employees, a code of ethics and other provisions for BVSWMA Inc.; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That the City Council hereby approves the Bylaws of Brazos Valley Solid Waste Management Agency, Inc.

PART 2: That this resolution shall take effect immediately from and after its passage.

ADOPTED this _____ day of _____, A.D. 2010.

ATTEST:

APPROVED:

City Secretary

MAYOR

APPROVED:


City Attorney

**BYLAWS OF THE
BRAZOS VALLEY SOLID WASTE MANAGEMENT AGENCY, INC.**

A Texas Local Government Corporation created on behalf of
the Cities of Bryan and College Station, Texas

**ARTICLE I
Corporate Purpose and Agency**

1.01 *Purpose.* The Corporation is organized for the purpose of auditing, assisting, and acting on behalf of the City of Bryan, Texas, and the City of College Station, Texas (“the Cities”) in the performance of their governmental functions to promote the common good and general welfare of the Cities, including, without limitation, the financing, construction, ownership, and operation of the existing and future municipal solid waste landfills and the existing compost facility (collectively the “Facilities”) on behalf of the Cities, and to perform such other governmental purposes of the Cities, including, without limitation, the collection, handling, transportation, storage, processing, and disposal of solid waste, as may be determined from time to time by the City Councils of the Cities (the “City Councils”). Subject to applicable state law and any contractual obligations of a City or the Corporation, a City or the Cities may discontinue participation in the activities of the Corporation, or a non-participating unit of local government, business, or individuals may join in the activities of the Corporation, under procedures established in the Bylaws of the Corporation (the “Bylaws”).

1.02 *Local Government Corporation.* The Corporation is formed pursuant to the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the “Act”), as it now or may hereafter be amended, and Chapter 394, Texas Local Government Code, which authorizes the Corporation to assist and act on behalf of the Cities and to engage in activities in the furtherance of the purposes for its creation.

1.03 *Non-Profit Corporation.* The Corporation shall have and exercise all of the rights, powers, privileges, and functions given by the general laws of Texas to non-profit corporations incorporated under the Act including, without limitation, the Texas Non-Profit Corporation Act, as amended (Tex. Rev. Civ. Stat. art. 1396-1.01, et.seq., as amended) and/or the Texas Nonprofit Corporation Law (Tex. Bus. Org. Code, Chapters 20 and 21 and the provisions of Title I to the extent applicable to non-profit corporations, as amended), whichever is applicable, or their successor.

1.04 *Powers of Non-Profit Corporation.* The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created; provided, however, that the Corporation shall not issue

any bond, certificate, note or other obligation evidenced by an instrument without the written consent of each of the Cities or as otherwise allowed by the Bylaws.

1.05 *Governmental Entity for Immunity.* The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (2), Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, Section 101.001, et seq., Texas Civil Practice and Remedies Code. The Corporation shall have the power to acquire land in accordance with the Act as amended from time to time.

1.06 *City Consent.* References herein to the consent or written consent of a City shall refer to an ordinance, resolution or order of the governing body of the City.

ARTICLE II Board of Directors

2.01 *Powers Vested in Board.* All powers of the Corporation shall be vested in a Board of Directors consisting of seven (7) members (the “Board”) subject to the oversight of the Cities and as otherwise provided in these Bylaws. The Board shall independently manage and operate the Facilities in accordance with all applicable laws and documents, including the Articles, these Bylaws, the Asset Transfer and Debt Reimbursement Agreement, the Operation Agreement (as those terms are defined in the Interlocal Agreement by and between the Cities dated January 14, 2009 (the “ILA”)), and such other documents agreed to by the Cities and as the same may be amended from time to time. The qualification, selection, terms, removal, replacement, and resignation of the members of the Board of Directors of the Corporation (“Director” or “Directors”) shall be governed by Article VI of the Articles.

2.02 *Initial Board and Transition.* The initial directors of the Corporation (“Director” or “Directors”) shall be those persons named in Article VIII of the Articles of Incorporation (the “Articles”). To provide for staggered terms, each initial Director named in Article VIII of the Articles shall serve for the term prescribed therein. With respect to the initial Board, the terms of the initial Directors shall commence on the date the Secretary of State has issued the certificate of incorporation for the Corporation. Upon the expiration of the terms of office of the initial Directors, the subsequent Directors shall be appointed for a three (3) year term, or until his or her successor is appointed by the entity authorized to appoint the Director; provided, however, upon the death, resignation or removal of a Director, the entity responsible for that Director’s appointment shall appoint a replacement Director to serve for the unexpired term of office of the replaced Director.

2.03 *Governing Documents.* All other matters pertaining to the internal affairs of the Corporation shall be governed by these Bylaws, so long as these Bylaws are not inconsistent with the Articles, the Asset Transfer and Debt Reimbursement Agreement,

the Operation Agreement as those terms are defined in the ILA, and such other documents agreed to by the Cities and as the same may be amended from time to time, or the laws of the State of Texas.

2.04 *Voting Rights.* All Directors shall have full and equal voting rights. All references herein to an act, resolution or vote of the Directors shall refer to a vote of the Directors entitled to vote on the matter as provided herein.

2.05 *Meetings of Directors.* The Directors may hold their meetings and may have an office and keep the books of the Corporation at such place or places within Brazos County, Texas, or Grimes County, Texas, as the Board may from time to time determine; provided, however, in the absence of any such determination, such place shall be the registered office of the Corporation in the State of Texas. The Board shall meet in accordance with and file notice of each meeting of the Board for the same length of time and in the same manner and location as is required under Chapter 551, Texas Government Code (the "Open Meetings Act"); provided that the notice of each meeting of the Board shall be posted on the official bulletin board designated by the Cities for the posting of meetings of the Cities' respective City Councils. The Corporation, the Board, and any committee of the Board exercising the powers of the Board are subject to Chapter 552, Texas Government Code (the "Public Information Act").

2.06 *Annual Meetings.* The annual meeting of the Board shall be held at the time and at the location in Brazos County, Texas, or Grimes County, Texas, designated by the resolution of the Board for the purposes of transacting such business as may be brought before the meeting.

2.07 *Regular Meetings.* Regular meetings of the Board shall be held at least quarterly at such times and places as shall be designated, from time to time, by resolution of the Board.

2.08 *Special and Emergency Meetings.* Special and emergency meetings of the Board shall be held whenever called by the President of the Board or the Secretary or by a majority of the Directors who are serving duly appointed terms of office at the time the meeting is called. A majority of the Board, or a quorum with at least two (2) Board members appointed by each City, must be present for any special called meeting. A majority of the Board or a quorum, with at least one (1) Board member appointed by each City, must be present for any emergency called meeting. The Secretary shall give notice of each special meeting in person, by telephone, facsimile, mail or email at least three (3) days before the meeting to each Director and to the public in compliance with the Open Meetings Act. Notice of each emergency meeting shall also be given in the manner required under the Open Meetings Act. An emergency meeting may only be held when there is an emergency or an urgent public necessity exists and immediate action is required of the Board because of an imminent threat to public health and safety, or a reasonably unforeseeable situation. The agenda notice of the emergency meeting must be posted at least two (2) hours before the meeting and clearly identify the emergency or

urgent public necessity. The President, or the Board member who calls an emergency meeting must notify by telephone, facsimile transmission, or electronic mail not later than one hour before the meeting those members of the news media that have previously filed at the Corporation a request containing all pertinent information for the special notice and has agreed to reimburse the Board for the cost of providing the special notice. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a special meeting. At any meeting at which every Director shall be present, even though without any notice, any matter pertaining to the purposes of the Corporation may be considered and acted upon to the extent allowed by the Open Meetings Act.

2.09 *Quorum.* A majority of the entire Board (four) shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. If at any meeting of the Board there is less than a quorum present, a majority of those present may adjourn the meeting. The act of a majority of the Directors present and voting at a meeting at which a quorum is in attendance shall constitute the act of the Board, unless the act of a greater number is required by law, by the Articles, or by these Bylaws.

2.10 *Assent Presumed Without Express Abstention or Dissent.* A Director who is present at a meeting of the Board at which any corporate action is taken shall be presumed to have assented to such action unless such person's dissent or abstention shall be entered in the minutes of the meeting or unless such person shall file written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof. Such right to dissent or abstain shall not apply to a Director who voted in favor of the action.

2.11 *Conduct of Business.* At the meetings of the Board, matters pertaining to the purpose of the Corporation shall be considered in such order as the Board may from time to time determine. At all meetings of the Board, the President shall preside, and in the absence of the President, the Vice President shall preside. In the absence of the President and the Vice President, an acting President shall be chosen by the Board from among the Directors present. The Secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as secretary of the meeting.

2.12 *Executive Committee, Other Committees.* The Board may, by resolution passed by a majority of the entire Board, designate two (2) or more Directors to constitute an executive committee or other type of committee. In addition, the Board may appoint members of Corporation staff and citizens of the Cities to be members of a committee, except for an Audit, Compensation or Governance Committee, which committees may only be composed of Directors.

2.13 *Power of Committees.* To the extent provided in the authorizing resolution for the committee and the Board-approved committee charter, a committee may not exercise the authority of the Board. Each committee so designated shall keep regular

minutes of the transactions of its meetings, shall cause such minutes to be recorded in books kept for that purpose in the office of the Corporation, and shall report the same to the Board from time to time. Committees authorized to exercise the powers of the Board shall give notice of any meeting in the manner required for a meeting of the Board. Committees are subject to the regulations which apply to committees of government entities including the Public Information Act and Open Meetings Act.

2.14 *Compensation of Directors.* Directors, as such, shall not receive any salary or compensation for their services as Directors, except the seventh (7th) Director appointed by the Board may receive such compensation as determined by the other Board members; provided, however, Directors may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes.

2.15 *Technical Advisory Committee.* The Board shall establish a Technical Advisory Committee composed of members who are, in the judgment of the Board, qualified to provide advice with respect to the activities of the Corporation. The size of the Technical Advisory Committee will be determined by the Board and may be adjusted from time to time; provided, however, the Technical Advisory Committee shall in no case have fewer than five (5) members with at least two (2) members appointed by the Bryan City Manager, at least two (2) members appointed by the College Station City Manager, and the remaining members appointed by the Board. The Board will designate one or more of its Directors to be a liaison to the Technical Advisory Committee to assure close communication between the Board and the Technical Advisory Committee. Directors shall not be eligible to be members of the Technical Advisory Committee.

Members of the Technical Advisory Committee appointed by the Board shall serve for a term of one (1) year or such longer term as may be fixed by the Board and may be removed by the Board at any time, with or without cause. Members of the Technical Advisory Committee appointed by the City Managers of the Cities shall serve at the pleasure of the respective City Managers. Members of the Technical Advisory Committee shall not receive any salary or compensation for their services; provided, however, they may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes with prior approval of the Board.

The officers and Directors of the Corporation may consult with the Technical Advisory Committee from time to time with respect to the activities of the Corporation, but the Technical Advisory Committee shall in no way exercise or restrict the powers of the Board nor limit its responsibility for the management of the affairs of the Corporation. The members of the Technical Advisory Committee may meet to discuss BVSWMA related activities and to advise the Board thereon. Based upon the individual areas of professional expertise, members of the Technical Advisory Committee may provide skilled analysis and comments regarding proposed BVSWMA plans and programs.

2.16 *Director's Reliance on Consultant Information.* A Director shall not be liable if while acting in good faith and with ordinary care, such person relies on information, opinions, reports or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by:

- (a) one or more other officers or employees of the Corporation;
- (b) an employee of a City;
- (c) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or,
- (d) a committee of the Board of which the Director is not a member.

2.17 *Executive Director.* The Board is authorized to hire an Executive Director who shall serve at the pleasure of the Board. The Executive Director shall be the chief executive officer of the Corporation and shall have the duties and powers as set forth in Article VI of these Bylaws. The Board shall establish the compensation, and may establish duties and responsibilities of the Executive Director in addition to those prescribed by Article VI of these Bylaws. The hiring and/or removal of the Executive Director shall be by a majority vote of the entire Board.

2.18 *Attorneys and Consultants.* The Board may employ attorneys, auditors, certified accountants and such other professionals and consultants as may be required for the purposes of the Corporation from time to time.

ARTICLE III Officers

3.01 *Titles and Term of Office.* The officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board may from time to time elect or appoint. Each officer shall be a current Director. One person may hold more than one office, except the President shall not hold the office of Secretary. The term of office for each officer shall be one (1) year and shall serve from October 1 through the following September 30, except that such office shall terminate on the earlier of: (a) the date that the officer is replaced by the Board; or (b) the date that the officer is no longer a member of the Board.

All officers shall be appointed and subject to removal at anytime, with or without cause, by a vote of a majority of the entire Board.

A vacancy in any office elected pursuant to this Article III shall be filled by a vote of a majority of the entire Board.

3.02 *Powers and Duties of the President.* The President shall be a member of the Board and shall preside at all meetings of the Board. Such person shall have such duties as are assigned by the Board. The President may call special or emergency meetings of the Board. Any special or emergency called meeting shall be called and conducted in accordance with Section 2.08 of these Bylaws. In furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles, the President or Vice President may sign and execute all bonds, notes, deeds, conveyances, franchises, assignments, mortgages, notes, contracts and other obligations in the name of the Corporation. The President shall be an ex-officio member of all committees.

3.03 *Powers and Duties of the Vice President.* A Vice President shall be a member of the Board and shall have such powers and duties as may be assigned to such person by the Board or the President, including the performance of the duties of the President upon the death, absence, disability, or resignation of the President, or upon the President's inability to perform the duties of such office. Any action taken by the Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken.

3.04 *Treasurer.* The Treasurer shall have custody of all the funds and securities of the Corporation which come into possession of the Corporation. When necessary or proper, the Treasurer (i) may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board; (ii) may sign all receipts and vouchers for payments made to the Corporation, either alone or jointly with such other officer as is designated by the Board; (iii) shall enter or cause to be entered regularly in the books of the Corporation to be kept by such person for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation; (iv) shall perform all acts incident to the position of Treasurer subject to the control of the Board; including the monitoring and audit of all cash accounts whose existence must first be approved by the Board; and (v) shall, if required by the Board, give such bond for the faithful discharge of his or her duties in such form as the Board may require.

3.05 *Secretary.* The Secretary (i) shall keep the minutes of all meetings of the Board in books provided for that purpose; (ii) shall attend to the giving and serving of all notices; (iii) in furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles of Incorporation, may sign with the President in the name of the Corporation and/or attest the signatures thereof, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; (iv) shall have charge of the Corporation's books, records, documents and instruments, except the books of account and financial records and securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to the inspection of any Director upon application at the office of the Corporation during business hours; and, (v)

shall in general perform all duties incident to the office of Secretary subject to the control of the Board.

3.06. *Compensation.* Officers shall serve without compensation for their duties, but are entitled to receive reimbursement for their reasonable expenses only in performing their functions in accordance with policies adopted by the Board.

3.07 *Officer's Reliance on Consultant Information.* In the discharge of a duty imposed or power conferred on an officer of the Corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by:

- (a) one or more other officers or employees of the Corporation, including members of the Board;
- (b) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or,
- (c) an employee of one of the Cities.

ARTICLE IV Financial Responsibilities

4.01 *Audit.* Not later than one hundred twenty (120) days after the close of each fiscal year, the Board shall have an annual audit prepared by an independent auditor who is duly licensed or certified as a public accountant in the State of Texas of the financial books and records of the Corporation. Upon receiving the completed audit, the Corporation shall immediately provide a copy to each City.

4.02 *Capital Spending Authority:* The Board may expend funds for capital improvements for the Facilities in accordance with the Capital Plan approved by the Board for the current fiscal year budget as follows:

- (a) Funds from a City shall be used for the purposes of the Corporation as authorized and directed by the Cities.
- (b) Funds from other sources, such as donations, may be used at the discretion of the Board for capital purposes as long as the uses are consistent with the Cities' direction and are not reasonably expected by the Board to increase the operation and maintenance costs of the Corporation above the limits established in Section 4.04, below or have a capital cost greater than \$100,000.

(c) For expansion of the Facilities beyond the size, function and scope existing at the time of the formation of the Corporation with the prior approval of the Cities.

(d) Proceeds of bonds, notes and other obligations shall be expended in accordance with the terms of the resolution authorizing the issuance of such bonds, notes or other obligations.

4.03 *Issuance of Debt.*

(a) The Corporation, with the approval of the Cities, is authorized to issue short-term debt in the form of bonds, notes, and other obligations which by their terms mature and are payable not later than one (1) year from their initial date of issuance. Where possible, the amount and purpose of the short term debt shall be projected by the Corporation in its annual budget to the Cities. Cities shall be given the first opportunity to provide these funds before the Board incurs debt.

(b) The Corporation, with the approval of the Cities, is authorized to issue long-term debt in the form of bonds, notes, and other obligations which by their terms mature and are payable beyond one (1) year from their initial date of issuance. Long term debt may be issued to finance capital improvements and costs related thereto, and to refund or refinance any outstanding bonds, notes, or obligations issued or incurred by the Corporation, or such for such other reasons as may be approved by the Cities.

(c) Short-term debt as defined in Subsection (a) and long-term debt as defined in Subsection (b) of this Section 4.03 may be issued only if:

(i) the issuance of said debt is approved by a majority of the entire Board;

(ii) at least one Director appointed by each of the Cities are among the majority of the Board voting in favor of issuance of the debt; and

(iii) the issuance of said debt is approved by resolution or ordinance of the Cities.

(d) Any debt issuance approved by the Cities shall be paid from any source or sources of permitted by law including the income and revenue of the Corporation.

4.04 *Increase of O&M Costs.* Except for items mandated by changes in state or federal law or regulation that could not reasonably have been anticipated prior to submission of the Corporation's annual budget to the Cities for review and comment, in the event any one or more items are added during a fiscal year that would increase or cause the annual operation and maintenance costs to exceed ten percent (10%) above the budgeted amount for that year, the Board must receive prior approval from both Cities prior to making that addition. Failure of the Cities to reject the request on or before the

thirtieth (30th) day after submission of the request to a City shall be deemed an approval of the request.

4.05 *Fiscal Year.* The fiscal year of the Corporation shall begin October 1 of each year.

4.06 *Annual Budget.* No later than 90 days prior to the beginning of each fiscal year, the Board shall prepare, or cause to be prepared, and approve a budget (the "Budget") for each fiscal year. The Budget must be approved by a two thirds (2/3) majority vote of the entire Board. After approval by the Board, the Budget shall be submitted to each City for approval. Failure of a City to reject the Budget approved by the Board on or before the thirtieth (30th) day after submission to the Cities shall be deemed an approval of the Budget.

If the Board fails to approve the Budget, or if the Budget is not approved by each City, then during the first three years of this Agreement, the Budget for the prior fiscal year shall be deemed approved. After the third year of the Agreement, if the Budget is not approved by either the Board or all Cities, then the next year's Budget is the greater of: the total amount of the prior year's Budget; or, the average of the annual Budgets for the prior three (3) years.

4.07 *Line Item Flexibility.* The Executive Director has the authority to shift operation and maintenance funds from one line item of the Budget to another without the approval of the Board or the Cities. The Board has the authority to shift operation and maintenance funds from one line item of the Budget to another without the approval of the Cities.

4.08 *Reserve Fund.* The Budget shall provide for one or more reserve funds for the replacement of scheduled assets, for capital improvements for the Facilities, reasonable reserves for future activities, debt, establishment of a capital reserve, establishment of a reserve for closure and post closure liability and satisfaction of other legal obligations of the Corporation. Any unencumbered funds remaining at the end of the fiscal year shall be converted to the Reserve Fund. The amount of the Reserve Fund shall be in an amount customary for facilities comparable to the Facilities in both size and use.

4.09 *Other Funds.* Other funds, such as unrestricted charitable donations, may be used by the Board in accordance with the approved budget or, if not anticipated in the Budget, as the Board directs, provided that the limitation set out in Section 4.04, above or a capital cost of \$100,000 is not exceeded.

4.10 *Appropriations and Grants.* The Corporation shall have the power to request and accept any appropriations, grant, contribution, donation, or other form of aid from the federal government, the State, any political subdivision, or municipality in the State, or from any other source.

4.11 *Sale or transfer of Assets.* The Corporation may not sell, transfer or assign real property or permits of the Corporation, in whole or in part, without the approval of a two-thirds (2/3) majority vote of the entire Board. After approval by the Board, the proposed sale, transfer or assignment of the Assets, the proposed asset transfer (“Asset Transfer”) shall be submitted to each City for approval. The Cities will approve or disapprove the Asset Transfer in whole or in part. Failure of the Cities to reject the Asset Transfer approved by the Board on or before the thirtieth (30th) day after submission to the Cities shall be deemed an approval of the Asset Transfer.

ARTICLE V Indemnification of Directors and Officers

5.01 *Right to Indemnification.* Subject to the limitations and conditions as provided in this Article V and the Articles, each person who was or is made a party, is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a “proceeding”), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or officer of the Corporation or while a Director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Corporation to the fullest extent permitted by the Texas Non-Profit Corporation Act and/or the Texas Nonprofit Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlement and reasonable expenses (including, without limitation, attorneys’ fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article V shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnify hereunder. The rights granted pursuant to this Article V shall be deemed contract rights, and no amendment, modification or repeal of this Article V shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article V could involve indemnification for negligence or under theories of strict liability.

5.02 *Advance Payment.* The right to indemnification conferred in this Article V shall include the right to be paid in advance or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 5.01 who was, is or is threatened to be made a named defendant or respondent in

a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article V and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article V or otherwise.

5.03 *Indemnification of Employees and Agents.* The Corporation, by adoption of a resolution of the Board, may indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article V; and the Corporation may indemnify and advance expenses to persons who are not or were not Directors, officers, employees or agents of the Corporation but who are or were serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person to the same extent that it may indemnify and advance expenses to Directors under this Article V.

5.04 *Appearance as a Witness.* Notwithstanding any other provision of this Article V, the Corporation may pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding involving the Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

5.05 *Non-exclusivity of Rights.* The right to indemnification and the advancement and payment of expenses conferred in this Article V shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 5.03 of this Article V may have or hereafter acquire under any law (common or statutory), provision of the Articles or these Bylaws, agreement or disinterested Directors or otherwise.

5.06 *Insurance.* The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article V.

5.07 *Notification.* Any indemnification of or advance of expenses to a Director or officer in accordance with this Article V shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the ninety (90) day period immediately following the date of the indemnification or advance notification.

5.08 *Savings Clause.* If this Article V or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to this Article V as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article V that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VI Executive Director; Employees

6.01 *Powers and Duties of the Executive Director.*

(a) *Chief Executive.* The Executive Director shall be the chief executive officer of the Corporation and, subject to the control of the Board, he or she shall be in general charge of the Facilities and the properties and affairs of the Corporation. The Executive Director has management and control of the Facilities, the properties and operations of the Corporation, including the powers of a general manager. The Executive Director shall be an ex-officio of all Board committees, except the Audit Committee. The Executive Director will be responsible for implementing all orders and resolutions of the Board, and all other powers that are not specifically reserved to the Directors or Cities, will be executed by the Executive Director within the general guidelines and policies of the Board and Cities.

(b) *Responsible for hiring and supervision of Employees.* The Executive Director shall be responsible for hiring and terminating the employees of the Corporation. All employees hired by the Executive Director shall be terminable at-will and not be provided any term or promise of employment.

(c) *Spending Authority.* The Executive Director is authorized to approve all contracts and expenditures that are not greater than the lowest authorized amount for budgeted contracts and expenditures by the city managers of the Cities without Board approval as long as funds are budgeted and are available for the expenditure.

(d) *Annual Budget.* The Executive Director is responsible for the preparation of the Corporation's annual budget.

(e) *Annual Business Plan.* The Executive Director shall prepare a Corporation business plan (the “Business Plan”) on an annual basis for review and approval by the Board. The Business Plan shall include such items and matters required by the Board and, at a minimum, shall include the following: (i) performance measures and benchmarks; (ii) short term and long term waste stream tonnage to be received; (iii) anticipated new customers and goals; (iv) compaction goals; (v) short and long range capacities and life expectancy; (vi) possible future activities; and (vii) short and long term compost and other waste diversion strategies.

6.02 *Corporation Employees.*

(a) The Executive Director shall be a full time employment position of the Corporation, except that the Board may contract with a person or entity to serve as an interim Executive Director to serve during the transition of the operation and management of the Brazos Solid Waste Management Agency to the Corporation or until the Board employs a person to serve as the Executive Director.

(b) For the initial operation of the Facilities, the Corporation shall utilize employees of the Cities pursuant to the Operation Agreement. Any new employees (other than the Executive Director) in excess of the persons employed from the Cities on a contract basis pursuant to the Operation Agreement shall be employees of the Corporation hired by the Executive Director.

ARTICLE VII Code of Ethics

7.01 *Policy and Purposes.*

(a) It is the policy of the Corporation that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that the Board establish policies to control and manage the affairs of the Corporation fairly, impartially, and without discrimination.

(b) This Code of Ethics has been adopted as part of the Corporation’s Bylaws for the following purposes: (a) to encourage high ethical standards in official conduct by Directors and corporate officers; and (b) to establish guidelines for such ethical standards of conduct.

7.02 *Conflicts of Interest*

(a) *Abide by State and Criminal Laws for Public Officers.* All directors, officers and employees shall abide by the state civil and criminal laws regarding conflict of

interest, official misconduct and other regulations and restrictions involving their official duties.

(b) *Disclosure and Abstention.* It is the intent of these Bylaws, that the Directors, Executive Director and officers shall take all steps to avoid the appearance of impropriety in the conduct of their affairs on behalf of the Corporation. This includes not engaging in any conduct or business that may be deemed to compromise their independent judgment in executing their duties as Corporation officials. In the event that a Director, officer, or the Executive Director has any financial or equitable interest, direct or indirect, in a transaction that comes before the Board, or a committee or the Executive Director, the affected Director or officer, must:

- (i) disclose that interest in writing and file it with the Board Secretary; and,
- (ii) refrain from discussing or voting on the same.

(c) *Restrictions on Executive Director.* The Executive Director is precluded from having any financial or equitable interest in any contract, service (other than such person's employment) or acquisition that is subject to such person's approval or that the subordinates of the Executive Director may approve or monitor.

(d) *Definition of Financial Interest/Relative.* The "financial interest" contemplated under (b) and (c) of this Section requires that the affected person who is the Director, officer, or Executive Director or their relative receive an actual financial benefit from the transaction with the Corporation. A relative is a person related within the first degree of consanguinity or affinity to the Director, officer, or Executive Director. A financial or equitable interest does not include the following:

- (i) An ownership in the entity transacting business with the Corporation where the ownership interest is less than one percent (1%).
- (ii) Compensation as an employee, officer or director of the entity transacting business with the Corporation where such compensation is not affected by the entity's transaction with the Corporation.
- (iii) An investment or ownership in a publicly held company in an amount less than TEN THOUSAND DOLLARS (\$10,000.00)
- (iv) An employee of a public entity serving on the Board.

7.03 *Acceptance of Gifts.* No Director or officer shall accept any benefit as consideration for any decision, opinion, recommendation, vote or other exercise of discretion in carrying out official acts for the Corporation. No Director or officer shall solicit, accept, or agree to accept any benefit from a person known to be interested in or likely to become interested in any contract, purchase, payment, claim or transaction

involving the exercise of the Director's or officer's discretion. As used here, "benefit" does not include:

(a) a fee prescribed by law to be received by a Director or officer or any other benefit to which the Director or officer is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a Director or officer;

(b) a gift or other benefit conferred on an account of kinship or a personal, professional, or business relationship independent of the official status of the Director or officer;

(c) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

(1) not more than one honorarium is received from the same person in a calendar year;

(2) not more than one honorarium is received for the same service; and

(3) the value of the honorarium does not exceed \$250 exclusive of reimbursement for travel, food, and lodging expenses incurred by the Director or officer in performance of the services.

(d) A benefit consisting of food, lodging, transportation, or entertainment accepted as a guest is reported as may be required by law.

7.04 *Nepotism.* No Director or officer shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree of consanguinity to the Director or officer so appointing, voting or confirming, or to any other Director or officer. This provision shall not prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship employment or duty at least thirty (30) days prior to the appointment of the Director or officer so appointing or voting.

ARTICLE VIII Miscellaneous Provisions

8.01 *Seal.* The seal of the Corporation shall be such as may be from time to time approved by the Board. The seal of the Corporation shall not be required to be placed on a document in order for the document to be considered a valid act or agreement of the Corporation.

8.02 *Notice and Waiver of Notice.* Whenever any notice, other than public notice of a meeting given to comply with the Open Meetings Act, is required to be given

under the provisions of these Bylaws, such notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. If transmitted by facsimile or email, such notice shall be deemed to be delivered upon successful transmission of the facsimile or email. A Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting unless such attendance is for the purpose of objecting to the failure of notice. A waiver of notice, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

8.03 *Gender.* References herein to the masculine gender shall also refer to the feminine in all appropriate cases and vice versa.

8.04 *Reports.*

(a) No later than ninety (90) days following the end of each fiscal year, the Board shall submit to each City the following: (1) Program of Service; and (2) Annual Report.

(b) The Executive Director shall provide a monthly operational and financial report to the Board and the Technical Advisory Committee, inclusive of a report of all contracts entered into and expenditures made by the Executive Director on behalf of the Corporation pursuant to the authority of Section 6.01(c) of these Bylaws.

8.05 *Distribution of Net Income; Return of Funds.* Notwithstanding Section 431.107 of the Act entitling the Cities at all times to have the right to equally receive the income earned by the Corporation, any income earned by the Corporation after payment of reasonable expenses, reasonable reserves for future activities, debt, establishment of a capital reserve, establishment of a reserve for closure and post closure liability, and satisfaction of other legal obligations of the Corporation shall be retained by the Corporation and applied equitably as a credit to the charges to Cities for tipping fees and other fees and costs charged to Cities for the disposal of municipal solid waste at Corporation's facilities and/or other services provided by the Corporation to the Cities.

8.06 *City Access to Records of Corporation.* Notwithstanding the provisions of the Public Information Act or any exceptions contained therein to disclosure and the rights or limitations thereof regarding the review of records of Texas non-profit corporation, the Cities shall have a special right to review and obtain copies of the records of the Corporation, regardless of format, upon reasonable notice and during regular business hours of the Corporation; provided, however, such special right of access to the Cities shall not apply to records to which law or regulation expressly prohibit disclosure to third parties that would by definition include the Cities.

8.07 *Expansion or Modification of Services.* The Corporation may not expand, reduce or modify the current municipal solid waste landfill and compost services consisting of two municipal solid waste landfills and compost facility (collectively referred to as the “BWSWMA Services”) without the approval of a two thirds (2/3) majority vote of the entire Board. After approval by the Board, the proposed expansion, reduction or modification of the BWSWMA Services, as the case may be, the proposed expansion, reduction or modification (the “BWSWMA Services Modification”) shall be submitted to each City for approval. Failure of a City to reject the BWSWMA Services Modification approved by the Board on or before the thirtieth (30th) day after submission to the Cities shall be deemed an approval of the BWSWMA Services Modification. The Cities may approve or disapprove the BWSWMA Services Modification in whole or in part. Failure of a City to reject any portion of the BWSWMA Services Modification within the thirty (30) day period shall be deemed an approval of such portion of the BWSWMA Services Modification.

8.08 *Amendments.* A proposal to alter, amend or repeal these Bylaws shall be made by the affirmative vote of a majority of the entire Board at any annual or regular meeting, or at any special meeting if notice of the proposed amendment be contained in the notice of said special meeting. However, any proposed change or amendment to the Bylaws must be approved by resolution of each City to be effective.

**25 March 2010
Regular Agenda Item No. 3
CSISD Development Regulations**

To: Glenn Brown, City Manager

From: Bob Cowell, AICP, Director of Planning and Development Services

Agenda Caption: Presentation, possible action, and discussion regarding the proposed approach to applying the City of College Station's development standards and regulations to College Station Independent School District projects.

Recommendation: Staff recommends the Council approve the attached general agreement regarding the applicability and enforcement of the City's development standards and regulations to CSISD projects.

Summary: Traditionally, CSISD has generally complied with the City's development regulations that are grounded in health and life safety (building codes, fire codes, floodplain regulations, etc.). However, a recent opinion from the Attorney General of Texas (see attached) affirmed the authority of a home rule city to also enforce land development regulations on an independent school district for the purpose of aesthetics and the maintenance of property values.

Over the course of several months, based on the acknowledgement by both parties that not all the development standards and regulations that exist in the City work for projects such as a school City staff worked with CSISD Staff to negotiate the applicability of the City's development standards and regulations to CSISD projects. The results of the negotiations are provided in tabular form as a coversheet attachment.

These agreements for exemptions to the City Code are in addition to the current practice of not requiring the CSISD to comply with customary submittal deadlines and the previous Council approved CSISD exemption to the payment of development review fees. As noted several of the exemptions will require amendment of the UDO and will be subject to public hearings before the P&Z Commission and City Council.

Budget & Financial Summary: N/A

Attachments:

1. Proposed Development Standards
2. Attorney General Opinion No. GA-0697



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2009

Mr. Robert Scott
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Opinion No. GA-0697

Re: Authority of a home rule city to enforce land development regulations against an independent school district for the purposes of aesthetics and the maintenance of property values (RQ-0741-GA)

Dear Mr. Scott:

You ask whether a home rule city may enforce certain provisions of its land development regulations against an independent school district. ⁽¹⁾ Your question is based upon a letter you received from the Mansfield Independent School District (the "District") objecting to certain requirements imposed upon the District by the City of Mansfield, a home rule municipality (the "City"). ⁽²⁾ Specifically, the District questions the validity of the following City zoning ordinance provisions as they apply to the District :

1. set back and height regulations;
2. community design standards;
3. sign standards;
4. landscaping and screening requirements;
5. supplemental requirements for screening of mechanical equipment and service areas;
6. general provisions for fences and free standing walls; and
7. fines for violation of such ordinances.

District Letter at 3-5. The District suggests that these regulations serve only to protect "the aesthetic appearance of and property values of" commercial property in the city. *Id.* at 1. ⁽³⁾

The application of municipal building ordinances to school district property within a municipality was first considered by the Texas Supreme Court in 1964. The court, while acknowledging that an independent school district is a creature of the state, declined to classify its property as "state property." *Port Arthur Indep. Sch. Dist. v. City of Groves*, 376 S.W.2d 330, 333 (Tex. 1964). Rather, "[t]he Legislature, in providing that local school boards shall contract for the erection of school buildings and superintend the construction of same, made no provision whatsoever that they should regulate, supervise, or control in any manner the building of school buildings." *Id.* The court concluded that a city, "in performing its duties as delegated to it by the state, does not usurp the authority and responsibility of the school district in the realm of education by requiring the school buildings to meet certain minimum standards of construction any more than it usurps the control and management of individuals and private corporations over their property and affairs by making them meet those same standards." *Id.* at 334. A subsequent decision added the caveat that a municipality may not in the exercise of its authority wholly exclude from its boundaries a facility operated by an independent school district. *Austin Indep. Sch. Dist. v. City of Sunset Valley*, 502 S.W.2d 670, 673 (Tex. 1973). The court in *City of Sunset Valley* noted that *City of Groves* "turned on the police power of the city to enforce necessary health and safety regulations," whereas the issue before it in the instant case was "a zoning ordinance of the City which wholly excludes the school facilities in issue." *Id.* See also *City of Addison v. Dallas Indep. Sch. Dist.*, 632 S.W.2d 771, 773 (Tex. App.--Dallas 1982, writ ref'd n.r.e.) (school district may place any facility within an area zoned residential and is generally exempt from a city's *location-based* requirements as long as the district is not acting unreasonably or arbitrarily); Tex. Att'y Gen. Op. No. JM-514 (1986) at 2 (municipality may not use zoning power to prevent school district from converting classroom facility to administrative facility).

Courts reviewing municipal ordinances begin with a presumption of validity, wherein the standard of review is abuse of discretion. *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 792-93 (Tex. 1982). See also *Price v. City of Junction*, 711 F.2d 582, 588 (5th Cir. 1983); *City of Lucas v. N. Tex.*

Mun. Water Dist., 724 S.W.2d 811, 820 (Tex. App.--Dallas 1986, writ ref'd n.r.e.). Moreover, the reasonableness of an ordinance is a question of law. *City of Lucas*, 724 S.W.2d at 820.

The District takes particular issue with the City's reliance upon aesthetics and the maintenance of property values to uphold the regulations in question. See District Letter at 1, 3. But those considerations have been approved by Texas courts since 1940. In *Connor v. City of University Park*, 142 S.W.2d 706, 712 (Tex. Civ. App.--Dallas 1940, writ ref'd), the court said that "in zoning, the aesthetic consideration is not to be ignored. Harmonious appearance, appropriateness, good taste and beauty displayed in a neighborhood not only tend to conserve the value of property, but foster contentment and happiness among homeowners." Subsequent cases have focused upon the same considerations. See, e.g., *City of Houston v. Johnny Frank's Auto Parts Co.*, 480 S.W.2d 774, 780 (Tex. Civ. App.--Houston [14th Dist.] 1972, writ ref'd n.r.e.) (quoting language from *Connor*, 142 S.W.2d at 712); *City of Pharr v. Pena*, 853 S.W.2d 56, 61 (Tex. App.--Corpus Christi 1993, writ denied) (considerations of aesthetics as well as surrounding property values "represent a legitimate goal [and] were substantially related to the public welfare"). In the most recent case, the court said that a restriction on off-premise signs "enhances the aesthetic appearance and economic prospects of the community." *Eller Media Co. v. City of Houston*, 101 S.W.3d 668, 675 (Tex. App.--Houston [1st Dist.] 2003, pet. denied).

Moreover, zoning ordinances and land development standards constitute a portion of a municipality's statutory police power. Chapter 211 of the Local Government Code provides the basis for municipal zoning authority. The powers granted therein "are for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance." Tex. Loc. Gov't Code Ann. § 211.001 (Vernon 2008).⁽⁴⁾ Zoning ordinances include, *inter alia*, regulation of the height and size of buildings and other structures. *Id.* § 211.003(a)(1); see also *id.* § 216.901(a) (home rule city may regulate signs). Another provision permits the governing body of a municipality to divide the city into districts and, within each district, to "regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land." *Id.* § 211.005(a). Zoning regulations "shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality." *Id.* § 211.005(b). Taken together, the foregoing statutes and judicial decisions make clear that the City may enforce reasonable zoning and building ordinances against the District on the bases of aesthetics and the maintenance of property values. Sections 54.004 and 211.005 of the Local Government Code establish the primacy of a municipality in enforcing its building and zoning regulations. In addition, the various cases upholding considerations of aesthetics and the maintenance of property values as sufficient underpinnings for such laws remove substantial obstacles to the implementation of those regulations. Finally, the Texas Supreme Court's decision in *City of Groves* indicates that, in the area of building regulation, a municipality may enforce its reasonable ordinances against an independent school district.

We conclude that a home rule city may enforce its reasonable land development regulations and ordinances against an independent school district for the purposes of aesthetics and the maintenance of property values.

S U M M A R Y

A home rule city may enforce its reasonable land development regulations and ordinances against an independent school district for the purposes of aesthetics and the maintenance of property values.

Very truly yours,



GREG ABBOTT
Attorney General of Texas

ANDREW WEBER
First Assistant Attorney General

JONATHAN K. FRELS
Deputy Attorney General for Legal Counsel

NANCY S. FULLER
Chair, Opinion Committee

Rick Gilpin
Assistant Attorney General, Opinion Committee

Footnotes

1. Request Letter (*available at* <http://www.texasattorneygeneral.gov>).
2. See Letter from Meridith Hayes, Abernathy, Roeder, Boyd & Joplin, P.C., to Robert Scott, Commissioner of Education (Sept. 5, 2008) (attachment to Request Letter) [hereinafter District Letter].
3. For purposes of this opinion, we accept the District's characterization of the referenced regulations as protective of "the aesthetic appearance of and property values of" property within the municipality.
4. Under another portion of the Local Government Code, "[a] home rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants." Tex. Loc. Gov't Code Ann. § 54.004 (Vernon 2008).

[Home](#) | [Opinions](#)

Proposed CSISD Development Regulations

Regulation/ Requirement	Waived by Previous Resolution	Currently Addressed in UDO	Requires UDO/Building Code Amendment	Exempt from City Requirements	Compliance Required	Addressed by City Policy or ILA
Development Fees	X					
Land Use Regulations		X				X
Sign Regulations ¹			X	X		
Buffer Requirements²			X	X		
NRA Requirements			X	X		
Outdoor Lighting Standards			X	X		
Parkland Dedication		X		X		X
Subdivision Regulations ³				X		
Utility Lines					X	
Easements					X	
Sidewalks/Bikeways					X	
Adopted Building/Fire Codes⁴			X		X	
Building Setbacks					X	
Height Restrictions (Related to Single- Family Setbacks)					X	
Driveway Access & Location Regulations					X	
Landscaping Requirements⁵					X	
Solid Waste Requirements & Standards					X	
Storm Drainage Requirements & Standards⁶					X	
Traffic Impact Analysis Requirements					X	

1. Provisions in 7.4 D “Prohibited Signs” of the UDO would apply

2. Applies to educational buildings (group “E” as defined by the International Building Code) and accessory uses

3. Should CSISD voluntarily pursue platting, the plat shall comply with the applicable requirements

4. Kitchen food grinders are not required to have a solids interceptor when connected to a 1,000 gallon (or larger) grease interceptor

5. The City would work with CSISD when landscaping and/or screening requirements cause security concerns. Also, CSISD would be exempt from fines associated with landscaping requirements.

6. The City of College Station will provide supporting engineering information for development requiring off-site studies